

Tab 1	CS/SB 760 by CA, Brandes; (Identical to H 01331) Fire Control Districts and Firefighter Pensions						
262866	D	S	RCS	GO, Brandes	Delete everything after	02/17 04:54 PM	
Tab 2	SB 774 by Diaz; (Similar to H 07081) Public Records and Meetings/Applicant for President/State University or Florida College System Institution						
458574	D	S	RCS	GO, Diaz	Delete everything after	02/17 04:54 PM	
Tab 3	SB 800 by Harrell (CO-INTRODUCERS) Farmer; (Identical to H 01171) Division of State Technology						
463360	A	S	L RCS	GO, Harrell	Delete L.88 - 101:	02/17 04:54 PM	
Tab 4	CS/SB 814 by EE, Perry; (Identical to CS/H 00491) Disposition of Surplus Funds by Candidates						
Tab 5	CS/SB 872 by CJ, Perry; (Similar to H 00893) Public Records/Florida Commission on Offender Review						
521370	T	S	RCS	GO, Perry	In title, delete L.10:	02/17 04:54 PM	
Tab 6	SB 1124 by Diaz; (Similar to CS/H 00707) Legislative Review of Occupational Regulations						
232090	T	S	RCS	GO, Diaz	In title, delete L.2 -	02/17 04:54 PM	
Tab 7	SB 1186 by Baxley (CO-INTRODUCERS) Albritton; (Identical to CS/H 01297) Drug-free Workplaces						
Tab 8	SB 1272 by Montford (CO-INTRODUCERS) Albritton; Statewide Emergency Shelter Task Force						
Tab 9	SJR 1502 by Diaz; (Identical to H 07061) Information About Counties and Municipalities						
Tab 10	CS/SB 1624 by CF, Perry; (Compare to CS/H 01323) Economic Self-sufficiency						
Tab 11	CS/SB 1656 by IT, Albritton; (Similar to CS/H 00715) Reclaimed Water						
672040	A	S	RCS	GO, Albritton	Delete L.172 - 398:	02/17 04:54 PM	
Tab 12	SB 1836 by Bean; (Compare to H 01279) Health Insurance and Prescription Drug Coverage						
539144	D	S	RCS	GO, Bean	Delete everything after	02/17 04:54 PM	
Tab 13	SB 7048 by IS; Public Records/Public Shelter Space						
Tab 14	SPB 7056 by GO; Public Records/Active Threat Assessment and Management Records						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Hooper, Chair
Senator Rader, Vice Chair

MEETING DATE: Monday, February 17, 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 760 Community Affairs / Brandes (Identical H 1331)	Fire Control Districts and Firefighter Pensions; Authorizing a municipality that provides fire protection services to a municipal services taxing unit under an interlocal agreement to receive property insurance premium taxes; authorizing a municipal services taxing unit that enters into an interlocal agreement for fire protection services with a municipality to impose an excise tax on property insurance premiums; requiring a municipal services taxing unit to provide the Division of Retirement of the Department of Management Services with a certified copy of an ordinance assessing and imposing certain taxes, etc. CA 02/03/2020 Fav/CS GO 02/17/2020 Fav/CS AP	Fav/CS Yeas 4 Nays 0
2	SB 774 Diaz (Similar H 7081)	Public Records and Meetings/Applicant for President/State University or Florida College System Institution; Providing an exemption from public records requirements for any personal identifying information of an applicant for president of a state university or Florida College System institution; providing an exemption from public meeting requirements for any meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution and for any portion of a meeting held for the purpose of establishing qualifications of, or any compensation framework to be offered to, such potential applicants which would disclose personal identifying information of an applicant or potential applicant; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. ED 01/27/2020 Favorable GO 02/17/2020 Fav/CS RC	Fav/CS Yeas 3 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 17, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	SB 800 Harrell (Identical H 1171)	Division of State Technology; Requiring the Department of Management Services to administer the Data Innovation Program through the division; establishing the Data Innovation Program within the division; specifying requirements for the division for data governance across state agencies; requiring the division to develop and conduct data interoperability pilot programs with the Agency for Health Care Administration, the Department of Health, and the Department of Children and Families by a specified date, etc. GO 02/17/2020 Fav/CS AEG AP	Fav/CS Yeas 4 Nays 0
4	CS/SB 814 Ethics and Elections / Perry (Identical CS/H 491)	Disposition of Surplus Funds by Candidates; Prohibiting a candidate from donating surplus funds to a charitable organization that employs the candidate; authorizing any candidate to give certain surplus funds to the state or a political subdivision to be disbursed in a specified manner, etc. EE 02/03/2020 Fav/CS GO 02/17/2020 Favorable RC	Favorable Yeas 4 Nays 0
5	CS/SB 872 Criminal Justice / Perry (Similar H 893)	Public Records/Florida Commission on Offender Review; Providing an exemption from public records requirements for the personal identifying and location information of current and former commissioners and specified commission personnel of the Florida Commission on Offender Review and the names and personal identifying and location information of the spouses and children of such personnel; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CJ 01/14/2020 Fav/CS GO 02/17/2020 Fav/CS RC	Fav/CS Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 17, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
6	SB 1124 Diaz (Similar CS/H 707, Compare H 677, CS/CS/CS/H 713, CS/H 1137, CS/H 1143, H 1193, H 1341, CS/CS/S 230, S 390, CS/CS/S 474, S 1138, S 1492)	Legislative Review of Occupational Regulations; Citing this act as the "Occupational Regulation Sunset Act"; establishing a schedule for the systematic review of occupational regulatory programs; providing for the abolition of units or subunits of government and personnel positions responsible for repealed programs; providing for the reversion of certain unexpended funds and the refund of certain unencumbered revenue of a repealed program; requiring the Department of Legal Affairs to prosecute or defend certain pending causes of actions, etc. GO 02/17/2020 Fav/CS AP RC	Fav/CS Yeas 3 Nays 1
7	SB 1186 Baxley (Identical CS/H 1297)	Drug-free Workplaces; Requiring licensed drug-testing facilities to perform prescreening tests on urine specimens to determine the specimens' validity; providing that urine specimens may not be sent to an out-of-state facility unless the facility complies with certain requirements; revising information required in a written policy statement provided to employees and job applicants before drug testing; revising procedures for specimen collection, testing, and preservation, etc. CM 01/28/2020 Favorable GO 02/17/2020 Favorable RC	Favorable Yeas 4 Nays 0
8	SB 1272 Montford	Statewide Emergency Shelter Task Force; Establishing the task force adjunct to the Department of Management Services; specifying the task force's purpose; providing for the membership of the task force; providing requirements and restrictions for members of the task force; requiring the task force to report recommendations to the Governor and the Legislature by a specified date, etc. IS 02/03/2020 Favorable GO 02/17/2020 Favorable RC	Favorable Yeas 4 Nays 0
9	SJR 1502 Diaz (Identical HJR 7061)	Information About Counties and Municipalities; Proposing an amendment to the State Constitution to require the Chief Financial Officer, as prescribed by general law, to annually provide information about counties and municipalities to residents in a manner that allows residents to compare economic and noneconomic factors of each local government, etc. CA 02/10/2020 Favorable GO 02/17/2020 Favorable RC	Favorable Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 17, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	CS/SB 1624 Children, Families, and Elder Affairs / Perry (Compare CS/H 1323)	Economic Self-sufficiency; Requiring the Auditor General to perform audits of specified programs at specified intervals; requiring the audits to review specified elements of such programs; requiring the Auditor General to make a specified determination, if possible; revising the criteria for a child to be given priority for participation in the school readiness program, etc. CF 02/04/2020 Fav/CS GO 02/17/2020 Favorable AP	Favorable Yeas 4 Nays 0
11	CS/SB 1656 Innovation, Industry, and Technology / Albritton (Similar CS/H 715)	Reclaimed Water; Prohibiting domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge beginning on a specified date; providing that reclaimed water is a water source for public water supply systems; providing specified groundwater and surface water quality protections for potable reuse projects; requiring counties, municipalities, and special districts to authorize graywater technologies under certain circumstances and to provide incentives for the implementation of such technologies, etc. IT 02/03/2020 Fav/CS GO 02/17/2020 Fav/CS AP	Fav/CS Yeas 4 Nays 0
12	SB 1836 Bean	Health Insurance and Prescription Drug Coverage; Requiring the state group insurance program to allow enrollees to obtain health care services and prescription drugs from out-of-network providers and pharmacies if certain conditions are met; revising provider organizations included in benefit packages for the state group insurance program; requiring the state employees' prescription drug program to allow members and members' dependents to obtain prescription drugs from out-of-network pharmacies if certain conditions are met; requiring health insurers to apply certain payments toward deductibles and out-of-pocket maximums within a specified timeframe under certain circumstances, etc. GO 02/17/2020 Fav/CS AEG AP	Fav/CS Yeas 3 Nays 1

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, February 17, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 7048 Infrastructure and Security	Public Records/Public Shelter Space; Creating an exemption from public records requirements for the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. GO 02/17/2020 Favorable RC	Favorable Yeas 4 Nays 0
Consideration of proposed bill:			
14	SPB 7056	Public Records/Active Threat Assessment and Management Records; Exempting from public records requirements active threat assessment and active threat management records; providing circumstances under which such records are considered active; defining terms; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.	Submitted and Reported Favorably as Committee Bill Yeas 4 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 760

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee and Senator Brandes

SUBJECT: Fire Control Districts and Firefighter Pensions

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Fav/CS
2.	McVaney	McVaney	GO	Fav/CS
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 760 amends provisions of the Marvin B. Clayton firefighters Pension Trust Fund Act (Act) to expand the Act to cover municipalities or special fire control districts providing fire protection services to a Municipal Service Taxing Unit (MSTU) through an interlocal agreement. Currently, the Act only provides an incentive – access to insurance premium tax revenues – to municipalities and special fire control districts organized and established by law, and it does not apply to unincorporated areas of any county or counties. The bill expands the applicability of the Act to allow a municipality or special fire control district that provides fire protection services to an MSTU through an interlocal agreement to receive insurance premium taxes collected within the MSTU boundary, to provide pension benefits to the district's or municipality's firefighters.

The bill also amends the general powers of independent special fire control districts to allow them to provide fire control and rescue services outside the geographical boundaries of a district. A fire control district will be allowed to provide services outside of its district boundaries through an interlocal agreement with another governmental entity that shares powers in common with the district.

Although special districts occasionally provide services to other governmental entities outside of their geographic boundaries,¹ the Florida Supreme Court recently ruled that this practice is unauthorized by ch. 189, F.S., the Uniform Special District Accountability Act. In *Halifax Hospital Medical Center v. State*² (decided April 18, 2019), the court ruled that special districts only have the power to provide services and operate within the specific geographic boundaries established for a district in its charter. As contemplated in the court ruling, the bill provides statutory authority for independent special fire control districts to operate outside established geographic boundaries through interlocal agreements.

State insurance premium tax revenues deposited into the General Revenue Fund are expected to be reduced by \$100,000 in fiscal year 2020-2021, with a recurring reduction of \$300,000 beginning in fiscal year 2021-2022. Local insurance premium tax revenues distributed to local firefighter pension plans will increase by a like amount over the same time period.

The bill takes effect July 1, 2020.

II. Present Situation:

Municipal Firefighters Pension Trust Fund

Local firefighter pension plans are governed by ch. 175, F.S., which is known as the Marvin B. Clayton Firefighters Pension Trust Fund Act (Act). The Act declares a legitimate state purpose to provide a uniform retirement system for the benefit of firefighters.³ All municipal and special district firefighter retirement trust fund systems or plans must be managed, administered, operated, and funded to maximize the protection of firefighters' pension trust funds.⁴

Chapter 175, F.S., was originally enacted in 1939 to provide an incentive – access to premium tax revenues – to encourage the establishment of firefighter pension plans by cities. In 1993, special fire control districts became eligible to participate under ch. 175, F.S.

The Act sets forth the minimum benefits or minimum standards for pensions for municipal firefighters. Municipalities may not reduce the benefits provided in the Act; however, the benefits provided in a local plan may vary from the provisions in the Act so long as the minimum standards are met.

Funding for these pension plans comes from four sources:⁵

- Net proceeds from an excise tax levied by a city upon property and casualty insurance companies (known as the premium tax);
- Employee contributions;

¹ See Florida Auditor General, *Health Care District of Palm Beach* (Report No. 2019-011, August 2018), available at: https://flauditor.gov/pages/pdf_files/2019-011.pdf (last visited Jan. 28, 2020). In finding 4, the auditor general recommends that the district enter into cooperative agreements with other government authorities to provide services outside the district's boundaries, *id.* at 4.

² *Halifax Hosp. Med. Ctr. v. State*, 278 So. 3d 545 (Fla. 2019).

³ Section 175.021(1), F.S.

⁴ *Id.*

⁵ Section 175.091(1), F.S.

- Other revenue sources; and
- Mandatory payments by the city of the normal cost of the plan.

The Firefighters' Pension Trust Fund is funded in part through an excise tax of 1.85 percent imposed on the gross premiums of property insurance covering property within boundaries of the municipality or special fire control district.⁶ It is payable by the insurers to the Department of Revenue, and the net proceeds are transferred to the appropriate fund at the Department of Management Services, Division of Retirement (division). The division, in coordination with the Municipal Police Officers' and Firefighters' Retirement Trust Funds Office, then distributes the retirement trust funds to the appropriate local taxing jurisdiction. The Florida Department of Financial Services performs all trust fund market conduct exams.⁷

As of 2017, the Department of Management Services recorded that the membership of the pension plan consisted of 26,942 individual firefighters.⁸ In 2018, premium tax distributions to municipalities and special fire control districts from the Firefighters' Pension Trust Fund amounted to \$77.1 million.⁹

To qualify for insurance premium tax dollars, municipalities and districts must develop pension plans that meet the requirements found in ch. 175, F.S. Responsibility for overseeing and monitoring these plans is assigned to the division; however, the day-to-day operational control rests with the local boards of trustees.¹⁰ The board of trustees must invest and reinvest the assets of the fund according to s. 175.071, F.S., unless specifically authorized to vary from the law. If the division deems that a firefighter pension plan created under ch. 175, F.S., is not in compliance, the sponsoring municipality could be denied its insurance premium tax revenues.¹¹

Firefighter's Supplemental Compensation Trust Fund

Every firefighter is entitled to supplemental compensation from the employing agency when specified circumstances are met.¹² The Firefighters' Supplemental Compensation Trust Fund, created under the Department of Revenue, provides the funds necessary for firefighters to receive supplemental compensation under Florida law.¹³ Supplemental compensation is provided to firefighters who pursue higher educational opportunities that directly relate to the improvement of the health, safety, and welfare of firefighters and those who firefighters protect.¹⁴ The Firefighters' Supplemental Compensation Trust Fund is funded by certain amounts appropriated from the Police and Firefighter's Premium Tax Trust Fund.¹⁵

⁶ Section 175.101, F.S.

⁷ Department of Revenue, Florida Insurance Premium Taxes and Fees, *available at*: <https://floridarevenue.com/taxes/taxesfees/Pages/ipt.aspx> (last visited Feb. 3, 2020).

⁸ Department of Management Services, Police & Fire Pension Funds Membership Information, *available at*: https://www.rol.frs.state.fl.us/forms/Membership_Information.pdf (last visited Feb. 3, 2020).

⁹ Department of Management Services, Municipal Police and Fire Plans, *available at*: http://www.dms.myflorida.com/workforce_operations/retirement/local_retirement_plans/municipal_police_and_fire_plans (last visited Feb. 3, 2020).

¹⁰ See s. 175.071, F.S.

¹¹ See s. 175.341(1), F.S.

¹² Section 633.422, F.S.

¹³ *Id.*

¹⁴ *Id.* at (1).

¹⁵ *Id.* at (3).

The amount of supplemental compensation for a firefighter is determined as follows:

- Fifty dollars is paid monthly to a firefighter who receives an associate degree from a college if the degree is applicable to fire department duties; and
- One hundred and ten dollars is paid monthly to a firefighter who receives a bachelor's degree from a college or university, regardless of whether the firefighter earned an associate degree earlier if the bachelor's degree is applicable to fire department duties.¹⁶

State Insurance Premium Taxes

Section 624.509, F.S., imposes a tax on the premiums of insurance policies written in the state, including property insurance. The tax is 1.75 percent of the gross premiums.¹⁷ The tax remitted under this section is net of any taxes imposed by municipalities and others under chapter 175, F.S.¹⁸ This means the local insurance premium taxes are 100 percent credits against the insurers' state insurance premium tax liabilities, resulting in no tax increase on policyholders or the insurers.

Municipal Services Taxing Units

A Municipal Service Taxing Unit (MSTU) is a funding mechanism for community members to create, through approval of the Board of County Commissioners, a special taxing unit to make improvements to a community area or provide additional services based on community needs.¹⁹

The legislative and governing body of a county has the power to carry on the county government.²⁰ This power includes the power to establish MSTUs for any part or all of the unincorporated areas of a county.²¹ The creation of an MSTU allows the county's governing body to place the burden of ad valorem taxes upon property in a geographic area less than countywide to fund a particular municipal-type service or services. The MSTU is used in a county budget to separate those ad valorem taxes levied within the taxing unit itself to ensure that the funds derived from the tax levy are used within the boundaries of the taxing unit for the contemplated services. If ad valorem taxes are levied to provide these municipal services, counties are authorized to levy up to 10 mills.²²

The MSTU may encompass the entire unincorporated area, a portion of the unincorporated area, or all or part of the boundaries of a municipality. However, the inclusion of municipal boundaries within the MSTU is subject to consent by ordinance of the governing body of the affected municipality given either annually or for a term of years.²³

¹⁶ *Id.* at (2).

¹⁷ Section 624.509(1)(a), F.S.

¹⁸ Section 624.509(4), F.S.

¹⁹ See Collier County, MSTU Information, available at: <https://www.colliercountyfl.gov/your-government/divisions-f-r/public-transit-neighborhood-enhancement/our-services/mstu-information> (last visited Feb. 3, 2020).

²⁰ Section 125.01(1), F.S.

²¹ *Id.* at (q).

²² Section 200.071(3), F.S.

²³ Section 125.01(1)(q), F.S.

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.”²⁴ Special districts are created to provide a wide variety of services, such as mosquito control,²⁵ beach facilities,²⁶ children’s services,²⁷ fire control and rescue,²⁸ or drainage control.²⁹

Special districts are 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.³⁰

Alternatively, an independent special district is any special district that does not meet the definition of a “dependent special district.”³¹ Furthermore, 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.³²

Excluding community development districts, the charter creating an independent special district must contain the following information:

- The purpose of the special district;
- The powers, functions, and duties of the special district relating to ad valorem taxes, bonds and other revenue-raising abilities, budget preparation and approval, liens and lien foreclosures, and the use of tax deeds and certificates for non-ad valorem assessments and contractual agreements;
- Method for establishing the district and amending the district charter;
- The membership, organization, compensation, and administrative duties of the governing board and its members;
- Applicable financial disclosure, noticing, and reporting requirements;
- Procedures and requirements for bond issues, if the special district will issue bonds;
- Election procedures and requirements;

²⁴ Section 189.012(6), F.S.

²⁵ Section 388.021(1), F.S., (however, new independent mosquito control districts are prohibited, see s. 388.021(2), F.S.).

²⁶ See Section 189.011, F.S.

²⁷ Section 125.901(1), F.S.

²⁸ Section 191.002, F.S.

²⁹ Section 298.01, F.S.

³⁰ Section 189.012(2), F.S.

³¹ Section 189.012(3), F.S.

³² *Id.*

- Method for financing the district;
- Authorized millage rate, and methods for collecting non-ad valorem assessments, fees, or service charges;
- Planning requirements; and
- District boundaries.³³

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.³⁴

Special districts may enter into interlocal agreements with one or more other local governmental units, provided that the special district is authorized to operate in the geographic bounds of the other local government unit.³⁵ Under such an agreement, the special district may exercise jointly with the other participating local governments, those powers, privileges, or authorities which they have in common, and each may exercise separately.³⁶

Independent Special Fire Control Districts

Chapter 191, F.S., the “Independent Special Fire Control District Act” (Fire Control Act or Act), establishes standards and procedures for the operation and governance of independent special fire control districts and provides greater uniformity in the financing authority, operations, and procedures for electing members of the governing boards of districts.³⁷ There are currently 64 fire control districts established by ch. 191, F.S., operating across Florida.³⁸

Unless otherwise exempted by special or general law, each district, whether created by special act, a general law of local application, or county ordinance, must comply with the Fire Control Act. The Act supersedes any special act or general law of local application containing the charter of a district, excluding provisions addressing district boundaries and geographical sub-districts for the election of members of the governing board.³⁹

The Fire Control Act prescribes procedures for the election, composition, and general administration of a district’s governing board, and contains a broad list of the district’s general powers to be exercised by a majority vote of the governing board.⁴⁰ The Act grants districts special powers related to facilities and duties, and are required to provide for fire suppression and prevention by establishing and maintaining fire stations and substations, and by acquiring and maintaining firefighting and fire protection equipment necessary to prevent or fight fires. All

³³ Sections 189.031 and 189.0311, F.S.

³⁴ FLA. CONST. Art. VII, s. 9(a),.

³⁵ Sections 163.01(2) and (3)(b), F.S.

³⁶ Section 163.10(4), F.S.

³⁷ Section 191.002, F.S.

³⁸ See Florida Department of economic Opportunity, Official List of Special Districts Online, *available at*: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Jan. 30, 2020).

³⁹ Section 191.004, F.S.

⁴⁰ Section 191.006, F.S.

construction must comply with applicable state, regional, and local regulations, including applicable comprehensive plans and land development regulations.⁴¹

A fire control district may levy ad valorem taxes up to 3.75 mills unless a greater millage rate is authorized by law, subject to a referendum as required by the Florida Constitution and the Fire Control Act. Districts may also be authorized to levy special assessments, user charges, and impact fees under the Fire Control Act.⁴²

Boundaries of a district may be modified, extended, or enlarged only upon approval or ratification by the Legislature.⁴³ New independent fire control districts may be created only by the Legislature under s. 189.031, F.S.

Fire control districts are authorized to cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or the purpose authorized by the Fire Control Act.⁴⁴ Additionally, the Act affords districts the right to issue usage charges for special emergency services, including firefighting occurring in or to structures outside the district, if called to render such emergency services.⁴⁵

Florida Interlocal Cooperation Act of 1969

The Florida Interlocal Cooperation Act provides local governmental units the right to enter into mutually advantageous agreements to provide services or facilities to other localities.⁴⁶ This section of the law allows public agencies of the state to exercise jointly with any other public agency of the state, of any other state, or the United States Government any power, privilege, or authority which such agencies share in common and which each might exercise separately.⁴⁷ To effectuate interlocal cooperation under this section, local governmental units jointly exercising power must form and execute a contract detailing the terms and conditions of the interlocal relationship.⁴⁸

Halifax Hospital Medical Center v. State, 278 So.3d 545 (Fla. 2019)

Created in 1925 as the Halifax Hospital District,⁴⁹ the Halifax Hospital Medical Center (commonly known as Halifax Health)⁵⁰ is an independent special district located in a portion of Volusia County.⁵¹ As originally adopted, the charter for Halifax Hospital District authorized the establishment, construction, operation, and maintenance of hospitals as necessary for the use of

⁴¹ Section 191.008, F.S.

⁴² Section 191.009, F.S.

⁴³ Section 191.014, F.S.

⁴⁴ Section 191.006(13), F.S.

⁴⁵ Section 191.009(3)(a), F.S.

⁴⁶ Section 163.01, F.S.

⁴⁷ *Id.* at (4).

⁴⁸ *Id.* at (5).

⁴⁹ Chapter 11272, Laws of Fla. (1925).

⁵⁰ See Halifax Health, “Our History,” at <https://www.halifaxhealth.org> (last visited Jan. 30, 2020). The official name of the district in the current charter is “Halifax Hospital Medical Center” and is so referenced in this analysis.

⁵¹ Chapter 2003-374, Laws of Fla.

the people in the district.⁵² The 1925 enabling act and subsequent amendments⁵³ were recodified in 1979.⁵⁴ Halifax Hospital Medical Center interpreted a change in the first sentence of the basic authorization section in the 1979 charter⁵⁵ as allowing the district to provide services and open facilities outside the borders of the district.⁵⁶

Applying this interpretation, the district established and operated extra-territorial facilities and services for several years.⁵⁷ The text on which the district relies was substantially unchanged when the 1979 charter and subsequent amending acts⁵⁸ were again recodified in 2003.⁵⁹ Each version of the charter for the Halifax Hospital Medical Center required the act to be liberally interpreted to achieve its stated purposes.⁶⁰

On November 6, 2017, Deltona and the Halifax district entered into an interlocal agreement for the district to construct and operate health facilities within the City.⁶¹ To finance the development and completion of the Deltona hospital, on January 8, 2018, the Board of the Halifax district adopted a resolution to issue \$115 million in bonds using the district's authority.⁶² Following the statutory procedure,⁶³ the district filed a complaint in the Circuit Court to validate the bonds.⁶⁴ The Circuit Court found the district was not authorized to construct the Deltona hospital outside the geographical boundaries of the district, and accordingly refused to validate the proposed bond issue.⁶⁵ On April 18, 2019, the Supreme Court affirmed the decision of the circuit court, holding that the district's enabling law and ch. 189, F.S., did not expressly authorize any operation outside the district boundaries.⁶⁶

⁵² Chapter 11272, s. 5, Laws of Fla. (1925).

⁵³ Chapters 13489 & 13490, Laws of Fla. (1927); ch. 16037, Laws of Fla. (1933); ch. 17977, Laws of Fla. (1937); chapter 19097, Laws of Fla. (1939); chapters 21748 & 21749, Laws of Fla. (1943); chapters 22688 & 22689, Laws of Fla. (1945); chapters 26280, 26283, 26292, Laws of Fla. (1949); chapter 27944, Laws of Fla. (1951); chapters 29579 & 29580, Laws of Fla.; chapter 31333, Laws of Fla. (1955); chapters 57-1925, 59-1952, 59-1953, 59-1954, 61-2961, 61-2963, 61-2964, 63-2019, 65-2353, 65-2354, 65-2356, 67-2155, 67-2156, 72-710, 72-711, 72-712, 74-622, 77-661, 77-662, Laws of Fla.

⁵⁴ Chapter 79-577, Laws of Fla.

⁵⁵ Chapter 79-577, s. 5, Laws of Fla.

⁵⁶ See Amended Brief of Halifax Hospital Medical Center, 17-18, 20, *Halifax Hospital Medical Center v. State of Fla., et al.*, Case No. SC18-683 in the Florida Supreme Court (filed 6/19/2018) [herein Appellant's Initial Brief]; Reply Brief of Halifax Hospital Medical Center, 3-5, *Halifax Hospital Medical Center v. State of Fla., et al.*, Case No. SC18-683 in the Florida Supreme Court (filed 9/19/2018) [herein Appellant's Reply Brief]. At the time these arguments were made, the legal standard for reviewing an agency's determination of its operative law required the court to give deference to the agency's interpretation if further interpretation was necessary. On November 6, 2018, the voters of Florida approved proposed Amendment 6 to the Florida Constitution, creating art. V, s. 21, which prohibits a reviewing court from deferring to an agency's interpretation of law and requiring an original, or *de novo* review by the court. That amendment was effective on January 8, 2019. Art. XI, s. 5(e), Fla. Const. The Supreme Court found the laws at issue were unambiguous and could be applied by the Court without need for other rules of interpretation. *Halifax Hospital Medical Center v. State of Florida*, No. SC18-683 (Fla. Apr. 18, 2019), 4.

⁵⁷ Appellant's Initial Brief, 8.

⁵⁸ Chapters 79-578, 84-539, 89-409, 91-352, Laws of Fla.

⁵⁹ Chapter 2003-374, Laws of Fla.

⁶⁰ Chapter 11272, s. 20, Laws of Fla. (1925); chapter 79-577, s. 15, Laws of Fla.; chapter 2003-374, s. 15 of s. 3, Laws of Fla.

⁶¹ Appellant's Initial Brief, 10. See s. 163.01, F.S.

⁶² Appellant's Initial Brief, 10. See chapter 2003-374, s. 8 of s. 3, Laws of Fla.

⁶³ Chapter 75, F.S.

⁶⁴ *Halifax Hospital Medical Center v. State of Florida, et al.*, Case no. 2018 30059 CICI, in the 7th Judicial Circuit Court in and for Volusia County, Florida.

⁶⁵ "Order on Motion for Final Judgment," Case no. 2018 30059 CICI (4/17/2018).

⁶⁶ *Halifax Hospital Medical Center v. State of Florida*, 278 So.3d 545, No. SC18-683 (Fla. Apr. 18, 2019).

III. Effect of Proposed Changes:

The bill expands the applicability of ch. 175, F.S., the Marvin B. Clayton Firefighters Pension Trust Fund Act (Act), to provide that the Act applies to municipalities providing fire protection services to an MSTU through an interlocal agreement. The bill authorizes municipalities to receive insurance premium taxes collected within the boundaries of an MSTU to afford pension benefits to firefighters serving the area. It conforms ch. 175, F.S., to authorize the levy and imposition of the insurance premium tax within an MSTU in the same manner as prescribed for municipalities and fire control districts.

Section 1 amends s. 175.041, F.S., to expand the application of ch. 175, F.S., to include unincorporated areas of a county located within an MSTU receiving fire protection services from a municipality or special fire control district.

A municipality or special fire control district that enters into an interlocal agreement to provide fire protection services in an unincorporated area for a period of 12 months or more may be eligible to receive the insurance premium taxes reported to the MSTU. For the municipality or special fire control district to be eligible to receive the tax revenues, the county, on behalf of the MSTU, must enact an ordinance levying the insurance premium tax and the municipality or special fire control district must notify the Department of Management Services that the county and municipality have entered into the interlocal agreement.

Section 2 amends s. 175.101, F.S., to grant authority to an MSTU to impose a tax of 1.85 percent on the premiums on property insurance policies covering property within the boundaries of the MSTU. Such tax revenues will be available for distribution to the municipality or special fire control district providing fire protection within the MSTU.

Section 3 amends s. 175.111, F.S., to require the MSTU to file with the Department of Management Services the certified copy of the resolution imposing the insurance premium tax. In addition, information regarding the properties subject to the tax must be filed.

Section 4 amends s. 175.411, F.S., to allow an MSTU to revoke its participation under ch. 175, F.S. If an MSTU revokes its participation, it no longer is eligible to receive insurance premium tax revenues.

Section 5 amends s. 191.006, F.S., to expressly provide that independent special fire control districts have all powers and duties provided in ch. 189, F.S., (Uniform Special District Accountability Act), ch. 191, F.S., (Fire Control Act), and s. 163.01, F.S., (Florida Interlocal Cooperation Act), including the exercise of such powers within or without the independent special fire control district's boundary in cooperation with another governmental agency when such agency shares such powers in common with the district.

Section 6 provides that the bill takes effect on 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:

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:**

The Revenue Estimating Conference has determined that the provisions of the bill pertaining to the insurance premium tax will reduce state General Revenue Fund receipts by \$100,000 in fiscal year 2020-2021, with a recurring reduction of \$300,000 beginning in fiscal year 2021-2022. The bill will increase local government receipts by \$100,000 in fiscal year 2020-2021, with a recurring increase of \$300,000 beginning in fiscal year 2021-2022.⁶⁷

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill specifies that a municipality is entitled to premium tax distributions provided by chapter 175, F.S., for providing fire services to MSTUs. As a result, the bill will have a negative fiscal impact on state revenues. Premium taxes paid by an insurer to fund a municipal firefighter retirement plan are credited against the total premium taxes paid to the state by the insurance company.⁶⁸ Amounts allocated to MSTU firefighter pension

⁶⁷ Revenue Estimating Conference, *Fire Control District Surtax, HB 1331* (Jan. 30, 2020), available at: http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2020/_pdf/page326-328.pdf (last visited Feb. 5, 2020).

⁶⁸ See s. 624.509(4), F.S.

funds will be deducted from amounts normally allocated to the General Revenue Fund of the state. The aggregate amount of premium taxes paid by insurers will not increase or decrease.⁶⁹

The bill will result in a positive fiscal impact on local governments because the bill provides that a municipality may collect insurance premium tax revenues within the MSTU boundary receiving firefighter services if the municipality provides a municipal firefighter retirement plan as provided in ch. 175, F.S.

The bill may also have a positive fiscal impact on special independent fire control districts. These districts may be able to increase revenues by entering interlocal agreements and providing services outside the specific geographic boundaries established in a district charter.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 175.041, 175.101, 175.111, 175.411, and 191.006.

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 17, 2020:

The committee substitute removes unnecessary language relating to MSTUs establishing firefighter pension plans. The CS also authorizes a special fire control district to enter into interlocal agreements with an MSTU to provide fire protection services and receive local insurance premium tax revenues to fund firefighter retirement benefits.

CS by Community Affairs on February 3, 2020:

The committee substitute adds provisions allowing municipalities that provide fire protection services to a municipal services taxing unit (MSTU) through an interlocal agreement to receive insurance premium taxes collected within the boundaries of an MSTU in order to provide pension benefits to the municipality's firefighters serving the MSTU.

⁶⁹ *Id.*

B. Amendments:

None.

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



262866

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
	.	
	.	
	.	

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. Subsection (3) of section 175.041, Florida
Statutes, is amended to read:

175.041 Firefighters' Pension Trust Fund created;
applicability of provisions.—For any municipality, special fire
control district, chapter plan, local law municipality, local
law special fire control district, or local law plan under this



262866

chapter:

(3) ~~The provisions of This chapter applies shall apply~~ only to municipalities organized and established pursuant to the laws of the state and to special fire control districts. This chapter does, and said provisions shall not apply to the unincorporated areas of any county or counties except with respect to municipal services taxing units established in unincorporated areas that are receiving fire protection service from a municipality or a special fire control district and special fire control districts that include unincorporated areas. This chapter also does not, ~~nor shall the provisions hereof~~ apply to any governmental entity whose firefighters are eligible to participate in the Florida Retirement System.

(a) Special fire control districts that include, or consist exclusively of, unincorporated areas of one or more counties may levy and impose the tax and participate in the retirement programs enabled by this chapter.

(b) With respect to the distribution of premium taxes, a single consolidated government consisting of a former county and one or more municipalities, consolidated pursuant to s. 3 or s. 6(e), Art. VIII of the State Constitution, is also eligible to participate under this chapter. The consolidated government shall notify the division when it has entered into an interlocal agreement to provide fire services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 175.101. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the



262866

interlocal agreement is in effect.

(c) Any municipality or special fire control district that has entered into an interlocal agreement to provide fire protection services to any other incorporated municipality or to a municipal services taxing unit in an unincorporated area, in its entirety, for a period of 12 months or more may be eligible to receive the premium taxes reported for such other municipality or municipal services taxing unit. In order to be eligible for such premium taxes, the municipality or special fire control district providing the fire services must notify the division that it has entered into an interlocal agreement with another municipality or a county on behalf of a municipal services taxing unit. The municipality receiving the fire services, or a county on behalf of the municipal services taxing unit receiving the fire services, may enact an ordinance levying the tax as provided in s. 175.101. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality or municipal services taxing unit receiving the fire services to the participating municipality or special fire control district providing the fire services as long as the interlocal agreement is in effect.

Section 2. Section 175.101, Florida Statutes, is amended to read:

175.101 State excise tax on property insurance premiums authorized; procedure.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:



262866

(1) Each municipality or special fire control district in this state described and classified in s. 175.041, having a lawfully established firefighters' pension trust fund or municipal fund or special fire control district fund, by whatever name known, providing pension benefits to firefighters as provided under this chapter, or a county on behalf of the municipal services taxing unit receiving fire protection services from a municipality or a special fire control district, may assess and impose on every insurance company, corporation, or other insurer now engaged in or carrying on, or who shall hereinafter engage in or carry on, the business of property insurance as shown by the records of the Office of Insurance Regulation of the Financial Services Commission, an excise tax in addition to any lawful license or excise tax now levied by each of the municipalities, municipal services taxing units, or special fire control districts, respectively, amounting to 1.85 percent of the gross amount of receipts of premiums from policyholders on all premiums collected on property insurance policies covering property within the corporate limits of such municipalities or within the legally defined boundaries of municipal services taxing units or special fire control districts, respectively. Whenever the boundaries of a special fire control district that has lawfully established a firefighters' pension trust fund encompass a portion of the corporate territory of a municipality that has also lawfully established a firefighters' pension trust fund or a municipal services taxing unit receiving fire protection services from a municipality participating under this chapter, that portion of the tax receipts attributable to insurance policies covering



262866

property situated both within the municipality or municipal services taxing unit and the special fire control district shall be given to the fire service provider. For the purpose of this section, the boundaries of a special fire control district include an area that has been annexed until the completion of the 4-year period provided for in s. 171.093(4), or other agreed-upon extension, or if a special fire control district is providing services under an interlocal agreement executed in accordance with s. 171.093(3). The agent shall identify the fire service provider on the property owner's application for insurance. Remaining revenues collected pursuant to this chapter shall be distributed to the municipality or special fire control district according to the location of the insured property.

(2) In the case of multiple peril policies with a single premium for both the property and casualty coverages in such policies, 70 percent of such premium shall be used as the basis for the 1.85-percent tax.

(3) This excise tax shall be payable annually on March 1 of each year after the passage of an ordinance, in the case of a municipality or municipal services taxing unit, or a resolution, in the case of a special fire control district, assessing and imposing the tax authorized by this section. Installments of taxes shall be paid according to the provision of s. 624.5092(2)(a), (b), and (c).

This section also applies to any municipality consisting of a single consolidated government which is made up of a former county and one or more municipalities, consolidated pursuant to the authority in s. 3 or s. 6(e), Art. VIII of the State



262866

Constitution, and to property insurance policies covering property within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, provided the properties are being provided fire protection services by the consolidated government. This section also applies to any municipality or municipal services taxing unit, as provided in s. 175.041(3)(c), which has entered into an interlocal agreement to receive fire protection services from another municipality or a special fire control district participating under this chapter. The excise tax may be levied on all premiums collected on property insurance policies covering property located within the corporate limits of the municipality or the legally defined boundaries of the municipal services taxing unit receiving the fire protection services, but will be available for distribution to the municipality or special fire control district providing the fire protection services.

Section 3. Section 175.111, Florida Statutes, is amended to read:

175.111 Certified copy of ordinance or resolution filed; insurance companies' annual report of premiums; duplicate files; book of accounts.—For any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, whenever any municipality passes an ordinance or whenever any special fire control district passes a resolution establishing a chapter plan or local law plan assessing and imposing the taxes authorized in s. 175.101, or any county on



262866

156 behalf of a municipal services taxing unit passes an ordinance
157 imposing the taxes authorized in s. 175.101, a certified copy of
158 such ordinance or resolution shall be deposited with the
159 division. Thereafter every insurance company, association,
160 corporation, or other insurer carrying on the business of
161 property insurance on real or personal property, on or before
162 the succeeding March 1 after date of the passage of the
163 ordinance or resolution, shall report fully in writing and under
164 oath to the division and the Department of Revenue a just and
165 true account of all premiums by such insurer received for
166 property insurance policies covering or insuring any real or
167 personal property located within the corporate limits of each
168 such municipality or within the legally defined boundaries of
169 such municipal services taxing unit or special fire control
170 district during the period of time elapsing between the date of
171 the passage of the ordinance or resolution and the end of the
172 calendar year. The report shall include the code designation as
173 prescribed by the division for each piece of insured property,
174 real or personal, located within the corporate limits of each
175 municipality and within the legally defined boundaries of each
176 special fire control district and municipal services taxing
177 unit. The aforesaid insurer shall annually thereafter, on March
178 1, file with the Department of Revenue a similar report covering
179 the preceding year's premium receipts, and every such insurer at
180 the same time of making such reports shall pay to the Department
181 of Revenue the amount of the tax hereinbefore mentioned. Every
182 insurer engaged in carrying on such insurance business in the
183 state shall keep accurate books of accounts of all such business
184 done by it within the corporate limits of each such municipality



262866

and within the legally defined boundaries of each such special fire control district and municipal services taxing unit, and in such manner as to be able to comply with the provisions of this chapter. Based on the insurers' reports of premium receipts, the division shall prepare a consolidated premium report and shall furnish to any municipality, municipal services taxing unit, or special fire control district requesting the same a copy of the relevant section of that report.

Section 4. Section 175.411, Florida Statutes, is amended to read

175.411 Optional participation.—A municipality, a county on behalf of a municipal services taxing unit, or a special fire control district may revoke its participation under this chapter by rescinding the legislative act, ordinance, or resolution which assesses and imposes the taxes authorized in s. 175.101, and by furnishing a certified copy of such legislative act, ordinance, or resolution to the division. Thereafter, the municipality or special fire control district shall be prohibited from participating under this chapter, and shall not be eligible for future premium tax moneys. Premium tax moneys previously received shall continue to be used for the sole and exclusive benefit of firefighters, or firefighters and police officers where included, and no amendment, legislative act, ordinance, or resolution shall be adopted which shall have the effect of reducing the then-vested accrued benefits of the firefighters, retirees, or their beneficiaries. The municipality or special fire control district shall continue to furnish an annual report to the division as provided in s. 175.261. If the municipality or special fire control district subsequently



262866

terminates the defined benefit plan, they shall do so in compliance with the provisions of s. 175.361.

Section 5. Subsection (13) of section 191.006, Florida Statutes, is amended to read

191.006 General powers.—The district shall have, and the board may exercise by majority vote, the following powers:

(13) To cooperate or contract with other persons or entities, including other governmental agencies, as necessary, convenient, incidental, or proper in connection with providing effective mutual aid and furthering any power, duty, or purpose authorized by this act. The district has, and the board may exercise, all powers and duties provided in s. 163.01, chapter 189, and this chapter, including such powers within or without the district's boundary, in cooperation with another governmental agency when such agency shares such powers in common with the district.

Section 6. 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 intergovernmental programs;
amending s. 175.041, F.S.; revising applicability of the Firefighters' Pension Trust Fund; authorizing a municipality or special fire control district that provides fire protection services to a municipal services taxing unit under an interlocal agreement to



262866

receive property insurance premium taxes; authorizing
a county to enact an ordinance levying a tax on behalf
of a municipal services taxing unit receiving fire
protection services; amending s. 175.101, F.S.;
authorizing a county on behalf of a municipal services
taxing unit that enters into an interlocal agreement
for fire protection services with a municipality to
assess and impose an excise tax on property insurance
premiums; amending s. 175.111, F.S.; requiring a
county on behalf of a municipal services taxing unit
to provide the Division of Retirement of the
Department of Management Services with a certified
copy of an ordinance assessing and imposing certain
taxes; amending s. 175.411, F.S.; authorizing a county
on behalf of a municipal services taxing unit to
revoke its participation and cease to receive property
insurance premium taxes under certain conditions;
amending s. 191.006, F.S.; providing that an
independent special fire control district has, and
that the board of such district may exercise by
majority vote, specified powers; providing an
effective date.

By the Committee on Community Affairs; and Senator Brandes

578-03052-20

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1 A bill to be entitled
 2 An act relating to fire control districts and
 3 firefighter pensions; amending s. 175.041, F.S.;
 4 revising applicability of the Firefighters' Pension
 5 Trust Fund; authorizing a municipality that provides
 6 fire protection services to a municipal services
 7 taxing unit under an interlocal agreement to receive
 8 property insurance premium taxes; authorizing a county
 9 to enact an ordinance levying a tax on behalf of a
 10 municipal services taxing unit receiving fire
 11 protection services; amending s. 175.101, F.S.;
 12 authorizing a municipal services taxing unit that
 13 enters into an interlocal agreement for fire
 14 protection services with a municipality to impose an
 15 excise tax on property insurance premiums; amending s.
 16 175.111, F.S.; requiring a municipal services taxing
 17 unit to provide the Division of Retirement of the
 18 Department of Management Services with a certified
 19 copy of an ordinance assessing and imposing certain
 20 taxes; amending ss. 175.121, 175.122, and 175.351,
 21 F.S.; revising provisions relating to the disbursement
 22 of moneys by the division and the Department of
 23 Revenue and the limitation of disbursement to conform
 24 to changes made by the act; amending s. 175.411, F.S.;
 25 authorizing a municipal services taxing unit to revoke
 26 its participation and cease to receive property
 27 insurance premium taxes under certain conditions;
 28 amending s. 191.006, F.S.; requiring an independent
 29 special fire control district to have, and authorizing

Page 1 of 28

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

578-03052-20

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30 the board of such district to exercise by majority
 31 vote, specified powers; amending ss. 175.032, 175.071,
 32 175.381, and 633.422, F.S.; conforming provisions to
 33 changes made by the act; providing an effective date.
 34

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

36
 37 Section 1. Subsection (14) of section 175.032, Florida
 38 Statutes, is amended to read:

39 175.032 Definitions.—For any municipality, special fire
 40 control district, chapter plan, local law municipality, local
 41 law special fire control district, or local law plan under this
 42 chapter, the term:

43 (14) "Local law plan" means a retirement plan that includes
 44 both a defined benefit plan component and a defined contribution
 45 plan component for firefighters, or for firefighters and police
 46 officers if both are included, as described in s. 175.351,
 47 established by ~~municipal~~ ordinance, special district resolution,
 48 or special act of the Legislature, which enactment sets forth
 49 all plan provisions. Local law plan provisions may vary from the
 50 provisions of this chapter if minimum benefits and minimum
 51 standards are met. However, any such variance must provide a
 52 greater benefit for firefighters, or firefighters and police
 53 officers if both are included. Actuarial valuations of local law
 54 plans shall be conducted by an enrolled actuary as provided in
 55 s. 175.261(2).

56 Section 2. Section 175.041, Florida Statutes, is amended to
 57 read:

58 175.041 Firefighters' Pension Trust Fund created;

Page 2 of 28

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578-03052-20

2020760c1

applicability of provisions.—For any municipality, municipal services taxing unit, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) There shall be established a special fund exclusively for the purpose of this chapter, which ~~in the case of chapter plans~~ shall be known as the "Firefighters' Pension Trust Fund," in each municipality, municipal services taxing unit, and ~~each~~ special fire control district of this state ~~heretofore or~~ hereafter created which now has or which may hereafter have a constituted fire department or an authorized volunteer fire department, or any combination thereof.

(2) To qualify as a fire department or volunteer fire department or combination thereof under ~~the provisions of~~ this chapter, the department shall own and use apparatus for the fighting of fires that was in compliance with National Fire Protection Association Standards for Automotive Fire Apparatus at the time of purchase.

(3) ~~The provisions of~~ This chapter applies ~~shall apply~~ only to municipalities organized and established under ~~pursuant to~~ the laws of the state and to special fire control districts. This chapter does, ~~and said provisions shall~~ not apply to the unincorporated areas of any county or counties except with respect to municipal services taxing units established in unincorporated areas for the purpose of receiving fire protection services from a municipality and special fire control districts that include unincorporated areas. This chapter also does not, ~~nor shall the provisions hereof~~ apply to any governmental entity whose firefighters are eligible to

578-03052-20

2020760c1

participate in the Florida Retirement System.

(a) Special fire control districts that include, or consist exclusively of, unincorporated areas of one or more counties may levy and impose the tax and participate in the retirement programs created ~~enabled~~ by this chapter.

(b) With respect to the distribution of premium taxes, a single consolidated government consisting of a former county and one or more municipalities, consolidated under ~~pursuant to~~ s. 3 or s. 6(e), Art. VIII of the State Constitution, is also eligible to participate under this chapter. The consolidated government shall notify the division when it has entered into an interlocal agreement to provide fire services to a municipality within its boundaries. The municipality may enact an ordinance levying the tax as provided in s. 175.101. Upon being provided copies of the interlocal agreement and the municipal ordinance levying the tax, the division may distribute any premium taxes reported for the municipality to the consolidated government as long as the interlocal agreement is in effect.

(c) Any municipality that has entered into an interlocal agreement to provide fire protection services to any other incorporated municipality, in its entirety, or a municipal services taxing unit in an unincorporated area, ~~in its entirety,~~ for a period of 12 months or more may be eligible to receive the premium taxes reported for such other municipality or municipal services taxing unit. In order to be eligible for such premium taxes, the municipality providing the fire services must notify the division that it has entered into an interlocal agreement with another municipality or a county on behalf of a municipal services taxing unit. The municipality receiving the fire

578-03052-20

2020760c1

services, or a county on behalf of the municipal services taxing unit receiving the fire services, may enact an ordinance levying the tax as provided in s. 175.101. Upon being provided copies of the interlocal agreement and the ~~municipal~~ ordinance levying the tax, the division may distribute any premium taxes reported for the municipality or municipal services taxing unit receiving the fire services to the participating municipality providing the fire services as long as the interlocal agreement is in effect.

(4) No municipality shall establish more than one retirement plan for public safety officers which is supported in whole or in part by the distribution of premium tax funds as provided by this chapter or chapter 185, nor shall any municipality establish a retirement plan for public safety officers which receives premium tax funds from both this chapter and chapter 185.

Section 3. Section 175.071, Florida Statutes, is amended to read:

175.071 General powers and duties of board of trustees.—For any municipality, municipal services taxing unit, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter:

(1) The board of trustees, subject to the fiduciary standards in ss. 112.656, 112.661, and 518.11 and the Code of Ethics in ss. 112.311-112.3187, may:

(a) Invest and reinvest the assets of the firefighters' pension trust fund in annuity and life insurance contracts of life insurance companies in amounts sufficient to provide, in whole or in part, the benefits to which all of the participants

578-03052-20

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in the firefighters' pension trust fund are entitled under this chapter and pay the initial and subsequent premiums thereon.

(b) Invest and reinvest the assets of the firefighters' pension trust fund in:

1. Time or savings accounts of a national bank, a state bank insured by the Bank Insurance Fund, or a savings, building, and loan association insured by the Savings Association Insurance Fund administered by the Federal Deposit Insurance Corporation or a state or federal chartered credit union whose share accounts are insured by the National Credit Union Share Insurance Fund.

2. Obligations of the United States or obligations guaranteed as to principal and interest by the government of the United States.

3. Bonds issued by the State of Israel.

4. Bonds, stocks, or other evidences of indebtedness issued or guaranteed by a corporation organized under the laws of the United States, any state or organized territory of the United States, or the District of Columbia, if:

a. The corporation is listed on any one or more of the recognized national stock exchanges or on the National Market System of the NASDAQ Stock Market and, in the case of bonds only, holds a rating in one of the three highest classifications by a major rating service; and

b. The board of trustees may not invest more than 5 percent of its assets in the common stock or capital stock of any one issuing company, nor may the aggregate investment in any one issuing company exceed 5 percent of the outstanding capital stock of that company or the aggregate of its investments under

578-03052-20

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175 this subparagraph at cost exceed 50 percent of the assets of the
176 fund.

177
178 This paragraph applies to all boards of trustees and
179 participants. However, if a municipality, municipal services
180 taxing unit, or special fire control district has a duly enacted
181 pension plan under ~~pursuant to~~, and in compliance with, s.
182 175.351, and the trustees desire to vary the investment
183 procedures, the trustees of such plan must request a variance of
184 the investment procedures as outlined herein only through an a
185 ~~municipal~~ ordinance, special act of the Legislature, or
186 resolution by the governing body of the special fire control
187 district; if a special act, or a municipality by ordinance
188 adopted before July 1, 1998, permits a greater than 50-percent
189 equity investment, such municipality is not required to comply
190 with the aggregate equity investment provisions of this
191 paragraph. Notwithstanding any other provision of law, this
192 section may not be construed to take away any preexisting legal
193 authority to make equity investments that exceed the
194 requirements of this paragraph. Notwithstanding any other
195 provision of law, the board of trustees may invest up to 25
196 percent of plan assets in foreign securities on a market-value
197 basis. The investment cap on foreign securities may not be
198 revised, amended, increased, or repealed except as provided by
199 general law.

200 (c) Issue drafts upon the firefighters' pension trust fund
201 pursuant to this act and rules prescribed by the board of
202 trustees. All such drafts must be consecutively numbered, be
203 signed by the chair and secretary, or by two individuals

578-03052-20

2020760c1

204 designated by the board who are subject to the same fiduciary
205 standards as the board of trustees under this subsection, and
206 state upon their faces the purpose for which the drafts are
207 drawn. The treasurer or depository of each municipality or
208 special fire control district shall retain such drafts when
209 paid, as permanent vouchers for disbursements made, and no money
210 may be otherwise drawn from the fund.

211 (d) Convert into cash any securities of the fund.

212 (e) Keep a complete record of all receipts and
213 disbursements and the board's acts and proceedings.

214 (2) Any and all acts and decisions shall be effectuated by
215 vote of a majority of the members of the board; however, no
216 trustee shall take part in any action in connection with the
217 trustee's own participation in the fund, and no unfair
218 discrimination shall be shown to any individual firefighter
219 participating in the fund.

220 (3) The board's action on all claims for retirement under
221 this act shall be final, provided, however, that the rules and
222 regulations of the board have been complied with.

223 (4) The secretary of the board of trustees shall keep a
224 record of all persons receiving retirement payments under ~~the~~
225 ~~provisions of~~ this chapter, in which shall be noted the time
226 when the pension is allowed and the time when the pension shall
227 cease to be paid. In this record, the secretary shall keep a
228 list of all firefighters employed by the municipality, municipal
229 services taxing unit, or special fire control district. The
230 record shall show the name, address, and time of employment of
231 such firefighters and when they cease to be employed by the
232 municipality, municipal services taxing unit, or special fire

578-03052-20

2020760c1

control district.

(5) The sole and exclusive administration of, and the responsibilities for, the proper operation of the firefighters' pension trust fund and for making effective ~~the provisions of~~ this chapter are vested in the board of trustees; however, nothing herein shall empower a board of trustees to amend ~~the provisions of~~ a retirement plan without the approval of the municipality, municipal services taxing unit, or special fire control district. The board of trustees shall keep in convenient form such data as shall be necessary for an actuarial valuation of the firefighters' pension trust fund and for checking the actual experience of the fund.

(6) (a) At least once every 3 years, the board of trustees shall retain a professionally qualified independent consultant who shall evaluate the performance of any existing professional money manager and shall make recommendations to the board of trustees regarding the selection of money managers for the next investment term. These recommendations shall be considered by the board of trustees at its next regularly scheduled meeting. The date, time, place, and subject of this meeting shall be advertised in the same manner as for any meeting of the board.

(b) For purposes of this subsection, the term "professionally qualified independent consultant" means a consultant who, based on education and experience, is professionally qualified to evaluate the performance of professional money managers, and who, at a minimum:

1. Provides his or her services on a flat-fee basis.
2. Is not associated in any manner with the money manager for the pension fund.

578-03052-20

2020760c1

3. Makes calculations according to the American Banking Institute method of calculating time-weighted rates of return. All calculations must be made net of fees.

4. Has 3 or more years of experience working in the public sector.

(7) To assist the board in meeting its responsibilities under this chapter, the board, if it so elects, may:

(a) Employ independent legal counsel at the pension fund's expense.

(b) Employ an independent enrolled actuary, as defined in s. 175.032, at the pension fund's expense.

(c) Employ such independent professional, technical, or other advisers as it deems necessary at the pension fund's expense.

If the board chooses to use the municipality's, municipal services taxing unit's, or special district's legal counsel or actuary, or chooses to use any of the municipality's, municipal services taxing unit's, or special district's other professional, technical, or other advisers, it must do so only under terms and conditions acceptable to the board.

(8) Notwithstanding paragraph (1) (b) and as provided in s. 215.473, the board of trustees must identify and publicly report any direct or indirect holdings it may have in any scrutinized company, as defined in that section, and proceed to sell, redeem, divest, or withdraw all publicly traded securities it may have in that company beginning January 1, 2010. The divestiture of any such security must be completed by September 30, 2010. The board and its named officers or investment

578-03052-20

2020760c1

291 advisors may not be deemed to have breached their fiduciary duty
 292 in any action taken to dispose of any such security, and the
 293 board shall have satisfactorily discharged the fiduciary duties
 294 of loyalty, prudence, and sole and exclusive benefit to the
 295 participants of the pension fund and their beneficiaries if the
 296 actions it takes are consistent with the duties imposed by s.
 297 215.473, and the manner of the disposition, if any, is
 298 reasonable as to the means chosen. For the purposes of effecting
 299 compliance with that section, the pension fund shall designate
 300 terror-free plans that allocate their funds among securities not
 301 subject to divestiture. No person may bring any civil, criminal,
 302 or administrative action against the board of trustees or any
 303 employee, officer, director, or advisor of such pension fund
 304 based upon the divestiture of any security pursuant to this
 305 subsection.

306 Section 4. Section 175.101, Florida Statutes, is amended to
 307 read:

308 175.101 State excise tax on property insurance premiums
 309 authorized; procedure.—For any municipality, municipal services
 310 taxing unit, special fire control district, chapter plan, local
 311 law municipality, local law special fire control district, or
 312 local law plan under this chapter:

313 (1) Each municipality, municipal services taxing unit, or
 314 special fire control district in this state described and
 315 classified in s. 175.041, having a lawfully established
 316 ~~firefighters'~~ pension trust fund, ~~or~~ municipal fund, or special
 317 fire control district fund, by whatever name known, providing
 318 pension benefits to firefighters, or firefighters and police
 319 officers if both are included, as provided under this chapter,

Page 11 of 28

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578-03052-20

2020760c1

320 or receiving fire protection services from a municipality
 321 participating under this chapter, may assess and impose on every
 322 insurance company, corporation, or other insurer now engaged in
 323 or carrying on, or who shall hereinafter engage in or carry on,
 324 the business of property insurance as shown by the records of
 325 the Office of Insurance Regulation of the Financial Services
 326 Commission, an excise tax in addition to any lawful license or
 327 excise tax now levied by each of the municipalities, municipal
 328 services taxing units, or special fire control districts,
 329 respectively, amounting to 1.85 percent of the gross amount of
 330 receipts of premiums from policyholders on all premiums
 331 collected on property insurance policies covering property
 332 within the corporate limits of such municipalities or within the
 333 legally defined boundaries of municipal services taxing units or
 334 special fire control districts, respectively. Whenever the
 335 boundaries of a special fire control district that has lawfully
 336 established a firefighters' pension trust fund encompass a
 337 portion of the corporate territory of a municipality that has
 338 also lawfully established a firefighters' pension trust fund, or
 339 a municipal services taxing unit receiving fire protection
 340 services from a municipality participating under this chapter,
 341 that portion of the tax receipts attributable to insurance
 342 policies covering property situated both within the municipality
 343 or municipal services taxing unit and the special fire control
 344 district shall be given to the fire service provider. For the
 345 purpose of this section, the boundaries of a special fire
 346 control district include an area that has been annexed until the
 347 completion of the 4-year period provided for in s. 171.093(4),
 348 or other agreed-upon extension, or if a special fire control

Page 12 of 28

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578-03052-20

2020760c1

district is providing services under an interlocal agreement executed in accordance with s. 171.093(3). The agent shall identify the fire service provider on the property owner's application for insurance. Remaining revenues collected under ~~pursuant to~~ this chapter shall be distributed to the municipality or special fire control district according to the location of the insured property.

(2) In the case of multiple peril policies with a single premium for both the property and casualty coverages in such policies, 70 percent of such premium shall be used as the basis for the 1.85-percent tax.

(3) This excise tax ~~is shall be~~ payable annually on March 1 of each year after the passage of an ordinance, in the case of a municipality or municipal services taxing unit, or resolution, in the case of a special fire control district, assessing and imposing the tax authorized by this section. Installments of taxes shall be paid according to ~~the provision of~~ s. 624.5092(2) (a), (b), and (c).

This section also applies to any municipality consisting of a single consolidated government which is made up of a former county and one or more municipalities, consolidated under ~~pursuant to~~ the authority in s. 3 or s. 6(e), Art. VIII of the State Constitution, and to property insurance policies covering property within the boundaries of the consolidated government, regardless of whether the properties are located within one or more separately incorporated areas within the consolidated government, provided the properties are being provided fire protection services by the consolidated government. This section

578-03052-20

2020760c1

also applies to any municipality or municipal services taxing unit in an unincorporated area, as provided in s. 175.041(3)(c), which has entered into an interlocal agreement to receive fire protection services from another municipality participating under this chapter. The excise tax may be levied on all premiums collected on property insurance policies covering property located within the corporate limits of the municipality or municipality services taxing unit receiving the fire protection services, but will be available for distribution to the municipality providing the fire protection services.

Section 5. Section 175.111, Florida Statutes, is amended to read:

175.111 Certified copy of ordinance or resolution filed; insurance companies' annual report of premiums; duplicate files; book of accounts.—For any municipality, municipal services taxing unit, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan under this chapter, whenever any municipality, or any county on behalf of a municipal services taxing unit, passes an ordinance or whenever any special fire control district passes a resolution establishing a chapter plan or local law plan assessing and imposing the taxes authorized in s. 175.101, a certified copy of such ordinance or resolution shall be deposited with the division. Thereafter every insurance company, association, corporation, or other insurer carrying on the business of property insurance on real or personal property, on or before the succeeding March 1 after the date of the passage of the ordinance or resolution, shall report fully in writing and under oath to the division and the Department of Revenue a

578-03052-20

2020760c1

just and true account of all premiums by such insurer received for property insurance policies covering or insuring any real or personal property located within the corporate limits of each such municipality, municipal services taxing unit, or special fire control district during the period of time elapsing between the date of the passage of the ordinance or resolution and the end of the calendar year. The report shall include the code designation as prescribed by the division for each piece of insured property, real or personal, located within the corporate limits of each municipality and within the legally defined boundaries of each special fire control district and municipal services taxing unit. The ~~aforesaid~~ insurer shall annually thereafter, on March 1, file with the Department of Revenue a similar report covering the preceding year's premium receipts, and every such insurer at the same time of making such reports shall pay to the Department of Revenue the amount of the imposed tax hereinbefore mentioned. Every insurer engaged in carrying on such insurance business in the state shall keep accurate books of accounts of all such business done by it within the corporate limits of each such municipality and within the legally defined boundaries of each such special fire control district and municipal services taxing unit, and in such manner as to be able to comply with ~~the provisions of~~ this chapter. Based on the insurers' reports of premium receipts, the division shall prepare a consolidated premium report and shall furnish to any municipality, municipal services taxing unit, or special fire control district requesting the same a copy of the relevant section of that report.

Section 6. Section 175.121, Florida Statutes, is amended to

Page 15 of 28

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578-03052-20

2020760c1

read:

175.121 Department of Revenue and Division of Retirement to keep accounts of deposits; disbursements.—For any municipality, municipal services taxing unit, or special fire control district having a chapter or local law plan established under ~~pursuant to~~ this chapter:

(1) The Department of Revenue shall keep a separate account of all moneys collected for each municipality, municipal services taxing unit, and ~~each~~ special fire control district under ~~the provisions of~~ this chapter. All moneys so collected must be transferred to the Police and Firefighters' Premium Tax Trust Fund and shall be separately accounted for by the division. The moneys budgeted as necessary to pay the expenses of the division for the daily oversight and monitoring of the firefighters' pension plans under this chapter and for the oversight and actuarial reviews conducted under part VII of chapter 112 are annually appropriated from the interest and investment income earned on the moneys collected for each municipality, municipal services taxing unit, or special fire control district and deposited in the Police and Firefighters' Premium Tax Trust Fund. Interest and investment income remaining thereafter in the trust fund which is unexpended and otherwise unallocated by law shall revert to the General Revenue Fund on June 30 of each year.

(2) The Chief Financial Officer shall, on or before July 1 of each year, and at such other times as authorized by the division, draw his or her warrants on the full net amount of money then on deposit in the Police and Firefighters' Premium Tax Trust Fund under ~~pursuant to~~ this chapter, specifying the

Page 16 of 28

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578-03052-20

2020760c1

465 municipalities, municipal services taxing units, and special
 466 fire control districts to which the moneys must be paid and the
 467 net amount collected for and to be paid to each municipality,
 468 municipal services taxing unit, or special fire control
 469 district, respectively, subject to the limitation on
 470 disbursement under s. 175.122. The sum payable to each
 471 municipality, municipal services taxing unit, or special fire
 472 control district is appropriated annually out of the Police and
 473 Firefighters' Premium Tax Trust Fund. The warrants of the Chief
 474 Financial Officer shall be payable to the respective
 475 municipalities, municipal services taxing units, and special
 476 fire control districts entitled to receive them and shall be
 477 remitted annually by the division to the respective
 478 municipalities, municipal services taxing units, and special
 479 fire control districts. In lieu thereof, the municipality,
 480 municipal services taxing unit, or special fire control district
 481 may provide authorization to the division for the direct payment
 482 of the premium tax to the board of trustees. In order for a
 483 municipality, municipal services taxing unit, or special fire
 484 control district and its pension fund to participate in the
 485 distribution of premium tax moneys under this chapter, all the
 486 provisions shall be complied with annually, including state
 487 acceptance ~~under pursuant to~~ part VII of chapter 112.

488 (3) (a) All moneys not distributed to municipalities,
 489 municipal services taxing units, and special fire control
 490 districts under this section as a result of the limitation on
 491 disbursement contained in s. 175.122, or as a result of any
 492 municipality, municipal services taxing unit, or special fire
 493 control district not having qualified in any given year, or

Page 17 of 28

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578-03052-20

2020760c1

494 portion thereof, shall be transferred to the Firefighters'
 495 Supplemental Compensation Trust Fund administered by the
 496 Department of Revenue, as provided in s. 633.422.

497 (b)1. Moneys transferred under paragraph (a) but not needed
 498 to support the supplemental compensation program in a given year
 499 shall be redistributed pro rata to those participating
 500 municipalities, municipal services taxing units, and special
 501 fire control districts that transfer any portion of their funds
 502 to support the supplemental compensation program in that year.
 503 Such additional moneys shall be used to cover or offset costs of
 504 the retirement plan.

505 2. To assist the Department of Revenue, the division shall
 506 identify those municipalities, municipal services taxing units,
 507 and special fire control districts that are eligible for
 508 redistribution as provided in s. 633.422(3)(c)2., by listing the
 509 municipalities, municipal services taxing units, and special
 510 fire control districts from which funds were transferred under
 511 paragraph (a) and specifying the amount transferred by each.

512 Section 7. Section 175.122, Florida Statutes, is amended to
 513 read:

514 175.122 Limitation of disbursement.—For any municipality,
 515 municipal services taxing unit, special fire control district,
 516 chapter plan, local law municipality, local law special fire
 517 control district, or local law plan under this chapter, any
 518 municipality, municipal services taxing unit, or special fire
 519 control district participating in the firefighters' pension
 520 trust fund ~~under pursuant to the provisions of~~ this chapter,
 521 whether under a chapter plan or local law plan, ~~is shall be~~
 522 limited to receiving any moneys from such fund in excess of that

Page 18 of 28

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578-03052-20

2020760c1

523 produced by one-half of the excise tax, as provided for in s.
 524 175.101; however, any such municipality, municipal services
 525 taxing unit, or special fire control district receiving less
 526 than 6 percent of its fire department payroll from such fund is
 527 ~~shall be~~ entitled to receive from such fund the amount
 528 determined under s. 175.121, in excess of one-half of the excise
 529 tax, not to exceed 6 percent of its fire department payroll.
 530 Payroll amounts of members included in the Florida Retirement
 531 System are ~~shall~~ not be included.

532 Section 8. Section 175.351, Florida Statutes, is amended to
 533 read:

534 175.351 Municipalities, municipal services taxing units,
 535 and special fire control districts that have their own
 536 retirement plans for firefighters.—In order for a municipality,
 537 municipal services taxing unit, or special fire control district
 538 that has its own retirement plan for firefighters, or for
 539 firefighters and police officers if both are included, to
 540 participate in the distribution of the tax fund established
 541 under s. 175.101, a local law plan must meet minimum benefits
 542 and minimum standards, except as provided in the mutual consent
 543 provisions in paragraph (1)(g) with respect to the minimum
 544 benefits not met as of October 1, 2012.

545 (1) If a municipality, municipal services taxing unit, or
 546 special fire control district has a retirement plan for
 547 firefighters, or for firefighters and police officers if both
 548 are included, which in the opinion of the division meets minimum
 549 benefits and minimum standards, the board of trustees of the
 550 retirement plan must place the income from the premium tax in s.
 551 175.101 in such plan for the sole and exclusive use of its

578-03052-20

2020760c1

552 firefighters, or for firefighters and police officers if both
 553 are included, where it shall become an integral part of that
 554 plan and be used to fund benefits as provided herein. Effective
 555 October 1, 2015, for noncollectively bargained service or upon
 556 entering into a collective bargaining agreement on or after July
 557 1, 2015:

558 (a) The base premium tax revenues must be used to fund
 559 minimum benefits or other retirement benefits in excess of the
 560 minimum benefits as determined by the municipality, municipal
 561 services taxing unit, or special fire control district.

562 (b) Of the additional premium tax revenues received that
 563 are in excess of the amount received for the 2012 calendar year,
 564 50 percent must be used to fund minimum benefits or other
 565 retirement benefits in excess of the minimum benefits as
 566 determined by the municipality, municipal services taxing unit,
 567 or special fire control district, and 50 percent must be placed
 568 in a defined contribution plan to fund special benefits.

569 (c) Additional premium tax revenues not described in
 570 paragraph (b) must be used to fund benefits that are not
 571 included in the minimum benefits. If the additional premium tax
 572 revenues subject to this paragraph exceed the full annual cost
 573 of benefits provided through the plan which are in excess of the
 574 minimum benefits, any amount in excess of the full annual cost
 575 must be used as provided in paragraph (b).

576 (d) Of any accumulations of additional premium tax revenues
 577 which have not been allocated to fund benefits in excess of the
 578 minimum benefits, 50 percent of the amount of the accumulations
 579 must be used to fund special benefits, and 50 percent must be
 580 applied to fund any unfunded actuarial liabilities of the plan;

578-03052-20

2020760c1

provided that any amount of accumulations in excess of the amount required to fund the unfunded actuarial liabilities must be used to fund special benefits.

(e) For a plan created after March 1, 2015, 50 percent of the insurance premium tax revenues must be used to fund defined benefit plan component benefits, with the remainder used to fund defined contribution plan component benefits.

(f) If a plan offers benefits in excess of the minimum benefits, such benefits, excluding supplemental plan benefits in effect as of September 30, 2014, may be reduced if the plan continues to meet minimum benefits and minimum standards. The amount of insurance premium tax revenues previously used to fund benefits in excess of minimum benefits before the reduction, excluding the amount of any additional premium tax revenues distributed to a supplemental plan for the 2012 calendar year, must be used as provided in paragraph (b). However, benefits in excess of minimum benefits may not be reduced if a plan does not meet the minimum percentage amount of 2.75 percent of the average final compensation of a full-time firefighter, as required by s. 175.162(2)(a)1., or provides an effective benefit that is below 2.75 percent as a result of a maximum benefit limitation as described in s. 175.162(2)(a)2.

(g) Notwithstanding paragraphs (a)-(f), the use of premium tax revenues, including any accumulations of additional premium tax revenues which have not been allocated to fund benefits in excess of minimum benefits, may deviate from the provisions of this subsection by mutual consent of the members' collective bargaining representative or, if there is no representative, by a majority of the firefighter members, or firefighter and police

578-03052-20

2020760c1

officer members if both are included, of the fund, and by consent of the municipality, municipal services taxing unit, or special fire control district, provided that the plan continues to meet minimum benefits and minimum standards; however, a plan that operates ~~under~~ pursuant to this paragraph and does not meet minimum benefits as of October 1, 2012, may continue to provide the benefits that do not meet the minimum benefits at the same level as was provided as of October 1, 2012, and all other benefit levels must continue to meet the minimum benefits. Such mutually agreed deviation must continue until modified or revoked by subsequent mutual consent of the members' collective bargaining representative or, if none, by a majority of the firefighter members, or firefighter and police officer members if both are included, of the fund, and the municipality, municipal services taxing unit, or special fire control district. An existing arrangement for the use of premium tax revenues contained within a special act plan or a plan within a supplemental plan municipality is considered, as of July 1, 2015, to be a deviation for which mutual consent has been granted.

(2) The premium tax provided by this chapter must be used in its entirety to provide retirement benefits to firefighters, or to firefighters and police officers if both are included. Local law plans created by special act before May 27, 1939, are deemed to comply with this chapter.

(3) A retirement plan or amendment to a retirement plan may not be proposed for adoption unless the proposed plan or amendment contains an actuarial estimate of the costs involved. Such proposed plan or proposed plan change may not be adopted

578-03052-20

2020760c1

without the approval of the municipality, municipal services
taxing unit, special fire control district, or, ~~if where~~
 required, the Legislature. Copies of the proposed plan or
 proposed plan change and the actuarial impact statement of the
 proposed plan or proposed plan change shall be furnished to the
 division before the last public hearing on the proposal is held.
 Such statement must also indicate whether the proposed plan or
 proposed plan change is in compliance with s. 14, Art. X of the
 State Constitution and those provisions of part VII of chapter
 112 which are not expressly provided in this chapter.
 Notwithstanding any other provision, only those local law plans
 created by special act of legislation before May 27, 1939, are
 deemed to meet minimum benefits and minimum standards.

(4) Notwithstanding any other provision, with respect to
 any supplemental plan municipality:

(a) A local law plan and a supplemental plan may continue
 to use their definition of compensation or salary in existence
 on March 12, 1999.

(b) Section 175.061(1)(b) does not apply, and a local law
 plan and a supplemental plan shall continue to be administered
 by a board or boards of trustees numbered, constituted, and
 selected as the board or boards were numbered, constituted, and
 selected on December 1, 2000.

(5) The retirement plan setting forth the benefits and the
 trust agreement, if any, covering the duties and
 responsibilities of the trustees and the regulations of the
 investment of funds must be in writing, and copies made
 available to the participants and to the general public.

(6) In addition to the defined benefit plan component of

578-03052-20

2020760c1

the local law plan, each plan sponsor must have a defined
 contribution plan component within the local law plan by October
 1, 2015, for noncollectively bargained service, upon entering
 into a collective bargaining agreement on or after July 1, 2015,
 or upon the creation date of a new participating plan. Depending
 upon the application of subsection (1), a defined contribution
 plan component may or may not receive any funding.

(7) Notwithstanding any other provision of this chapter, a
 municipality, municipal services taxing unit, or special fire
 control district that has implemented or proposed changes to a
 local law plan based on the municipality's, municipal services
taxing unit's, or district's reliance on an interpretation of
 this chapter by the Department of Management Services on or
 after August 14, 2012, and before March 3, 2015, may continue
 the implemented changes or continue to implement proposed
 changes. Such reliance must be evidenced by a written collective
 bargaining proposal or agreement, or formal correspondence
 between the municipality, municipal services taxing unit, or
 district and the Department of Management Services which
 describes the specific changes to the local law plan, with the
 initial proposal, agreement, or correspondence from the
 municipality, municipal services taxing unit, or district dated
 before March 3, 2015. Changes to the local law plan which are
 otherwise contrary to minimum benefits and minimum standards may
 continue in effect until the earlier of October 1, 2018, or the
 effective date of a collective bargaining agreement that is
 contrary to the changes to the local law plan.

Section 9. Section 175.381, Florida Statutes, is amended to
 read:

578-03052-20

2020760c1

697 175.381 Applicability.—This act shall apply to all
 698 municipalities, municipal services taxing units, special fire
 699 control districts, chapter plans, local law municipalities,
 700 local law special fire control districts, or local law plans
 701 presently existing or to be created under ~~pursuant to~~ this
 702 chapter. Those plans presently existing under ~~pursuant to~~ s.
 703 175.351 and not in compliance with ~~the provisions of~~ this act
 704 must comply no later than December 31, 1999. However, the plan
 705 sponsor of any plan established by special act of the
 706 Legislature shall have until July 1, 2000, to comply with ~~the~~
 707 ~~provisions of~~ this act, except as otherwise provided in this act
 708 with regard to establishment and election of board members. ~~The~~
 709 ~~provisions of~~ This act shall be construed to establish minimum
 710 standards and minimum benefit levels, and nothing contained in
 711 this act or in chapter 175 operates ~~shall operate~~ to reduce
 712 presently existing rights or benefits of any firefighter,
 713 directly, indirectly, or otherwise.

714 Section 10. Section 175.411, Florida Statutes, is amended
 715 to read:

716 175.411 Optional participation.—A municipality, municipal
 717 services taxing unit, or special fire control district may
 718 revoke its participation under this chapter by rescinding the
 719 legislative act, ordinance, or resolution which assesses and
 720 imposes the taxes authorized in s. 175.101, and by furnishing a
 721 certified copy of such legislative act, ordinance, or resolution
 722 to the division. Thereafter, the municipality, municipal
 723 services taxing unit, or special fire control district is ~~shall~~
 724 ~~be~~ prohibited from participating under this chapter, and is
 725 ~~shall~~ not be eligible for future premium tax moneys. Premium tax

578-03052-20

2020760c1

726 moneys previously received shall continue to be used for the
 727 sole and exclusive benefit of firefighters, or firefighters and
 728 police officers if both are ~~where~~ included, and no amendment,
 729 legislative act, ordinance, or resolution shall be adopted which
 730 ~~has shall have~~ the effect of reducing the then-vested accrued
 731 benefits of the firefighters, or firefighters and police
 732 officers if both are included, retirees, or their beneficiaries.
 733 The municipality, municipal services taxing unit, or special
 734 fire control district shall continue to furnish an annual report
 735 to the division as provided in s. 175.261. If the municipality,
 736 municipal services taxing unit, or special fire control district
 737 subsequently terminates the defined benefit plan, they shall do
 738 so in compliance with ~~the provisions of~~ s. 175.361.

739 Section 11. Subsection (13) of section 191.006, Florida
 740 Statutes, is amended to read:

741 191.006 General powers.—The district shall have, and the
 742 board may exercise by majority vote, the following powers:

743 (13) To cooperate or contract with other persons or
 744 entities, including other governmental agencies, as necessary,
 745 convenient, incidental, or proper in connection with providing
 746 effective mutual aid and furthering any power, duty, or purpose
 747 authorized by this act. The district shall have, and the board
 748 may exercise, all powers and duties provided in s. 163.01,
 749 chapter 189, and this chapter, including such powers within or
 750 without the district's boundary in cooperation with another
 751 governmental agency when such agency shares such powers in
 752 common with the district.

753 Section 12. Paragraph (c) of subsection (3) of section
 754 633.422, Florida Statutes, is amended to read:

578-03052-20

2020760c1

755 633.422 Firefighters; supplemental compensation.—
 756 (3) FUNDING.—
 757 (c) There is appropriated from the Police and Firefighter's
 758 Premium Tax Trust Fund to the Firefighters' Supplemental
 759 Compensation Trust Fund, which is created under the Department
 760 of Revenue, all moneys which have not been distributed to
 761 municipalities, municipal services taxing units, and special
 762 fire control districts in accordance with s. 175.121 as a result
 763 of the limitation contained in s. 175.122 on the disbursement of
 764 revenues collected under ~~pursuant to~~ chapter 175 or as a result
 765 of any municipality, municipal services taxing unit, or special
 766 fire control district not having qualified in any given year, or
 767 portion thereof, for participation in the distribution of the
 768 revenues collected under ~~pursuant to~~ chapter 175. The total
 769 required annual distribution from the Firefighters' Supplemental
 770 Compensation Trust Fund shall equal the amount necessary to pay
 771 supplemental compensation as provided in this section, provided
 772 that:
 773 1. Any deficit in the total required annual distribution
 774 shall be made up from accrued surplus funds existing in the
 775 Firefighters' Supplemental Compensation Trust Fund on June 30,
 776 1990, for as long as such funds last. If the accrued surplus is
 777 insufficient to cure the deficit in any given year, the
 778 proration of the appropriation among the counties,
 779 municipalities, municipal services taxing units, and special
 780 fire service taxing districts shall equal the ratio of
 781 compensation paid in the prior year to county, municipal,
 782 municipal services taxing unit, and special fire service taxing
 783 district firefighters under ~~pursuant to~~ this section. This ratio

Page 27 of 28

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

578-03052-20

2020760c1

784 shall be provided annually to the Department of Revenue by the
 785 division. Surplus funds that have accrued or accrue on or after
 786 July 1, 1990, shall be redistributed to municipalities,
 787 municipal services taxing units, and special fire control
 788 districts as provided in subparagraph 2.
 789 2. By October 1 of each year, any funds that have accrued
 790 or accrue on or after July 1, 1990, and remain in the
 791 Firefighters' Supplemental Compensation Trust Fund following the
 792 required annual distribution shall be redistributed by the
 793 Department of Revenue pro rata to those municipalities,
 794 municipal services taxing units, and special fire control
 795 districts identified by the Department of Management Services as
 796 being eligible for additional funds under ~~pursuant to~~ s.
 797 175.121(3)(b).
 798 Section 13. This act shall take effect July 1, 2020.

Page 28 of 28

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)

2-17-20

Meeting Date

760

Bill Number (if applicable)

Topic FIRE CONTROL DISTRICTS + FIRE PENSIONS

Amendment Barcode (if applicable)

Name Wayne "Bernie" BERNOSKI

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 FIREFIGHTERS

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)

2/17/20
Meeting Date

760
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title _____

Address 315 S. Calhoun St., Ste. 830
Street
Tallahassee 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)

2-17-20
Meeting Date

760
Bill Number (if applicable)

Topic Fire Control Districts & Firefighter Pensions

Amendment Barcode (if applicable)

Name Jim Milligan

Job Title Division Chief

Address 4360-55 NW
Street

Phone 727-526-5650

St. Pete FL 33744
City State Zip

Email jmilligan@ec/mentefire.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lealman 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

APPEARANCE RECORD

2/17/2020
Meeting Date

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

760
Bill Number (if applicable)

Topic Fire Control Districts and Firefighter Pensions
Name Laura Donaldson
Amendment Barcode (if applicable)

Job Title _____

Address 109 N. Brush St, Suite 300 Phone 813-514-4700
Street
Tampa FL 33602 Email ldonaldson@marsonbolves.com
City State Zip

Speaking: ☒ For ☐ Against ☐ Information

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

Representing North Collier Fire + Rescue 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 774

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Diaz

SUBJECT: Public Records and Meetings/Applicant for President/State University or Florida College System Institution

DATE: February 18, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bouck</u>	<u>Sikes</u>	<u>ED</u>	Favorable
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/SB 774 makes confidential and exempt from public disclosure requirements any personal identifying information of an applicant for the position of president of a state university or Florida College System institution. The bill provides that the personal identifying information of an applicant included in a final group of applicants for president is no longer confidential and exempt from public record requirements at least 21 days before the date of a meeting at which either an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

The bill also exempts from public meeting requirements any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution, including any portion of a meeting that would disclose personal identifying information of such applicants. The bill provides that a complete recording must be made of any portion of a closed meeting, and any closed portion of such meeting may not be held off the record. The recording is also exempt from public disclosure requirements.

The bill specifies that the meeting exemption does not apply to any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation framework to be offered to an applicant. Additionally, any meeting held after a final group of applicants has been established at which an interview of an applicant is conducted or at which

final action or a vote is to be taken on the offer of the employment of an applicant as president must be open to the public.

The bill provides that the exemption is subject to the Open Government Sunshine Review Act, and so is repealed on October 2, 2025, unless saved from repeal by the Legislature.

The bill may have a minimal fiscal impact on state universities and Florida College System institutions.

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, 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

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ Each collegial body must provide notice of its meetings to the public and permit the public to

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).

¹⁶ FLA. CONST., art. I, s. 24(b).

attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

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,”¹⁹ or the “Sunshine Law,”²⁰ 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.²¹ The board or commission must provide the public reasonable notice of such meetings.²² 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.²³ Minutes of a public meeting must be promptly recorded and open to public inspection.²⁴ Failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

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.²⁷ 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.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

¹⁷ *Id.*

¹⁸ 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.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *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.

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,³⁰ with specified exceptions.³¹ 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.³² 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.³³

Open Government Sunset Review Act

The Open Government Sunset Review Act³⁴ (the Act) prescribes a legislative review process for newly created or substantially amended³⁵ public records or open meetings exemptions, with specified exceptions.³⁶ 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.³⁷

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.³⁸ 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;³⁹
- 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;⁴⁰ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.⁴¹

³⁰ 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.).

³¹ 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.

³² Section 119.15(3), F.S.

³³ Section 119.15(6)(b), F.S.

³⁴ Section 119.15, F.S.

³⁵ 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.

³⁶ 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.

³⁷ Section 119.15(3), F.S.

³⁸ Section 119.15(6)(b), F.S.

³⁹ Section 119.15(6)(b)1., F.S.

⁴⁰ Section 119.15(6)(b)2., F.S.

⁴¹ Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.⁴² 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.⁴³ 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.⁴⁴

State University System and Florida College System Governance

The State University System is composed of all public state universities.⁴⁵ The Board of Governors (BOG) has the authority to regulate the State University System pursuant to Art. IX, s. 7(d) of the State Constitution. The BOG is required to operate, regulate, control, and be fully responsible for the management of the whole university system.⁴⁶ Each state university is governed by a local board of trustees, which is subject to public record and open meetings laws.⁴⁷ The BOG establishes the powers and duties of the boards of trustees and may delegate its constitutional or statutory powers and duties to the boards of trustees as its designee.⁴⁸ The BOG establishes the personnel system for all state university employees and confirms the selection and reappointment of presidents by state university boards of trustees.⁴⁹

The Legislature created the Florida College System (FCS) consisting of institutions⁵⁰ governed by boards of trustees.⁵¹ The State Board of Education establishes the standards and guidelines for FCS institutions.⁵² A local board of trustee governs each FCS institution.⁵³

⁴² 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?

⁴³ See *generally* s. 119.15, F.S.

⁴⁴ Section 119.15(7), F.S.

⁴⁵ FLA. CONST art. IX, s. 7(b). The State University System is made up of 12 state universities, specified in s. 1000.21(6), F.S.

⁴⁶ FLA. CONST art. IX, s. 7(d). See also ss. 20.155(4)(a), 1001.70(3), 1001.705(2), and 1001.706(2)(a), F.S.

⁴⁷ FLA. CONST art. IX, s. 7(b)-(c). See also s. 1001.71(1), F.S.

⁴⁸ FLA. CONST. art. IX, s. 7(c). see also s. 1001.706(2)(b), F.S.

⁴⁹ Sections 1001.705(2)(k) and 1001.706(6)(a), F.S.

⁵⁰ See s. 1000.21(3), F.S., for a definition and list of each “Florida College System institution.” Such institutions constitute political subdivisions of the state operated by boards of trustees. See s. 1004.67 and ss. 1001.61-1001.64, F.S.

⁵¹ Sections 1001.60, 1001.61(1) and (2), and 1001.64(2), F.S.

⁵² Section 20.15(1), (2), and (5); see also s. 1001.02(1) and (6), F.S..

⁵³ FLA. CONST s. 8(b). See also ss. 1001.60(3) and 1001.64(2), F.S.

State University and Florida College System Presidential Searches

Each state university board of trustees selects its university president, subject to confirmation of the candidate by the BOG and in accordance with BOG regulations. State universities and FCS institutions often establish search committees for filling a vacant president position. The purpose of a search committee is to locate qualified applicants who are interested in filling the position. The search committees may utilize consultants to aid them in their search.

BOG regulation specifies criteria to ensure that the search process is transparent, robust, and designed to attract highly qualified individuals.⁵⁴ Criteria include the requirements that a search committee be familiar, or demonstrate its ability to become familiar, with Florida's Sunshine laws,⁵⁵ and that the search committee maintain a webpage that includes search committee notices, agendas, and meetings; applicant lists; and means to provide input; for purposes of transparency.⁵⁶ Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition any meetings associated with the search process are open to the public.⁵⁷

III. Effect of Proposed Changes:

Section 1 creates s. 1004.098, F.S., to establish an exemption from public records and public meetings requirements for applicants for president of a state university or FCS institution.

The bill specifies that any personal identifying information of an applicant for president of a state university or FCS institution is confidential and exempt from public records requirements.

The bill provides that the personal identifying information of an applicant included in a final group of applicants for president of a state university or Florida College System institution is no longer confidential and exempt at least 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

The bill exempts from public meetings requirements any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or FCS institution, including any portion of a meeting that would disclose personal identifying information of such applicants. The bill provides that a complete recording must be made of any portion of a meeting that is closed and any closed portion of such meeting may not be held off the record. The recording of the closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

⁵⁴ BOG Regulation 1.002(1).

⁵⁵ BOG Regulation 1.002(1)(b)ii.

⁵⁶ BOG Regulation 1.002(1)(c)i.

⁵⁷ FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law); *Rhea v. District Bd. Of Trustees of Santa Fe College*, 109 So. 3d 851 at 855, n. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the Florida College System, is a state agency having a duty to provide access to public records).

The bill specifies that the public meeting exemption does not apply to:

- Any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation framework to be offered to an applicant for president of a state university or Florida College System institution.
- Any meeting held after a final group of applicants for president of a state university or Florida College System institution has been established at which an interview of an applicant is conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

The exemption from public records and public meetings established in the bill is 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.

Section 2, pursuant to a requirement in the State Constitution, sets forth the public necessity justifying the exemption.⁵⁸ The bill asserts that applicants for president who are currently employed could jeopardize their current positions if it were known that they were seeking employment elsewhere. Further, the bill specifies that an exemption is necessary to allow an institution search committee to have the most experienced and desirable pool of qualified applicants from which to fill the position of president.

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 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, 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 personal identifying information about applicants for the position of president at a state university or Florida College System (FCS) institution, 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 two of the bill contains a statement of public necessity for the exemption.

⁵⁸ FLA. CONST art. I, s. 24(c).

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 identifying information of applicants for the position of president of a state university or FCS institution. This bill exempts only personal identifying information of such individuals, and portions of meetings where such information is discussed, 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 continue to be subject to the cost associated with an agency making redactions in response to a public records request.

C. Government Sector Impact:

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

VI. Technical Deficiencies:

None.

VII. Related Issues:

The First Amendment Foundation has opposed the exemption established in the bill as contrary to the public interest.⁵⁹

⁵⁹ First Amendment Foundation, *SB 774 Exemption/University President Searches* (Jan. 6, 2020), available at <https://floridafaf.org/wp-content/uploads/2020/01/SB-774-University-Presidents.pdf>.

VIII. Statutes Affected:

This bill creates section 1004.098 of the Florida Statutes.

This bill 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 by Governmental Oversight and Accountability on February 17, 2020:

The committee substitute:

- Removes the requirement that a final group of applicants constitutes three or more;
- Provides for the transcription and recordation of any portion of a closed meeting;
- Makes other non-substantive changes; and
- Delays the effective date to July 1, 2020.

- B. **Amendments:**

None.



458574

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 1004.098, Florida Statutes, is created
to read:

1004.098 Applicants for president of a state university or
Florida College System institution; public records exemption;
public meetings exemption.—

(1)(a) Any personal identifying information of an applicant



458574

for president of a state university or Florida College System institution is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) The personal identifying information of an applicant included in a final group of applicants for president of a state university or Florida College System institution is no longer confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution at least 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

(2) (a) Any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution, including any portion of a meeting that would disclose personal identifying information of such applicants, is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution.

(b) A complete recording must be made of any portion of a meeting that is closed pursuant to paragraph (a), and any closed portion of such meeting may not be held off the record. The recording of the closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) The public meeting exemption provided in paragraph (a) does not apply to:

1. Any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation framework to be offered to an applicant for president of a state university or Florida College System institution.



458574

2. Any meeting held after a final group of applicants for president of a state university or Florida College System institution has been established at which an interview of an applicant is conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

(3) This section 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 personal identifying information of an applicant for president of a state university or Florida College System institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. The Legislature also finds that it is a public necessity that any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution, including any portion of a meeting that would disclose personal identifying information of such applicants, be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Art. I of the State Constitution, and that the recording of such meeting be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. The task of filling the position of president of a state university or Florida College System institution is often conducted by an executive search committee. Many, if not most, applicants for such a position are currently employed at another job at the time they apply and could



458574

jeopardize their current positions if it were to become known
that they were seeking employment elsewhere. These exemptions
from public records and public meeting requirements are needed
to ensure that such a search committee can avail itself of the
most experienced and desirable pool of qualified applicants from
which to fill the position of president of a state university or
Florida College System institution. If potential applicants fear
the possibility of losing their current jobs as a consequence of
attempting to progress along their chosen career path or simply
seeking different and more rewarding employment, failure to have
these safeguards in place could have a chilling effect on the
number and quality of applicants available to fill the position
of president of a state university or Florida College System
institution.

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 and public meetings; creating
s. 1004.098, F.S.; providing an exemption from public records
requirements for any personal identifying information of an
applicant for president of a state university or Florida College
System institution; specifying that personal identifying
information of applicants who comprise a final group of
applicants is no longer confidential and exempt at a time
certain; providing an exemption from public meeting requirements



458574

98 for any portion of a meeting held for the purpose of identifying
99 or vetting applicants for president of a state university or
100 Florida College System institution, including any portion of a
101 meeting that would disclose identifying information of such
102 applicants; requiring a recording to be made of any portion of a
103 closed meeting and providing that no portion of a closed meeting
104 may be held off the record; providing that the recording of any
105 closed portion of a meeting is exempt from public record
106 requirements; specifying that certain meetings are not exempt
107 from public meeting requirements; providing for future
108 legislative review and repeal of the exemptions; providing a
109 statement of public necessity; providing an effective date

By Senator Diaz

36-00599A-20

2020774__

1 A bill to be entitled
 2 An act relating to public records and meetings;
 3 creating s. 1004.098, F.S.; providing an exemption
 4 from public records requirements for any personal
 5 identifying information of an applicant for president
 6 of a state university or Florida College System
 7 institution; providing an exemption from public
 8 meeting requirements for any meeting held for the
 9 purpose of identifying or vetting applicants for
 10 president of a state university or Florida College
 11 System institution and for any portion of a meeting
 12 held for the purpose of establishing qualifications
 13 of, or any compensation framework to be offered to,
 14 such potential applicants which would disclose
 15 personal identifying information of an applicant or
 16 potential applicant; providing applicability;
 17 requiring release of the names of specified applicants
 18 within a certain timeframe; providing for future
 19 legislative review and repeal of the exemptions;
 20 providing a statement of public necessity; providing
 21 an effective date.
 22
 23 Be It Enacted by the Legislature of the State of Florida:
 24
 25 Section 1. Section 1004.098, Florida Statutes, is created
 26 to read:
 27 1004.098 Information identifying applicants for president
 28 at state universities and Florida College System institutions;
 29 public records exemption; public meeting exemption.-

Page 1 of 4

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

36-00599A-20

2020774__

30 (1) Any personal identifying information of an applicant
 31 for president of a state university or Florida College System
 32 institution is confidential and exempt from s. 119.07(1) and s.
 33 24(a), Art. I of the State Constitution.
 34 (2) Any meeting held for the purpose of identifying or
 35 vetting applicants for president of a state university or
 36 Florida College System institution is exempt from s. 286.011 and
 37 s. 24(b), Art. I of the State Constitution. This exemption does
 38 not apply to a meeting held for the purpose of establishing
 39 qualifications of potential applicants or any compensation
 40 framework to be offered to potential applicants. However, any
 41 portion of such a meeting which would disclose personal
 42 identifying information of an applicant or potential applicant
 43 is exempt from s. 286.011 and s. 24(b), Art. I of the State
 44 Constitution.
 45 (3) Any meeting or interview held after a final group of at
 46 least three applicants has been established which is conducted
 47 for the purpose of making a final selection to fill the position
 48 of president of a state university or Florida College System
 49 institution is subject to s. 286.011 and s. 24(b), Art. I of the
 50 State Constitution.
 51 (4) The names of the three or more applicants who comprise
 52 a final group of applicants pursuant to subsection (3) must be
 53 released by the state university or Florida College System
 54 institution no later than 21 days before the date of the meeting
 55 at which final action or voting is to occur on the employment of
 56 the applicants.
 57 (5) Any personal identifying information of the three or
 58 more applicants who comprise a final group of applicants

Page 2 of 4

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

36-00599A-20

2020774__

pursuant to subsection (3) becomes subject to s. 119.07(1) and s. 24(a), Art. I of the State Constitution at the time the names of such applicants are released pursuant to subsection (4).

(6) This section 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 personal identifying information of an applicant for president of a state university or Florida College System institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature also finds that any meeting held for the purpose of identifying or vetting applicants for president of a state university or Florida College System institution and any portion of a meeting held for the purpose of establishing qualifications of, or any compensation framework to be offered to, such potential applicants which would disclose personal identifying information of an applicant or potential applicant be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The task of filling the position of president of a state university or Florida College System institution is often conducted by an executive search committee. Many, if not most, applicants for such a position are currently employed at another job at the time they apply, and their current positions could be jeopardized if it were to become known that they were seeking employment elsewhere. These exemptions from public records and public meeting requirements are needed to ensure that an

36-00599A-20

2020774__

executive search committee can avail itself of the most experienced and desirable pool of qualified applicants from which to fill the position of president of a state university or Florida College System institution. If potential applicants fear the possibility of losing their current jobs as a consequence of attempting to further their careers or simply seeking different and more rewarding employment, failure to have these safeguards in place could have a chilling effect on the number and quality of applicants available to fill the position of president of a state university or Florida College System institution.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 3, 2019

I respectfully request that **Senate Bill # 774**, relating to Public Records and Meetings/Applicant for President/State University or Florida College System Institution, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/20

Meeting Date

SB774

Bill Number (if applicable)

Topic OPEN Records

Amendment Barcode (if applicable)

Name James Young

Job Title Teacher (8 years)

Address 1313 West Broward Street

Phone 772-579-1185

Street

City

Lantana FL

State

33461

Zip

Email jyoung837@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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)

2/17/20
Meeting Date

774
Bill Number (if applicable)

Topic Security of Univ / Colleges President Searches

Amendment Barcode (if applicable)

Name Marshall Opatree

Job Title Exec. Director

Address 115 N. Calhoun St, Suite 6

Phone 850-224-8220

Street Tallahassee FL 32301
City State Zip

Email ~~Marshall.Opatree@flsu.edu~~

Speaking: ☐ For ☒ Against ☐ Information

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

Representing United Faculty of Florida

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/

Meeting Date

SB 774

Bill Number (if applicable)

Topic Open Records

Amendment Barcode (if applicable)

Name Carmen King

Job Title Teacher, Adjunct Instructor

Address 2128 NW 74th place

Phone 352-871-3622

Street

Gainesville, FL

City

State

Zip

Email

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/2020

Meeting Date

open Records

SB 774

Bill Number (if applicable)

Topic

SB 774

SECRET SEARCH FOR
Presidents of Colleges & Univ

Amendment Barcode (if applicable)

Name

Christopher King

Job Title

Retired Post Secondary
Educators

Address

2128 NW 74th PL

Phone

352-871-0622

Street

Gainesville

State

FL

Zip

32653

Email

cdking61@gmail.com

Speaking:

☐

For

☒

Against

☐

Information

Waive Speaking:

☐

In Support

☐

Against

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

Representing

Myself

Appearing at request of Chair:

☐

Yes

☒

No

Lobbyist registered with Legislature:

☐

Yes

☒

No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/17/20

Meeting Date

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

SB 774

Bill Number (if applicable)

Topic Open records

Amendment Barcode (if applicable)

Name Bob Glat

Job Title Teacher

Address 7152 Dawnshire Pl

Phone 561 707-7157

Street Lake Worth FL

Email Bohanning0@gmail.com

City State Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/17/20
Meeting Date

SB774
Bill Number (if applicable)

Topic OPEN RECORDS

Amendment Barcode (if applicable)

Name Donald Persson

Job Title Teacher (38 years)

Address 12980 Orange Grove Blvd.
Street

Phone (561) 719-6838

West Palm Beach FL 33411
City State Zip

Email donaldpersson@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/17/2020
Meeting Date

SB 774
Bill Number (if applicable)

Topic Open Records

Amendment Barcode (if applicable)

Name ROBERT MOOR

Job Title PUBLIC SCHOOL EDUCATOR

Address 1350 Monroe St #1771
Street

Phone 641 529 7316

FORT MYERS FL 33902
City State Zip

Email po5myp@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing myself as individual

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

02/17/2020

Meeting Date

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

SB 774

Bill Number (if applicable)

Topic Open Records

Amendment Barcode (if applicable)

Name Christine Derry

Job Title Teacher at public school

Address 2913 SW Bridge St.

Phone 772-807-0866

Street

Port St. Lucie FL

Email ccincco685@yahoo.com

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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)

2-17-20

Meeting Date

SB 774

Bill Number (if applicable)

Topic Open Records

Amendment Barcode (if applicable)

Name Johnathan P. Droskis

Job Title Educator

Address 11959 Cypress Links Dr
Street

Phone 239-822-9717

FL Myers FL 33913
City State Zip

Email JPDRU@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2/17/20

Meeting Date

SB 774

Bill Number (if applicable)

Topic Sunshine Law

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title _____

Address 135 S. Monroe

Street

Phone 850-224-8926

Tallahassee

City

FL

State

32301

Zip

Email _____

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2/17/20

Meeting Date

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

774

Bill Number (if applicable)

Topic Secrecy Bill

Amendment Barcode (if applicable)

Name Jeremiah Tattersall

Job Title Office worker

Address 230 NW 14th Ave

Phone 352-222-1991

Street

Gainesville

FL

32601

City

State

Zip

Email Jeremiah.Tattersall@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/17/2020
Meeting Date

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

SB 0774
Bill Number (if applicable)

Topic Open Record

Amendment Barcode (if applicable)

Name Ferraro Jacobs

Job Title Drafting Technician

Address 9611 N. 46th St. Apt. B

Phone 813-240-9451

Street

Tampa
City

FL
State

33617
Zip

Email ferrarojacobs@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

2/17/2020

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

SB 0774

Meeting Date

Bill Number (if applicable)

Topic Open Record

Amendment Barcode (if applicable)

Name Stephen Simon

Job Title Wastewater Operator

Address 13294 Don Loop

Phone (813) 240-9828

Street

Spring Hill

FL

34609

Zip

Email stephensimon@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing

Myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

02-17-2020

Meeting Date

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

SB 0774

Bill Number (if applicable)

Topic Public Records and Meeting Application Amendment Barcode (if applicable)

Name Jackie McColister

Job Title Hillsborough County School Bus Driver

Address 6400 Coronet Rd

Phone 813 918 9559

Street

Lakeland

FL

33811

City

State

Zip

Email clan7mac@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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)

2-17-20

Meeting Date

SB 0774

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Stephanie Clark

Job Title Hillsborough School

Address 210 Dogwood Rd

Street

Plant City

City

FL

State

33545

Zip

Phone 727-277-9780

Email Steph1974.SC@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing my self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/20

Meeting Date

SB 0774

Bill Number (if applicable)

Topic Public Records 2nd meeting / Application

Amendment Barcode (if applicable)

Name Sherene Tolbert

Job Title R & P Specialist

Address 3623 E. Shadowlawn Ave
Street

Phone 813 407 6060

Tampa
City

FL
State

33610
Zip

Email Stolbert606@gmail.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Self

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

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)

2-17-2020

Meeting Date

774

Bill Number (if applicable)

Topic Open records

Amendment Barcode (if applicable)

Name James Jones

Job Title Sheetmetal worker

Address 2373 Glen Gardner Dr
Street

Phone (904) 312-0067

Jacksonville FL 32246
City State Zip

Email steelersfan5DJ@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

12/17/2020

Meeting Date

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

774

Bill Number (if applicable)

Topic SUS/FCS Applicant PR Exemption

Amendment Barcode (if applicable)

Name MARCUS DIXON

Job Title EXECUTIVE DIRECTOR

Address 2881 Corporate Way

Street

Miramar

City

FL

State

33025

Zip

Phone (305) 720-1627

Email Marcus.Dixon@seiufla.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SEIU 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.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-20

Meeting Date

SB 774
Bill Number (if applicable)

Topic PUBLIC RECORDS & MEETINGS

Amendment Barcode (if applicable)

Name DAVID GATES

Job Title RETIRED ELECTRICIAN

Address 1444
Street

Phone 904-322-3995

JAX. FL. 32218
City State Zip

Email davidgates177@yahoo.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing MYSELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/20

Meeting Date

SB 774

Bill Number (if applicable)

Topic PUBLIC RECORDS

Amendment Barcode (if applicable)

Name Russell Harper

Job Title Retired ELECTRICIAN

Address 1785 Lilly Road East
Street

Phone 904-588-4855

JACKSONVILLE FL 32207
City State Zip

Email Russell-Harper@LBW17.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SELF

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-17-20

Meeting Date

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

SB 774

Bill Number (if applicable)

Topic Public Records and Meetings / App. for Pres. for state Univ
Name Kari Ann Kinkey

Amendment Barcode (if applicable)

Job Title Teacher

Address 10079 Hwy 83

Phone 850-414-3889

DeFuniak Springs
City

FL
State

32433
Zip

Email kariannkin11@gmail.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing myself

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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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)

2-17-2020

Meeting Date

SB-774

Bill Number (if applicable)

Topic Secret Search for President of Univ.

Amendment Barcode (if applicable)

Name Zac Cassidy

Job Title _____

Address 6106 Southard St.

Street

WPB,

City

FL

State

33411

Zip

Phone 561-281-5032

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing _____

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

2-17-2020

Meeting Date

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

774

Bill Number (if applicable)

Topic Secret Search for University President

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retired Environmental Scientist

Address

Phone 850 322-7598

Street

Tallahassee

City

State

Zip

Email amali@datz@mac.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Self.

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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

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

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 800

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Harrell and Farmer

SUBJECT: Division of State Technology

DATE: February 18, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 800 establishes the Data Innovation Program within the Department of State Technology (DST). The DST is to identify the data coming into and out of the DST, unify data definitions among agencies, and publish a data catalog. The DST is further required to inventory, by June 30, 2021, all existing interagency data-sharing agreements, identify areas of data-sharing needs, and, thereafter, execute a new interagency agreement.

The bill further directs DST to develop three proof-of-concept programs in conjunction with the Agency for Health Care Administration (AHCA), the Department of Health (DOH), and the Department of Children and Families (DCF) by December 31, 2021. The programs are required to demonstrate interoperability across data types in order to promote analysis of such data. Further parameters are provided for the programs to be conducted.

The bill has a potentially significant impact on the Department of Management Services, AHCA, DOH, and DCF. See Section V., Fiscal Impact Statement.

The bill takes effect upon becoming a law.

II. Present Situation:

Information Technology in the State of Florida

The DMS contains several divisions, including the DST. The DST is charged with information technology (IT)¹ governance and security for the executive branch of state government.²

The DST develops IT policy for state resources, information technology architecture standards, and project management and oversight standards. The DST also performs oversight on IT projects, manages the state data center, and makes recommendations for IT services the government can invest in. Among its duties related to IT security, specifically, are designating a state chief information security officer, developing a statewide IT security strategic plan, developing an IT security framework, and providing training for information security managers.³

Data Interoperability

Interoperability is a phrase from the IT industry used to describe how electronic devices communicate with each other. For example, a mouse plugged into a computer is interoperable because the USB connection provides barrier-free information exchange between the two devices.

Data interoperability is the same concept applied to data. If a list of names (the data) can be opened by a program such as Microsoft Word, the data and program are interoperable. If agency A has a list of names in a format that agency B cannot view or use, the system lacks interoperability. Converting the data from one format to another in many cases takes time and money, or makes the data unusable entirely. Promoting data interoperability means investing in systems that would allow the state's various agencies to share data freely and simply, and ensuring that such data is useable.⁴

Data Dictionary

A data dictionary is a tool that provides detailed information about business data. The data dictionary will standardize what data elements are allowable, what they mean, and what values can apply to each type of data. The most common elements of a data dictionary are the data's

¹ The term "information technology" means equipment, hardware, software, firmware, programs, systems, networks, infrastructure, media, and related material used to automatically, electronically, and wirelessly collect, receive, access, transmit, display, store, record, retrieve, analyze, evaluate, process, classify, manipulate, manage, assimilate, control, communicate, exchange, convert, converge, interface, switch, or disseminate information of any kind or form. S. 282.0041(14), F.S.

² Section 282.0051, F.S.

³ Section 282.318(3), F.S.

⁴ NCOIC, What is interoperability? Available at <https://www.ncoic.org/what-is-interoperability/> (last visited February 12, 2020); Office of the National Coordinator for Health Information Technology (ONC), U.S. Core Data for Interoperability (USCDI), available at <https://www.healthit.gov/isa/us-core-data-interoperability-uscdi> (last visited February 12, 2020); Cai, Hongming and Athanasios Vasilaskos, Data Interoperability, ScienceDirect, 2017, available at <https://www.sciencedirect.com/topics/computer-science/data-interoperability> (last visited February 12, 2020).

attribute name (or unique identifier), and attribute type (deciding what is allowed, between text, numbers, dates, etc.).⁵

Interagency Data-Sharing Agreements

Two state agencies may enter into an Interagency Data-Sharing Agreement in pursuit of their statutory duties. These agreements will contain the purpose for the data sharing, the legal authority as required, and the scope of work to be accomplished as a result of the data sharing. The agreement will, in detail, specify the location and types of information each agency will provide the other with unfettered access to. The agreement will also cover the procedure for access, confidentiality issues, and costs.⁶

III. Effect of Proposed Changes:

Section 1 amends s. 282.0041, F.S., to add a definition for “information technology portfolio rationalization” to mean “the streamlining of an existing application portfolio to improve efficiency, reduce complexity, and lower the total cost of ownership through processes including, but not limited to:

- (a) Software license optimization;
- (b) Application retirement;
- (c) Server optimization;
- (d) Project rationalization;
- (e) Data storage optimization;
- (f) Retirement of aged and low-value applications;
- (g) Elimination of redundancies; and
- (h) Standardization of common technology platforms.”

Section 2 amends section 282.0051, F.S., to provide that the DMS is to administer the Data Innovation Program established under 282.319 through the DST.

Section 3 creates s. 282.319, F.S., to establish the Data Innovation Program within the DST. The section provides legislative intent behind the program, which includes to:

- Ensure that all state agencies collaborate and synthesize data securely through interoperability;
- Create software and information technology portfolio rationalization and procurement to achieve interoperability and reduce the number of stand-alone applications that do not communicate with each other;
- Minimize costs associated with data management areas;
- Ensure accurate procedures for regulation and compliance activities;
- Increase transparency within data-related activities;
- Institute better training and educational practices for the management of data assets;

⁵ Brandenburg, Laura, *What is a Data Dictionary?* Bridging the Gap, <https://www.bridging-the-gap.com/data-dictionary/> (last visited February 12, 2020).

⁶ See, e.g., Interagency Data Sharing Agreement between The Department of Juvenile Justice and The Department of Children and Families, available at <http://www.djj.state.fl.us/docs/agreements/data-sharing-dcr-djj-for-fsfn-with-osca-data-sharing-final.pdf?sfvrsn=2> (last visited February 12, 2020).

- Increase the value of this state's data while providing standardized data systems, data policies, and data procedures;
- Aid in the resolution of past and current data issues;
- Facilitate improved monitoring and tracking mechanisms for data quality and other data-related activities;
- Increase overall state data standards, thereby translating data into actionable information and workable knowledge of this state's information technology system;
- Enable state agencies to transform their use of technology to offer services in an effective, efficient, and secure manner; and
- Improve the health of all persons in this state.

The section further provides that the DST shall identify all data elements within state agencies and develop common data definitions across state agencies; inform state agencies of the data types they collect and report publicly or to the Federal government, to identify where interagency data-sharing can create staff and technology efficiencies. The DST must also publish a comprehensive data catalog and a data dictionary. The DST must inventory, by June 30, 2021, all existing interagency data-sharing agreements, identify areas of data-sharing needs, and, thereafter, execute a new interagency agreement.

The section further directs DST to develop three proof-of-concept programs in conjunction with the AHCA, the DOH, and the DCF by December 31, 2021. The programs are required to demonstrate interoperability across data types, enabling the use of the data in its native form, as opposed to being transferred in a document. The programs must respect policy difference across state agencies while allowing both interagency and intraagency analytics. Finally, the programs are to be scalable and vendor-agnostic in nature.

Section 4 provides that the bill takes effect upon becoming 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:

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 the DMS contracts out any facet of the programs it is required to produce, those information technology companies involved will benefit.

C. Government Sector Impact:

The bill may have a significant workload impact the DMS. The bill requires the DMS to develop three separate pilot programs with three separate agencies to be conducted by the end of next calendar year. Such programs will require both manpower and capital, and may have a significant workload impact on the AHCA, the DOH, and the DCF. The bill does not provide additional fiscal resources to these state agencies to complete these projects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends ss. 282.0041 and 282.0051, Florida Statutes. The bill creates section 282.319, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on February 17, 2020:

The CS changes the dates for the DST's inventory of data agreements and interoperability pilot programs from 2020 to 2021.

B. Amendments:

None.

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



463360

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 88 - 101
and insert:

(c) By June 30, 2021, inventory all existing interagency
data-sharing agreements, identify areas of data-sharing needs
which are not currently addressed, and execute a new interagency
agreement.

(d) Inform state agencies of the data types they collect
and report publicly or to the Federal Government, to identify



463360

11 where interagency data sharing can create staff and technology
12 efficiencies.

13 (3) DATA INTEROPERABILITY.—The Division of State Technology
14 shall develop three proof-of-concept pilot programs in
15 conjunction with the Agency for Health Care Administration, the
16 Department of Health, and the Department of Children and
17 Families. The pilot programs must be conducted by December 31,
18 2021, and:

By Senator Harrell

25-00823-20

2020800__

1 A bill to be entitled
 2 An act relating to the Division of State Technology;
 3 amending s. 282.0041, F.S.; defining the term
 4 "information technology portfolio rationalization";
 5 amending s. 282.0051, F.S.; requiring the Department
 6 of Management Services to administer the Data
 7 Innovation Program through the division; creating s.
 8 282.319, F.S.; establishing the Data Innovation
 9 Program within the division; providing legislative
 10 intent; specifying requirements for the division for
 11 data governance across state agencies; requiring the
 12 division to develop and conduct data interoperability
 13 pilot programs with the Agency for Health Care
 14 Administration, the Department of Health, and the
 15 Department of Children and Families by a specified
 16 date; specifying requirements for the pilot programs;
 17 providing an effective date.
 18
 19 Be It Enacted by the Legislature of the State of Florida:
 20
 21 Section 1. Present subsections (16) through (31) of section
 22 282.0041, Florida Statutes, are redesignated as subsections (17)
 23 through (32), respectively, and a new subsection (16) is added
 24 to that section, to read:
 25 282.0041 Definitions.—As used in this chapter, the term:
 26 (16) "Information technology portfolio rationalization"
 27 means the streamlining of an existing application portfolio to
 28 improve efficiency, reduce complexity, and lower the total cost
 29 of ownership through processes including, but not limited to:

Page 1 of 5

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

25-00823-20

2020800__

30 (a) Software license optimization;
 31 (b) Application retirement;
 32 (c) Server optimization;
 33 (d) Project rationalization;
 34 (e) Data storage optimization;
 35 (f) Retirement of aged and low-value applications;
 36 (g) Elimination of redundancies; and
 37 (h) Standardization of common technology platforms.
 38 Section 2. Present subsections (17), (18), and (19) of
 39 section 282.0051, Florida Statutes, are redesignated as
 40 subsections (18), (19), and (20), respectively, and a new
 41 subsection (17) is added to that section, to read:
 42 282.0051 Department of Management Services; powers, duties,
 43 and functions.—The department shall have the following powers,
 44 duties, and functions:
 45 (17) Administer the Data Innovation Program established
 46 under s. 282.319 through the Division of State Technology.
 47 Section 3. Section 282.319, Florida Statutes, is created to
 48 read:
 49 282.319 Data Innovation Program.—
 50 (1) PROGRAM ESTABLISHMENT AND INTENT.—The Data Innovation
 51 Program is established within the Division of State Technology
 52 of the department. The Legislature recognizes that the
 53 department is responsible for ensuring that this state's data is
 54 interoperable. By establishing the program, the Legislature
 55 intends to:
 56 (a) Ensure that all state agencies collaborate and
 57 synthesize data securely through interoperability.
 58 (b) Create software and information technology portfolio

Page 2 of 5

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25-00823-20

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59 rationalization and procurement to achieve interoperability and
 60 reduce the number of stand-alone applications that do not
 61 communicate with each other.

62 (c) Minimize costs associated with data management areas.

63 (d) Ensure accurate procedures for regulation and
 64 compliance activities.

65 (e) Increase transparency within data-related activities.

66 (f) Institute better training and educational practices for
 67 the management of data assets.

68 (g) Increase the value of this state's data while providing
 69 standardized data systems, data policies, and data procedures.

70 (h) Aid in the resolution of past and current data issues.

71 (i) Facilitate improved monitoring and tracking mechanisms
 72 for data quality and other data-related activities.

73 (j) Increase overall state data standards, thereby
 74 translating data into actionable information and workable
 75 knowledge of this state's information technology system.

76 (k) Enable state agencies to transform their use of
 77 technology to offer services in an effective, efficient, and
 78 secure manner.

79 (l) Improve the health of all persons in this state.

80 (2) DATA GOVERNANCE.—The Division of State Technology
 81 shall:

82 (a) Identify all data elements within state agencies and
 83 publish a comprehensive data catalog.

84 (b) Develop common data definitions across state agencies
 85 and publish a data dictionary. Where data definitions are
 86 limited to agency functionality, the data dictionary must define
 87 each data element, depending on each state agency's need.

25-00823-20

2020800

88 (c) By June 30, 2020, inventory all existing interagency
 89 data-sharing agreements, identify areas of data-sharing needs
 90 which are not currently addressed, and execute a new interagency
 91 agreement.

92 (d) Inform state agencies of the data types they collect
 93 and report publicly or to the Federal Government, to identify
 94 where interagency data sharing can create staff and technology
 95 efficiencies.

96 (3) DATA INTEROPERABILITY.—The Division of State Technology
 97 shall develop three proof-of-concept pilot programs in
 98 conjunction with the Agency for Health Care Administration, the
 99 Department of Health, and the Department of Children and
 100 Families. The pilot programs must be conducted by December 31,
 101 2020, and:

102 (a) Respect policy differences in data use among the state
 103 agencies and require robust consent and security functionality,
 104 especially related to personal information.

105 (b) Enable the use of information in elemental data form
 106 rather than through document-based methods.

107 (c) Select solutions with integrated database technology
 108 which natively enable analytics at the interagency and
 109 intraagency level.

110 (d) Use technology that supports the spectrum of modern
 111 software development technologies, including, but not limited
 112 to, application programming interfaces, web services, and
 113 representational state transfer.

114 (e) Demonstrate interoperability across diverse data types
 115 and enable information generation across state agencies with
 116 different missions.

25-00823-20

2020800__

117 (f) Be able to scale to perform at volumes to support all
118 types of state initiatives.
119 (g) Use technology with the latest standards and standards
120 development to facilitate vendor-agnostic interoperability.
121 (h) Use solutions that preserve the existing investments in
122 technology among state agencies while achieving interoperability
123 on a broader scale and enabling future technical paradigms.
124 Section 4. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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2/17/2020

Meeting Date

SB0800

Bill Number (if applicable)

Topic Division of State Technology

Amendment Barcode (if applicable)

Name David Poole

Job Title Director of Legislative Affairs

Address 1825 Country Club Dr

Phone 850-766-3323

Street

Tallahassee

FL

32301

City

State

Zip

Email david.poole@aidshealth.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing AIDS Healthcare Foundation

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/2020

Meeting Date

SB0800

Bill Number (if applicable)

Topic DIVISION OF STATE TECHNOLOGY

Amendment Barcode (if applicable)

Name NATALIE KELLYJob Title CEO FLORIDA ASSOCIATION OF MANAGING ENTITIESAddress 122 S CALHOUN STREET

Street

Phone 850-570-5747TALLAHASSEE

City

FL

State

32301

Zip

Email natalie@flmanagingentities.comSpeaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing The Florida Association of Managing EntitiesAppearing 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 814

INTRODUCER: Ethics and Elections Committee and Senator Perry

SUBJECT: Disposition of Surplus Funds by Candidates

DATE: February 14, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Fox</u>	<u>Roberts</u>	<u>EE</u>	Fav/CS
2. <u>Hackett</u>	<u>McVane</u>	<u>GO</u>	Favorable
3. _____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 814 prohibits a candidate from being employed by the charitable organization to which he or she donates surplus funds following an election. Current law provides that a candidate failing to dispose of campaign funds to a charity in the manner prescribed by statute commits a first-degree misdemeanor.

The bill also allows any candidate to remit surplus campaign funds either to the state General Revenue Fund or to any local political subdivision's general revenue fund of the candidate's choice; currently, state candidates only have the option to give to the *State* general revenue fund, and local candidates to their local political subdivision's general revenue fund.

The bill takes effect July 1, 2020.

II. Present Situation:

A candidate who withdraws his or her candidacy, becomes unopposed, or is eliminated or elected to office must dispose of surplus funds in his or her campaign account within 90 days and file a termination report reflecting the disposition of all remaining funds.¹ Florida law provides former candidates with seven non-exclusive options for disposing of surplus funds:²

¹ Section 106.141, F.S.

² Sections 106.11(5) and 106.141(4)(a), F.S. Successful candidates have the additional option to transfer a certain amount of the surplus funds to an "office account," to be used for "legitimate expenses in connection with the candidate's public office."

- Return funds *pro rata* to contributors;
- Give the funds as a charitable donation;
- Rebate up to \$25,000 to the candidate's political party;
- Deposit funds to the General Revenue Fund of State (***state candidates***) or to the local political subdivision for the office the candidate is seeking to represent (***local candidates***);
- Purchase "thank you" advertising for up to 75 days;
- Pay for items obligated before the candidate withdrew, became unopposed, or was eliminated or elected; and,
- Pay for necessary expenses to close down the campaign office and prepare final reports.

The statutory language for the charitable donation option authorizes candidates to:

Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the requirements of s. 501(c)(3) of the Internal Revenue Code.³

Thus, the only limitation is that funds must be given to a 501(c)(3) organization(s).

Any candidate who fails to dispose of campaign funds to a charity in the manner provided by statute commits a first-degree misdemeanor.⁴

III. Effect of Proposed Changes:

Section 1 amends s. 106.141, F.S; provides that, for charitable donations involving surplus campaign funds, the candidate may not be employed by the charitable organization to which he or she donates the funds; candidates who violate this new restriction commit a first-degree misdemeanor.

The bill also allows **any** candidate to remit surplus funds *either* to the State general revenue fund or to **any** local political subdivision's general revenue fund; currently, state candidates only have the option to give to the *State* general revenue fund, and local candidates to the political subdivision's general revenue fund for which they are seeking office.

Section 2 provides that 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 a state tax shares with counties and municipalities.

Section 106.141(5), F.S. Candidates receiving public campaign financing must return *all* excess funds to the State General Revenue Fund after paying for any items for which the campaign was liable before withdrawing, becoming unopposed, or being eliminated or elected. Section 106.141(4)(b), F.S.

³ Section 106.141(4)(a)2., F.S.

⁴ Section 106.141(11), F.S.

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 bill could result in additions to state and/or local political subdivision general revenue funds that can now receive surplus campaign funds from *any* state or local candidate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 106.141, 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 Ethics and Elections on February 3, 2020:

The CS expands the options for disposing of surplus campaign funds by allowing any candidate to remit funds either to the State general revenue fund or to any local political subdivision's general revenue fund.

- B. **Amendments:**

None.

By the Committee on Ethics and Elections; and Senator Perry

582-03039-20

2020814c1

A bill to be entitled

An act relating to the disposition of surplus funds by candidates; amending s. 106.141, F.S.; prohibiting a candidate from donating surplus funds to a charitable organization that employs the candidate; authorizing any candidate to give certain surplus funds to the state or a political subdivision to be disbursed in a specified manner; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 106.141, Florida Statutes, is amended to read:

106.141 Disposition of surplus funds by candidates.—

(4)(a) Except as provided in paragraph (b), any candidate required to dispose of funds pursuant to this section shall, at the option of the candidate, dispose of such funds by any of the following means, or any combination thereof:

1. Return pro rata to each contributor the funds that have not been spent or obligated.

2. Donate the funds that have not been spent or obligated to a charitable organization or organizations that meet the qualifications of s. 501(c)(3) of the Internal Revenue Code, except that the candidate may not be employed by the charitable organization to which he or she donates the funds.

3. Give not more than \$25,000 of the funds that have not been spent or obligated to the affiliated party committee or political party of which such candidate is a member.

4. Give the funds that have not been spent or obligated:

Page 1 of 2

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

582-03039-20

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a. ~~In the case of a candidate for state office,~~ To the state, to be deposited in either the Election Campaign Financing Trust Fund or the General Revenue Fund, as designated by the candidate; or

b. ~~In the case of a candidate for an office of a political subdivision,~~ To a ~~such~~ political subdivision, to be deposited in the general fund thereof.

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

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: February 5, 2020

I respectfully request that **Senate Bill #814**, relating to Disposition of Surplus Funds by Candidates, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Senator Keith Perry
Florida Senate, District 8

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 872

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

SUBJECT: Public Records/Florida Commission on Offender Review

DATE: February 17, 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 - Technical Changes

I. Summary:

CS/CS/SB 872 exempts from public inspection and copying certain information held by an agency that could identify or locate current or former commissioners of the Florida Commission on Offender Review (FCOR or commission), certain FCOR personnel, and their spouses and children. The bill applies to FCOR personnel whose duties include making a final decision on, holding a hearing for, or investigating a violation of post-incarceration supervised release.

The information exempted from public records requirements for the above-mentioned entity includes the:

- Home addresses, telephone numbers, dates of birth, and photographs of such personnel;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

The bill provides that the exemption created under the bill is 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 by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new 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 an agency in responding to public records requests regarding this exemption should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming 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.

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

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.”

“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

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

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).

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.

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 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

General Public Records Exemptions for State Agency Personnel

There are three general public records exemptions that apply to all state agency personnel: disclosure of an employee's (1) social security number, (2) medical information, and (3) personal

¹⁹ Section 119.15(3), F.S.

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.

identifying information of dependent children who are insured by an agency group insurance plan.²⁷

(1) Social Security Numbers

Social security numbers of all current and former agency personnel are confidential and exempt when held by the employing agency.²⁸ An employing agency may only release social security numbers for the following reasons:

- It is required by law.
- A receiving government agency needs the social security number to perform its duties.
- The employee consents to disclose his or her social security number.²⁹

In addition, there is a general exemption for social security numbers which applies to the public that makes social security numbers confidential and exempt.³⁰ This exemption applies to any agency that holds anyone's social security number, including those belonging to the personnel of that agency. This exemption, however, permits the agency to disclose social security numbers of agency personnel in order to administer health or retirement benefits.³¹

(2) Medical Information

An agency employee's medical information is also exempt from public disclosure if the medical information could identify the employee. This exemption applies to prospective, current and former employees.³²

(3) Personal Identifying Information

The personal identifying information of a dependent child of an agency employee who is insured by an agency group insurance plan is exempt from public disclosure. This exemption applies to the children of current and former employees and is also retroactively applied.³³

Public Records Exemptions for Specified Agency Personnel and Their Families (s. 119.071(4)(d), F.S.)

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

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;³⁴

²⁷ Section 119.071(4)(a) and (b), F.S.

²⁸ Section 119.071(4)(a)1., F.S.

²⁹ Section 119.071(4)(a), F.S.

³⁰ Section 119.071(5)(a)5., F.S.

³¹ Section 119.071(5)(a)5.f. and g., F.S.

³² Section 119.071(4)(b)1., F.S.

³³ Section 119.071(4)(b)2., F.S.

³⁴ Section 119.071(4)(d)2.a., F.S.

- Certain current or former nonsworn investigative personnel of the Department of Financial Services;³⁵
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations;³⁶
- Current or former certified firefighters;³⁷
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;³⁸
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;³⁹
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;⁴⁰
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;⁴¹
- Current or former code enforcement officers;⁴²
- Current or former guardians ad litem;⁴³
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;⁴⁴
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;⁴⁵
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;⁴⁶
- County tax collectors;⁴⁷
- Certain current or former personnel of the Department of Health;⁴⁸
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;⁴⁹

³⁵ Section 119.071(4)(d)2.b., F.S.

³⁶ Section 119.071(4)(d)2.c., F.S.

³⁷ Section 119.071(4)(d)2.d., F.S.

³⁸ Section 119.071(4)(d)2.e., F.S.

³⁹ Section 119.071(4)(d)2.f., F.S.

⁴⁰ Section 119.071(4)(d)2.g., F.S.

⁴¹ Section 119.071(4)(d)2.h., F.S.

⁴² Section 119.071(4)(d)2.i., F.S.

⁴³ Section 119.071(4)(d)2.j., F.S.

⁴⁴ Section 119.071(4)(d)2.k., F.S.

⁴⁵ Section 119.071(4)(d)2.l., F.S.

⁴⁶ Section 119.071(4)(d)2.m., F.S.

⁴⁷ Section 119.071(4)(d)2.n., F.S.

⁴⁸ Section 119.071(4)(d)2.o., F.S.

⁴⁹ Section 119.071(4)(d)2.p., F.S.

- Current or former certified emergency medical technicians and paramedics;⁵⁰
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;⁵¹
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;⁵²
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers;⁵³ and
- Active or former civilian personnel employed by a law enforcement agency.⁵⁴

The employing agency as well as the employee may assert the right to the exemption by submitting a written request to each agency which holds the employee's information.⁵⁵ Further, all of these exemptions have retroactive application.⁵⁶

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses,⁵⁷ telephone numbers,⁵⁸ and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

Section 119.071(4)(d)2., F.S., also exempts from public disclosure certain types of information about employees' spouses and children. The exemptions for family members include home addresses, telephone numbers, spouses' places of employment, and names and locations of children's schools and day care facilities. However, exemptions are not uniform for names, dates of birth, and photographs of family members.

In addition, some of the provisions exempt information from ch. 119, F.S., but not from Article I, s. 24(a), of the State Constitution. This means that information would be exempt if held by an executive branch agency, but may not necessarily be exempt if held by the legislative or judicial branches of government.

Finally, certain exemptions have different Open Government Sunset Review sunset dates.

⁵⁰ Section 119.071(4)(d)2.q., F.S.

⁵¹ Section 119.071(4)(d)2.r., F.S.

⁵² Section 119.071(4)(d)2.s., F.S.

⁵³ Section 119.071(4)(d)2.t., F.S.

⁵⁴ Section 119.071(4)(d)2.u., F.S.

⁵⁵ Section 119.071(4)(d)3., F.S.

⁵⁶ Section 119.071(4)(d)4., F.S.

⁵⁷ Section 119.071(4)(d)1.a., F.S., defines "home addresses" to mean "the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address."

⁵⁸ Section 119.071(4)(d)1.b., F.S., defines "telephone numbers" to include "home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices."

FCOR Commissioners and Personnel

The FCOR is involved in post-release decisions affecting inmates and ex-offenders. The FCOR functions as a quasi-judicial body that makes a variety of decisions involving parole, conditional release, and conditional medical release.⁵⁹ The FCOR also acts as the investigative arm of the Governor and Cabinet, sitting as the Board of Executive Clemency, in clemency matters.⁶⁰

The commission must consist of six members that reside in Florida.⁶¹ Commissioners are appointed by the Governor and Cabinet and confirmed by the Senate in accordance with s. 947.02, F.S. Commission appointees are appointed for terms of six years, unless otherwise stated, and may not be appointed for more than two consecutive six-year terms.⁶² The FCOR reports that commissioners preside over approximately 36 hearings annually at various locations in Florida.⁶³ These meetings are public proceedings and the commissioners make a variety of determinations regarding parole and other releases.

The commission reviews releasees' supervision status every two years, imposes conditions of conditional release or addiction recovery supervision, and makes final determinations related to revocation of post release supervision that may include recommitment to the Department of Corrections to complete service of the original term of imprisonment.⁶⁴

The FCOR employs investigators who investigate and compile necessary background information to be used in making final decisions related to any of the cases that are before the commission. The FCOR commissioners and certain commission personnel, such as investigators, are routinely involved in decisions which affect the incarceration or supervision status of convicted felons.⁶⁵

As of January 8, 2020, there are 3 commissioners and 43 commission personnel whose duties include making a final decision on, holding a hearing for, or investigating a violation of post-incarceration supervised release.⁶⁶ Current law does not provide a public records exemption for the commissioners or the commission personnel involved in these decisions.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(4)(d)2., F.S., to exempt certain information pertaining to current or former commissioners of the FCOR or commission personnel whose duties include making certain final decisions on, holding hearings for, or investigating violations of post-incarceration release.

⁵⁹ The FCOR, *Organization Overview*, available at <https://www.fcor.state.fl.us/overview.shtml> (last visited December 21, 2019)(hereinafter cited as "Organization Overview").

⁶⁰ The FCOR, *Agency Analysis for SB 872*, December 3, 2019, p. 2 (on file with the Senate Criminal Justice Committee) (hereinafter cited as the "FCOR Agency Analysis").

⁶¹ Section 947.01, F.S.

⁶² Section 947.03(1), F.S.

⁶³ Organization Overview.

⁶⁴ *Id.*

⁶⁵ The FCOR Agency Analysis, p. 2.

⁶⁶ *Id.*

The bill exempts specific information from public records requirements for the above-mentioned entities including the:

- Home addresses, telephone numbers, dates of birth, and photographs of such personnel;
- Names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and
- Names and locations of schools and day care facilities attended by the children of such personnel.

A custodian of a record who is not the employer of the person covered by the exemption must maintain the exempt status of the information if the covered person submits a written request for maintenance of the exemption to the custodial agency.

This exemption applies to information held by an agency before, on, or after the effective date of the exemption.

The bill provides that the exemption created under the bill is 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 by the Legislature.

Section 2 provides a statement of public necessity as required by the State Constitution. Currently, s. 119.071(4)(d), F.S., exempts from public disclosure specified information of certain agency personnel and their families. The public necessity statement notes:

[t]he Legislature finds...efforts of commissioners and commission personnel can have a direct effect on which persons are placed on parole or released on conditional medical release; on the terms and conditions of those persons released on parole, conditional release, conditional medical release, or addiction recovery supervision; and on the determination of whether a releasee has violated the terms of his or her parole. The Legislature finds that the release of such personal identifying information and location information might place these personnel of the Florida Commission on Offender Review and their family members in danger of physical and emotional harm by disgruntled individuals who react contentiously to actions taken by such personnel. The Legislature further finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of such information.

Section 3 provides that the bill takes effect upon becoming a law.

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:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill enacts a new exemption for specified identification and location information for current or former commissioners of the FCOR or commission personnel with certain duties, 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 the FCOR commissioners and staff from any harm that could result from decisions that they must make for persons that they interact with as a result of their employment. This bill exempts only the relevant identifying and location information 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:

An individual or business that requests location information that is covered by the definition of “home address” in the bill will not be able to readily obtain that information from the records custodian. If the employee or the employee’s agency has taken the initiative and requested that the home address information be exempted from disclosure, the protected person will need to sign a waiver granting permission to the records custodian to release the information to the requestor.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.⁶⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

CS/CS by Governmental Oversight and Accountability on February 17, 2020:

The CS amends the title to reflect that the public records exemption applies retroactively.

CS by Criminal Justice on January 14, 2020:

The committee substitute limits the public records exemption to current or former commissioners of the Florida Commission on Offender Review or specified commission personnel by removing the provision establishing the exemption for school administrators.

B. Amendments:

None.

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

⁶⁷ Section 119.07(2) and (4), F.S.



521370

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
	.	
	.	
	.	

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

Senate Amendment

In title, delete line 10
and insert:
personnel; providing for retroactive application;
providing for future review and repeal of

By the Committee on Criminal Justice; and Senator Perry

591-02254A-20

2020872c1

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 the personal identifying and location information of current and former commissioners and specified commission personnel of the Florida Commission on Offender Review and the names and personal identifying and location information of the spouses and children of such personnel; 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 (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term:

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

b. "Telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone

Page 1 of 12

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numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn law enforcement personnel or of active or former civilian personnel employed by a law enforcement agency, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care

Page 2 of 12

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

591-02254A-20

2020872c1

59 facilities attended by the children of such personnel are exempt
 60 from s. 119.07(1) and s. 24(a), Art. I of the State
 61 Constitution.

62 c. The home addresses, telephone numbers, dates of birth,
 63 and photographs of current or former nonsworn investigative
 64 personnel of the Office of Financial Regulation's Bureau of
 65 Financial Investigations whose duties include the investigation
 66 of fraud, theft, other related criminal activities, or state
 67 regulatory requirement violations; the names, home addresses,
 68 telephone numbers, dates of birth, and places of employment of
 69 the spouses and children of such personnel; and the names and
 70 locations of schools and day care facilities attended by the
 71 children of such personnel are exempt from s. 119.07(1) and s.
 72 24(a), Art. I of the State Constitution.

73 d. The home addresses, telephone numbers, dates of birth,
 74 and photographs of current or former firefighters certified in
 75 compliance with s. 633.408; the names, home addresses, telephone
 76 numbers, photographs, dates of birth, and places of employment
 77 of the spouses and children of such firefighters; and the names
 78 and locations of schools and day care facilities attended by the
 79 children of such firefighters are exempt from s. 119.07(1) and
 80 s. 24(a), Art. I of the State Constitution.

81 e. The home addresses, dates of birth, and telephone
 82 numbers of current or former justices of the Supreme Court,
 83 district court of appeal judges, circuit court judges, and
 84 county court judges; the names, home addresses, telephone
 85 numbers, dates of birth, and places of employment of the spouses
 86 and children of current or former justices and judges; and the
 87 names and locations of schools and day care facilities attended

591-02254A-20

2020872c1

88 by the children of current or former justices and judges are
 89 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 90 Constitution.

91 f. The home addresses, telephone numbers, dates of birth,
 92 and photographs of current or former state attorneys, assistant
 93 state attorneys, statewide prosecutors, or assistant statewide
 94 prosecutors; the names, home addresses, telephone numbers,
 95 photographs, dates of birth, and places of employment of the
 96 spouses and children of current or former state attorneys,
 97 assistant state attorneys, statewide prosecutors, or assistant
 98 statewide prosecutors; and the names and locations of schools
 99 and day care facilities attended by the children of current or
 100 former state attorneys, assistant state attorneys, statewide
 101 prosecutors, or assistant statewide prosecutors are exempt from
 102 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

103 g. The home addresses, dates of birth, and telephone
 104 numbers of general magistrates, special magistrates, judges of
 105 compensation claims, administrative law judges of the Division
 106 of Administrative Hearings, and child support enforcement
 107 hearing officers; the names, home addresses, telephone numbers,
 108 dates of birth, and places of employment of the spouses and
 109 children of general magistrates, special magistrates, judges of
 110 compensation claims, administrative law judges of the Division
 111 of Administrative Hearings, and child support enforcement
 112 hearing officers; and the names and locations of schools and day
 113 care facilities attended by the children of general magistrates,
 114 special magistrates, judges of compensation claims,
 115 administrative law judges of the Division of Administrative
 116 Hearings, and child support enforcement hearing officers are

591-02254A-20

2020872c1

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

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

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

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and

591-02254A-20

2020872c1

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

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

l. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; and the names and locations of schools and day care facilities attended by the children of current or former public defenders, assistant public defenders,

591-02254A-20

2020872c1

criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses

591-02254A-20

2020872c1

and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit

591-02254A-20

2020872c1

department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

s. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility; the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For purposes of this sub-subparagraph, the term "addiction treatment facility" means a county government, or agency thereof, that is licensed pursuant to s. 397.401 and provides substance abuse prevention, intervention, or clinical treatment, including any licensed service component described in s. 397.311(26).

t. The home addresses, telephone numbers, dates of birth, and photographs of current or former directors, managers, supervisors, and clinical employees of a child advocacy center that meets the standards of s. 39.3035(1) and fulfills the screening requirement of s. 39.3035(2), and the members of a Child Protection Team as described in s. 39.303 whose duties

591-02254A-20

2020872c1

include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, and child exploitation or to provide services as part of a multidisciplinary case review team; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel and members; and the names and locations of schools and day care facilities attended by the children of such personnel and members are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

u. The home addresses, telephone numbers, dates of birth, and photographs of current or former commissioners of the Florida Commission on Offender Review or commission personnel whose duties include making a final decision on, holding a hearing for, or investigating a violation of post-incarceration supervised release; the names, home addresses, telephone numbers, dates of birth, photographs, and places of employment of the spouses and children of such current or former commissioners and commission personnel; and the names and locations of schools and day care facilities attended by the children of such current or former commissioners and commission personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-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. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that

591-02254A-20 2020872c1

291 information only if the officer, employee, justice, judge, other
 292 person, or employing agency of the designated employee submits a
 293 written request for maintenance of the exemption to the
 294 custodial agency.

295 4. An officer, an employee, a justice, a judge, or other
 296 person specified in subparagraph 2. may submit a written request
 297 for the release of his or her exempt information to the
 298 custodial agency. The written request must be notarized and must
 299 specify the information to be released and the party that is
 300 authorized to receive the information. Upon receipt of the
 301 written request, the custodial agency shall release the
 302 specified information to the party authorized to receive such
 303 information.

304 5. The exemptions in this paragraph apply to information
 305 held by an agency before, on, or after the effective date of the
 306 exemption.

307 6. This paragraph is subject to the Open Government Sunset
 308 Review Act in accordance with s. 119.15 and shall stand repealed
 309 on October 2, 2024, unless reviewed and saved from repeal
 310 through reenactment by the Legislature.

311 Section 2. (1) The Legislature finds that it is a public
 312 necessity to exempt from public records requirements the home
 313 addresses, telephone numbers, dates of birth, and photographs of
 314 current or former commissioners of the Florida Commission on
 315 Offender Review and commission personnel whose duties include
 316 making a final decision on, holding a hearing for, or
 317 investigating a violation of post-incarceration supervised
 318 release; the names, home addresses, telephone numbers, dates of
 319 birth, photographs, and places of employment of the spouses and

591-02254A-20 2020872c1

320 children of such current or former commissioners and commission
 321 personnel; and the names and locations of schools and day care
 322 facilities attended by the children of such current or former
 323 commissioners and commission personnel.

324 (2) The efforts of commissioners and commission personnel
 325 can have a direct effect on which persons are placed on parole
 326 or released on conditional medical release; on the terms and
 327 conditions of those persons released on parole, conditional
 328 release, conditional medical release, or addiction recovery
 329 supervision; and on the determination of whether a releasee has
 330 violated the terms of his or her parole. The Legislature finds
 331 that the release of such personal identifying information and
 332 location information might place these personnel of the Florida
 333 Commission on Offender Review and their family members in danger
 334 of physical and emotional harm by disgruntled individuals who
 335 react contentiously to actions taken by such personnel. The
 336 Legislature further finds that the harm that may result from the
 337 release of such personal identifying and location information
 338 outweighs any public benefit that may be derived from the
 339 disclosure of such information.

340 Section 3. This act shall take effect upon becoming 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 16, 2020

I respectfully request that **Senate Bill #872**, relating to Public Records/Florida Commission on Offender Review, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a large, stylized "P" at the end.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE
APPEARANCE RECORD

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

02/17/2020

Meeting Date

872

Bill Number (if applicable)

Topic SB 872

Amendment Barcode (if applicable)

Name Alec Yarger

Job Title Legislative Affairs Director

Address 4070 Esplande Way

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Florida

32399

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City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Commission on Offender Review

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 1124

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Diaz

SUBJECT: Legislative Review of Occupational Regulations

DATE: February 18, 2020

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1124 repeals over 100 occupational regulatory programs currently administered in Florida. The bill states that it is the intent of the legislature to review each program before the scheduled effective date of the repeal of the program to determine whether (a) to allow the program to expire under the terms of this bill, (b) to enact another law to save the program from repeal and to renew the program with or without modifications, or (c) to provide for other appropriate actions.

If an occupational regulatory program expires through the repeal of the program by this act, the agency positions responsible for administering the program are abolished and any appropriations for the program revert. Any remaining unencumbered revenue collected under the program must be refunded on a pro rata basis if the refund is requested within one year of the repeal. Any causes of action pending upon repeal of the program are transferred to the Department of Legal Affairs to be prosecuted or defended.

The bill preempts to the state the regulation of any occupation related to an occupational regulatory program repealed by this act.

State agencies who administer occupational regulatory programs that are repealed by this act will experience a reduction in revenues associated with the repealed regulatory fees and licenses. On the other hand, these same agencies will experience a reduction in expenditures associated with the ceased administration of the occupation regulatory programs.

In some instances, the regulatory revenues associated with the administration of the occupation regulatory programs are subject to the general revenue service charge imposed by s. 215.20, F.S. To the extent the regulatory fees subject to the service charge expire, the distributions to the General Revenue Fund will be reduced.

The bill provides that, except as otherwise provided in the act, the act takes effect upon becoming a law.

II. Present Situation:

Occupational Licensing

An occupational or professional license is a form of regulation that requires individuals who want to perform certain types of work, such as contractors and cosmetologists, to obtain permission from the government to perform the work. Generally, an individual obtains such permission by demonstrating that they have the designated knowledge, skills, and abilities to perform the work by meeting pre-determined criteria established by the government, such as work experience and examinations. If the individual successfully completes the pre-determined criteria, the government issues the individual a license, which allows them to perform the work.

Various governmental entities and agencies in Florida license and regulate such individuals practicing in a wide range of professions, including:

- Department of Business and Professional Regulation (DBPR),
- Department of Health (DOH),
- Department of Financial Services (DFS),
- Department of Agriculture and Consumer Services (DACS),
- Florida Supreme Court (FSC),
- Department of Environmental Protection (DEP),
- Agency for Healthcare Administration (AHCA),
- Department of Children and Families (DCF),
- Department of Elder Affairs (DEA),
- Department of Highway Safety and Motor Vehicles (DHSMV), and
- Office of Financial Regulation (OFR).

Sunset Reviews of Occupations and Professions

A sunset review is a clause within a statute or regulation requiring the statute or regulation to expire on a certain date unless the legislature takes action to renew the statute or regulation. A sunset review allows regulations to be periodically examined to determine if they are necessary or if the need to be changed, improved, or reduced. Sunset reviews can be useful, because even if a regulation was justified when first introduced, technological and economic advancements may have made the regulation unnecessary or overly burdensome.¹ Thirty-six states have some form

¹ White House Report, *supra* note 1 at 48-49; *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), <http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx> (last visited Dec. 30, 2019); Council on Licensure & Regulation, *Sunrise*,

of sunset process for existing occupational licensing laws, ranging from automatic program reviews and repeals, to sunset recommendations made from a commission to the state legislature.²

Sunset Reviews of Occupations and Professions in Florida

In 1976, the Florida Legislature enacted The Regulatory Reform Act.³ The Act set up a sunset review process which called for a systematic, cyclical review and repeal of statutes related to the regulatory functions of the executive branch, including statutes regulating professions, occupations, businesses, and industries. In 1978, The Sundown Act was enacted as a supplement to the sunset review law to set up a review for boards of trustees, commissions, and advisory bodies which were connected to executive agency functions.⁴

The law required certain committees within the Legislature to perform an in-depth review and make a recommendation for the continuation, modification, or repeal of certain occupational regulatory programs. The recommendation needed to consider the following criteria:⁵

- Would the absence of the regulation significantly harm or endanger the public health, safety, or welfare?
- Is there a reasonable relationship between the exercise of the police power of the state and the protection of the public health, safety, and welfare?
- Is there a less restrictive method of regulation available that would adequately protect the public?
- Does the regulation have the effect of directly or indirectly increasing the costs of any goods or services involved, and, if so, to what degree?
- Is the increase in cost more harmful to the public than the harm that would result from the absence of regulation?
- Are any facets of the regulatory process designed for the purpose of benefitting, and do they have as their primary effect the benefit of, their regulated entity?

During the sunset review process, if any program was allowed to expire, the personnel positions which were responsible for carrying out the program and all unexpended balances of appropriations, allocations, or other funds for such program were to be reverted to the fund from which they were appropriated, or, if that fund was abolished, to the General Revenue Fund. Any remaining unencumbered revenue collected under a repealed occupational regulatory program were to be refunded on a pro rata basis by the Comptroller (now the Chief Financial Officer), upon request of the person or entity who paid, if such request was made within 1 year after the repeal of the program.⁶

Sunset and State Agency Audits, <https://www.clearhq.org/page-486181> (last visited Dec. 30, 2019); Brian Baugus & Feler Bose, *Sunset Legislation in the States: Balancing the Legislature and the Executive*, Mercatus Center, 3 (August 2015).

² *Improving Occupational Licensing with Sunrise and Sunset Reviews*, National Conference of State Legislatures, (July 2018), <http://www.ncsl.org/research/labor-and-employment/improving-occupational-licensing-with-sunrise-and-sunset-reviews.aspx> (last visited Dec. 30, 2019).

³ Chapter 1976-168, L.O.F. (codified as s. 11.61, F.S.)

⁴ Chapter 1978-323, L.O.F. (codified as s. 11.611, F.S.)

⁵ Section 11.61(6), F.S. (1991).

⁶ Section 11.61(7)-(8), F.S. (1991).

The Act also provided that any cause of action pending on the date any program was repealed, or any cause of action brought thereafter, was to be prosecuted or defended in the name of the state by the Department of Legal Affairs. All regulatory activities related to the repealed program were to cease after the date of repeal.⁷

In 1991, the Senate Committee on Government Operations (SCGO) performed a review of the sunset and sundown laws. SCGO found that between 1977 and 1991, 240 program sunset reviews were completed. During that time period, an estimated 20 regulatory laws were repealed, and 50 new ones were created. Based on the mandatory nature of the in-depth review process, it was found that the costs of the sunset reviews were high in terms of legislative and executive agency staff time. The SCGO report also found that the initial reviews of regulatory programs were more useful than any second or subsequent reviews.⁸

In light of the SCGO findings, the sunset reviews for occupations, professions, businesses, and industries under the Regulatory Reform Act, and entities under The Sundown Act, were repealed in 1991. There has not been a comprehensive sunset review process specifically for occupational licensing schemes since.⁹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies it precludes a local government from exercising authority in that particular area.¹⁰

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹³ Implied preemption is “a more difficult concept.”¹⁴ Implied preemption will be found to exist in those circumstances where the state “legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and where strong public policy reasons exist for finding such an area to be preempted by the Legislature.”¹⁵ Thus, implied preemption is actually a decision by the courts to create preemption in the absence of an

⁷ Section 11.61(9), F.S. (1991).

⁸ Florida Senate Committee on Government Operations, Staff Analysis of 1991 Senate Bill 28-D, note 8, at 3 (Dec. 11, 1991).

⁹ Ch. 91-429, Laws of Fla. Between 2006 and 2011, there was another systematic and scheduled sunset review process which included occupational regulatory programs, but that review process was applicable to every aspect of state agencies as a whole. That process was repealed in 2011. Ch. 2011-35, Laws of Fla.

¹⁰ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹¹ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

¹² *Mulligan*, 934 So.2d at 1243.

¹³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹⁴ *Tallahassee Mem'l Reg'l Med. Ctr., Inc. v. Tallahassee Med. Ctr., Inc.*, 681 So. 2d 826, 831 (Fla. 1st DCA 1996).

¹⁵ *Id.* (citations omitted)

explicit legislative directive.¹⁶ Implied preemption is generally disfavored by courts and the Supreme Court has emphasized that it can be found only “so long as it is clear that the legislature has clearly preempted local regulation of the subject.”¹⁷ In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.¹⁸ Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.¹⁹

III. Effect of Proposed Changes:

The bill repeals specified occupational regulatory programs, over four years, beginning July 1, 2021, and ending July 1, 2024. The bill impacts over 100 professions and occupations.

The bill states that it is the intent of the legislature to complete a systematic review of the costs and benefits of certain occupational regulatory programs prior to the date set for repeal to determine whether the program should be allowed to expire, be fully renewed, or be renewed with modifications.

The bill provides:

“There is established a schedule for systematic review of the costs and benefits of occupational regulatory programs. The Legislature intends to review each program before the scheduled date on which each occupational regulatory program is set to expire through scheduled repeal to determine whether to allow the program to expire, renew the program without modifications, renew the program with modifications, or provide for other appropriate actions.”

The bill defines the following terms:

- "Occupational regulatory program" or "program" means any statutory regulatory provision or scheme which places a condition on practicing an occupation, including, but not limited to, programs that require a license, certification, registration, or credential.
- "Local government" means a county, municipality, special district, or political subdivision of the state.
- "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

When an occupational regulatory program is allowed to expire or is repealed, the bill requires:

- The personnel positions which are responsible for carrying out the program to be abolished, and all unexpended balances of appropriations, allocations, or other funds for such program revert to the fund from which they were appropriated, or, if that fund is abolished, to the General Revenue Fund, within 60 days;
- Any remaining unencumbered revenue collected under a repealed occupational regulatory program to be refunded on a pro rata basis by the Chief Financial Officer, upon request of the

¹⁶ *Phantom of Clearwater, Inc.*, 894 So.2d at 1019.

¹⁷ *Mulligan* 934 So.2d at 1243.

¹⁸ *See, e.g., Nat'l Rifle Ass'n of Am., Inc. v. City of S. Miami*, 812 So.2d 504 (Fla. 3d DCA 2002).

¹⁹ *Sarasota Alliance for Fair Elections, Inc.*, 28 So.3d at 886.

person or entity who paid, if such request is made within 1 year after the repeal of the program;

- Any cause of action pending on the date the occupational regulatory program was repealed, or any cause of action brought thereafter, to be prosecuted or defended in the name of the state by the Department of Legal Affairs, if prior to repeal such action would have been prosecuted or defended by the occupational regulatory program repealed by this act; and
- All regulatory activities related to the repealed program cease after the date of repeal, except as otherwise authorized.

The bill prohibits any local government from regulating any occupation or profession of any repealed occupational regulatory program, and preempts such regulation to the state, unless local regulation of such occupation is expressly authorized by law.

If after the effective date of the bill a law scheduled for review under the bill is amended or transferred, such action does not eliminate the scheduled repeal of such law, unless otherwise expressly provided in law.

Section 1 provides that this act may be cited as the “Occupational Regulation Sunset Act.”

Section 2 creates s. 11.65, F.S., to provide legislative intent that each occupational regulatory program be reviewed before the effective date of the repeal of a program.

Section 3 repeals the following regulatory statutes on July 1, 2021:

- Sections 25.383 and 25.386, F.S., authorizing the Florida Supreme Court to regulate Court Reporters and Foreign Language Court Interpreters;
- Ch. 310, F.S., authorizing the Department of Business and Professional Regulation (DBPR) to regulate harbor pilots;
- Section 320.8249, F.S., authorizing the Department of Highway Safety and Motor Vehicles (HSMV) to regulate mobile home installers;
- Ch. 326, F.S., authorizing DBPR to regulate yacht and ship brokers;
- Sections 401.27, and 401.271 – 401.273, 401.465, F.S., authorizing the Department of Health (DOH) to regulate paramedics, emergency medical technicians, and 911 operators;
- Part VI of ch. 468, F.S., authorizing the DBPR to regulate auctioneers and auctioneer apprentices;
- Part VII of ch. 468, F.S., authorizing the DBPR to regulate talent agencies;
- Part VIII of ch. 468, F.S., authorizing the DBPR to regulate community association managers;
- Part IX of ch. 468, F.S., authorizing the DBPR to regulate athlete agents;
- Part X of ch. 468, F.S., authorizing the DOH to regulate dietitians, nutritionists, and nutrition counselors;
- Part XIII of ch. 468, F.S., authorizing the DOH to regulate athlete trainers;
- Part XIV of ch. 468, F.S., authorizing the DOH to regulate orthotists, orthotic fitters, orthotic fitter assistants, prosthetists, and pedorthists;
- Chapter 478, F.S., authorizing the DOH to regulate electrologists;
- Chapter 480, F.S., authorizing the DOH to regulate massage therapists;
- Chapter 488, F.S., authorizing the DHSMV to regulate commercial driving schools;

- Sections 554.104 and 554.114(1)(d), F.S., authorizing the Department of Financial Services (DFS) to regulate Boiler Safety Inspectors; and
- Sections 627.7015(4) and 627.7074(1)(a), F.S., authorizing the DFS to regulate property insurance mediators and neutral evaluators.

Section 4 repeals the following regulatory statutes on July 1, 2022:

- Section 61.125, F.S., authorizing the Florida Supreme Court to regulate parenting coordinators;
- Part III of ch. 373, F.S., authorizing the Department of Environmental Protection (DEP) to regulate water wells and water well contractors;
- Section 399.01(16), F.S., authorizing the DBPR to regulate elevator safety professionals;
- Chapter 457, F.S., authorizing the DOH to regulate acupuncturists;
- Chapter 458, F.S., authorizing the DOH to regulate medical doctors, physician assistants, anesthesiologist assistants, and medical assistants;
- Chapter 459, F.S., (except s. 459.0137, relating to pain-management clinics), authorizing the DOH to regulate osteopathic doctors, physician assistants, and anesthesiologist assistants;
- Part I of ch. 468, F.S., authorizing the DOH to regulate audiologists and speech-language pathologists;
- Part II of ch. 468, F.S., authorizing the DOH to regulate nursing home administrators;
- Part III of ch. 468, F.S., authorizing the DOH to regulate occupational therapists and occupational therapist assistants;
- Part IV of ch. 468, F.S., authorizing the DOH to regulate radiographers, radiological technologists, radiology assistants, and x-ray machine operators;
- Part V of ch. 468, F.S., authorizing the DOH to regulate respiratory therapists and respiratory therapy assistants;
- Part XI of ch. 468, F.S., authorizing the DBPR to regulate employee leasing companies;
- Part XV of ch. 468, F.S., authorizing the DBPR to regulate home inspectors;
- Part XVI of ch. 468, F.S., authorizing the DBPR to regulate mold-related services professionals;
- Sections 497.144, 497.145, 497.147, 497.148, 497.168, 497.554, 497.602, 497.603, and 497.605, and Part III of ch. 497, F.S., (except ss. 497.380-.389 and 497.391-.393), authorizing the DFS to regulate funeral directors and embalmers, monument establishment sales representatives, and direct disposers;
- Sections 501.605, 501.607, 501.608, 501.609, 501.612, and 501.616(2) and (4), F.S., authorizing the Department of Agriculture and Consumer Services (DACS) to regulate commercial telephone sellers and entities;
- Chapter 507, F.S., authorizing the DACS to regulate intrastate movers and moving brokers;
- Section 517.12(1) and (4), F.S., authorizing the DFS to regulate associated persons of a securities dealer and associated persons of a state-registered investment advisor or federal covered advisor;
- Section 548.003, F.S., establishing the Florida State Boxing Commission;
- Section 548.017, F.S., requiring certain persons involved in a match to be licensed; and
- Sections 634.171, 634.318, 634.320, and 634.420, F.S., authorizing the DFS to regulate service warranty sales representatives, motor vehicle service agreement salespersons, and home warranty sales representatives.

Section 5 repeals the following regulatory statutes on July 1, 2023:

- Section 44.106, F.S., authorizing the Florida Supreme Court to regulate mediators and arbitrators;
- Section 450.30, F.S., authorizing the DBPR to regulate farm labor contractors;
- Chapter 460, F.S., authorizing the DOH to regulate chiropractic physicians, physician assistants, and registered chiropractic assistants;
- Chapter 461, F.S., authorizing the DOH to regulate podiatric physicians and certified podiatric x-ray assistants;
- Chapter 462, F.S., authorizing the DOH to regulate naturopaths;
- Chapter 463, F.S., authorizing the DOH to regulate certified optometrists and licensed optometric professionals;
- Chapter 473, F.S., authorizing the DBPR to regulate certified public accountants;
- Chapter 474, F.S., authorizing the DBPR to regulate veterinarians;
- Part I of ch. 475, F.S., authorizing the DBPR to regulate real estate brokers and salespersons;
- Chapter 476, F.S., authorizing the DBPR to regulate barbers;
- Chapter 477, F.S., authorizing the DBPR to regulate cosmetologists and specialists;
- Part II of ch. 483, F.S., authorizing the DOH to regulate clinical laboratory personnel;
- Part III of ch. 483, F.S., authorizing the DOH to regulate medical physicists;
- Sections 484.002, 484.007(3) and (4), 484.013, 484.014, 484.015, and 484.018(3), F.S., authorizing the DOH to regulate opticians;
- Chapter 486, F.S., authorizing the DOH to regulate physical therapists and physical therapist assistants;
- Section 496.4101, F.S., authorizing the DACS to regulate professional solicitors and certain employees of a professional solicitor;
- Part IX of ch. 559, F.S., authorizing the DACS to regulate motor vehicle repair shops;
- Part XI of ch. 559, F.S., authorizing the DACS to regulate sellers of travel;
- Sections 633.132, 633.216, 633.304, 633.316, 633.318, 633.324, 633.328, 633.332, 633.336, 633.338, 633.406, 633.408, 633.412, 633.414, 633.416, 633.418, 633.424, and 633.426, F.S., authorizing the DFS to regulate firefighters, fire protection systems contractors, fire equipment dealers, firesafety inspectors, and volunteer firefighters; and
- Chapter 648, F.S., authorizing the DFS to regulate professional bail bond agents and limited surety bail bond agents.

Section 6 repeals the following regulatory statutes on July 1, 2024:

- Sections 381.0075-.00777, 381.00781-.00791, and 381.0101, F.S., authorizing the DOH to regulate body piercing salons, tattoo artists, tattoo establishments, and certified environmental health professionals;
- Section 395.10973, F.S., authorizing the Agency for Health Care Administration to regulate health care risk managers;
- Section 397.4871, F.S., authorizing the Department of Children and Families (DCF) to regulate recovery residence administrators;
- Section 402.305, F.S., authorizing the DCF to regulate child and family care personnel operators and employees;

- Section 429.52(11) and (12), F.S. authorizing the Department for Elderly Affairs to regulate registered core trainers;
- Chapter 464, F.S., authorizing the DOH to regulate registered nurses, advanced registered nurse practitioners, and certified nurse assistants;
- Sections in Ch. 465, F.S., authorizing the DOH to regulate pharmacists, pharmacist interns, and pharmacist technicians;
- Chapter 466, F.S., (except ss. 466.031-.039, relating to dental laboratories), authorizing the DOH to regulate dentists and dental hygienists;
- Chapter 467, F.S., authorizing the DOH to regulate licensed midwives;
- Part XII of ch. 468, F.S., authorizing the DBPR to regulate building code administrators and inspectors and plan examiners;
- Chapter 471, F.S., authorizing the DBPR to regulate engineers;
- Chapter 472, F.S., authorizing the DACS to regulate land surveyors and mappers;
- Chapter 481, F.S., authorizing the DBPR to regulate architects, interior designers, and landscape architects;
- Chapter 482, F.S., authorizing the DACS to regulate pest control professionals;
- Chapter 485, F.S., authorizing the DOH to regulate hypnosis;
- Part I of ch. 487, F.S., authorizing the DACS to regulate pesticides and pesticide application professionals;
- Part I of ch. 489, F.S., authorizing the DBPR to regulate construction contractors;
- Part II of ch. 489, F.S., authorizing the DBPR to regulate electrical contractors;
- Part III of ch. 489, F.S., authorizing the DOH to regulate septic tank contractors;
- Chapter 490, F.S., authorizing the DOH to regulate psychologists and school psychologists;
- Chapter 491, F.S., authorizing the DOH to regulate licensed clinical social workers, marriage and family therapists, mental health counselors, psychotherapists, and certified master social workers;
- Chapter 492, F.S., authorizing the DBPR to regulate professional geologists;
- Sections of ch. 626, F.S., authorizing the DFS to regulate property and casualty agents, health and life insurance agents, title agents, portable electronic agents, credit insurance agents, in-transit and storage personal property insurance agents, legal expense sales representatives, managing general agents, motor vehicle rental insurance agents, individual reinsurance brokers and managers, service representatives, travel insurance agents, all-lines adjusters, emergency adjusters, public adjusters and apprentices, health agents, viatical settlement providers and brokers, ACA navigators, and motor vehicle physical damage and mechanical breakdown agents.

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:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 6 of Art. III of the State Constitution provides that “Every law shall embrace but one subject and matter properly connected therewith...” This bill is an act relating to “legislative review of occupational regulations.” The bill provides a statement of legislative intent that each occupation regulatory program will be reviewed prior to its respective repeal date, repeals the regulatory statutes relating to over 100 occupations or professions over a 4-year period, directs the distribution and refund of regulatory fees collected for repealed programs, appears to modify later-enacted general appropriations acts regarding the funding and personnel of repealed programs, and preempts the regulation of these occupations and professions to the state.

It is unclear whether the substance of this bill violates the constitutional “single subject” requirement. If a court of competent jurisdiction finds that it is in violation, the entire act may be voided.

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

The bill repeals, over a four year period, numerous statutes imposing regulatory fees and licenses. At this time, it is unknown the value of the regulatory fees and licenses repealed each year.

It is unknown to what extent local governments currently regulate any of the occupations impacted by this bill. A local government will be preempted from regulating any occupation for which the state regulation of that occupation expires, unless the local regulation is expressly authorized by law.

B. Private Sector Impact:

Persons or entities licensed, certified, registered, or credentialed under the occupation regulatory programs repealed by this bill may see a reduction in costs associated with the repeal of the regulatory fees over the four year period.

C. Government Sector Impact:

State agencies who administer occupational regulatory programs that are repealed by this act will experience a reduction in revenues associated with the regulatory fees and licenses. On the other hand, these same agencies will experience a reduction in expenditures associated with the administration of the occupation regulatory programs.

In some instances, the regulatory revenues associated with the administration of the occupation regulatory programs are subject to the general revenue service charge imposed by s. 215.20, F.S. To the extent the regulatory fees subject to the service charge expire, the distributions to the General Revenue Fund will be reduced.

Local governments that regulate occupations also regulated by the state may experience reductions in revenues and expenditures to the extent that the local regulation of these occupations are preempted to the state.

VI. Technical Deficiencies:

The Legislature may want to consider amending the title to be more broad and inclusive of the provisions in the bill. An example of a title that may be appropriate is “an act relating to occupational regulatory programs”.

VII. Related Issues:

The bill repeals over 100 occupational regulatory programs over the next four years without any further action by the legislature. However, the bill states that it is the intent of the legislature to review each occupational regulatory program before the scheduled effective date of the repeal of the program to determine whether (a) to allow the program to expire under the terms of this bill, (b) to enact another law to save the program from repeal and to renew the program with or without modifications, or (c) to provide for other appropriate actions. In order to achieve this legislative review, the legislature should consider certain constitutional requirements that may be applicable.

Section 19, Art. VII of the State Constitution limits the authority of the legislature to enact legislation that imposes or raises a state tax or fee by requiring such legislation to be approved by a 2/3 vote of each chamber of the legislature. Such state tax or fee imposed, authorized, or raised must be contained in a separate bill that contains no other subject. For purposes of this limitation, the term “fee” is defined, in pertinent part, to mean any charge or payment required by law, including . . . fee or cost for licenses, and charge for service.

If the occupational regulatory program (including the associated statutory fee provisions) is repealed by this bill and a future legislature enacts a new regulatory structure with fees after the effective date of the repeal, the fee bill associated with that regulatory program must be in a separate bill and will require a 2/3 vote of each chamber of the legislature. This means that a new regulatory program with fees will require a 2/3 vote or the use of monies from existing trust fund or the General Revenue Fund.

If an occupational regulatory program (including the associated statutory fee provisions) is repealed by this bill but a future legislature saves the program (and statutory fee provisions) from repeal before the scheduled repeal date, it is unclear whether the bill extending the imposition of the fees beyond the repeal date established in SB 1124 must be in a separate bill and will require a 2/3 vote of each chamber of the legislature. If the requirements of Section 19, Art. VII of the State Constitution must be met even though the effective date of the repeal has not passed, a decision by a future legislature to continue the occupational regulatory program without modification will require a 2/3 vote of each chamber of the legislature.

To address the unknown aspect of the application of this constitutional requirement, the Legislature may want to consider excluding the statutory fee provisions from repeal. A future legislature, after the intended review of each program, may repeal those fee provisions that are render unnecessary by the repeal of the regulatory program.

VIII. Statutes Affected:

This bill creates section 11.65 of the Florida Statutes.

This bill repeals the following sections, parts, and chapters of the Florida Statutes: 25.383, 25.386, 44.106, 61.125, ch. 310, 320.8249, and ch. 326, part III of ch. 373, ss. 381.0075-.00777, 381.00781-.00791, 381.0101, 395.10973, 397.4871, 399.01(16), 401.27, 401.271 – 401.273, 401.465, 402.305, 429.52(11) and (12), 450.30, ch. 457, 458, 459 (except s. 459.0137), 460, 461, 462, 463, and 464, ss. 465.002, 465.007, 465.0075, 465.008, 465.009, 465.012, 465.0125, 465.0126, 465.013, 465.014, 465.0155, 465.0252, 465.0255, 465.026, 465.0275, 465.0276, 465.186, 465.187, 465.188, 465.189, 465.1893, and 465.1901, ch. 466, (except ss. 466.031-.039), 467, 468, 471, 472, 473, and 474, part I of ch. 475, ch. 476, 477, 478, 480, 481, and 482, parts II and III of ch. 483, ss. 484.002, 484.007(3) and (4), 484.013, 484.014, 484.015, and 484.018(3), ch. 485 and 486, part I of ch. 487, ch. 488, 489, 490, 491, and 492, ss. 496.4101, 497.144, 497.145, 497.147, 497.148, 497.168, 497.554, 497.602, 497.603, and 497.605, part III of ch. 497, F.S., (except ss. 497.380-.389 and 497.391-.393), ss. 501.605, 501.607, 501.608, 501.609, 501.612, and 501.616(2) and (4), ch.507, ss. 517.12(1) and (4), 548.003, 548.017, 554.104 and 554.114(1)(d); parts IX and XI of ch. 559, ss. 626.011, 626.015, 626.016, 626.022, 626.025, 626.0428, 626.112, 626.141, 626.161, 626.171, 626.172, 626.175, 626.181, 626.191, 626.201, 626.202, 626.207, 626.211, 626.221, 626.231, 626.241, 626.2415, 626.251, 626.261, 626.266, 626.271, 626.281, 626.2815, 626.2816, 626.2817, 626.291, 626.292, 626.301, 626.311, 626.321, 626.322, 626.331, 626.341, 626.342, 626.371, 626.381, 626.382, 626.431, 626.441, 626.451, 626.461, 626.471, 626.511, 626.536, 626.541, 626.551, 626.561, 626.571, 626.5715, 626.572, 626.593, 626.601, 626.602, 626.611, 626.6115, 626.621, 626.6215, 626.631, 626.641, 626.651, 626.6515, 626.661, 626.681, 626.691, 626.692, 626.711, 626.726, 626.727, 626.728, 626.729, 626.730, 626.731, 626.7315, 626.732, 626.733, 626.734, 626.7351, 626.7352, 626.7353, 626.7354, 626.741, 626.742, 626.743, 626.744, 626.745, 626.7451, 626.7452, 626.7453, 626.7454, 626.7455, 626.748, 626.7491, 626.7492, 626.752, 626.753, 626.754, 626.776, 626.777, 626.778, 626.779, 626.780, 626.781, 626.782, 626.783, 626.784, 626.7845, 626.785, 626.7851, 626.788, 626.789, 626.792, 626.793, 626.794, 626.795, 626.796, 626.797, 626.798, 626.826, 626.827, 626.828, 626.829, 626.830, 626.8305, 626.831, 626.8311, 626.833, 626.834, 626.835, 626.836, 626.837, 626.8373, 626.838, 626.839, 626.841, 626.8411, 626.8412, 626.8413, 626.8414, 626.8417, 626.8418, 626.8419, 626.84195, 626.842, 626.84201, 626.8421,

626.8423, 626.8427, 626.843, 626.8433, 626.8437, 626.844, 626.8443, 626.8447, 626.845, 626.8453, 626.8457, 626.846, 626.8463, 626.8467, 626.847, 626.8473, 626.851, 626.852, 626.853, 626.854, 626.8548, 626.855, 626.856, 626.8561, 626.8582, 626.8584, 626.859, 626.860, 626.861, 626.862, 626.863, 626.864, 626.865, 626.8651, 626.866, 626.8685, 626.869, 626.8695, 626.8696, 626.8697, 626.8698, 626.870, 626.871, 626.8732, 626.8734, 626.8736, 626.8737, 626.8738, 626.874, 626.875, 626.876, 626.877, 626.878, 626.8795, 626.8796, 626.8797, 626.927, 626.9271, 626.9272, 626.9912, 626.9916, 626.995, 626.9951, 626.9952, 626.9953, 626.9954, 626.9955, 626.9956, 626.9957, 626.9958, 627.7015(4), 627.7074(1)(a), 633.132, 633.216, 633.304, 633.316, 633.318, 633.324, 633.328, 633.332, 633.336, 633.338, 633.406, 633.408, 633.412, 633.414, 633.416, 633.418, 633.424, 633.426, 634.171, 634.318, 634.320, and 634.420, and ch. 648.

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 17, 2020:
Clarifies the title as “an act relating to occupational regulatory programs.”

- B. **Amendments:**

None.



232090

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
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The Committee on Governmental Oversight and Accountability
(Diaz) recommended the following:

Senate Amendment

In title, delete lines 2 - 3
and insert:
An act relating to occupational regulatory programs;
providing a short title; creating s.

By Senator Diaz

36-00919-20

20201124__

A bill to be entitled

An act relating to legislative review of occupational regulations; providing a short title; creating s. 11.65, F.S.; defining terms; establishing a schedule for the systematic review of occupational regulatory programs; providing Legislative intent; providing that amending or transferring a section with a scheduled repeal does not affect the scheduled repeal; providing for the abolition of units or subunits of government and personnel positions responsible for repealed programs; providing for the reversion of certain unexpended funds and the refund of certain unencumbered revenue of a repealed program; requiring the Department of Legal Affairs to prosecute or defend certain pending causes of actions; preempting the regulation of an occupation to the state if such occupation's regulatory program has been repealed through this act; providing a schedule of repeal for occupational regulatory programs; providing effective dates.

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

Section 1. This act may be cited as the "Occupational Regulation Sunset Act."

Section 2. Section 11.65, Florida Statutes, is created to read:

11.65 Legislative review of occupational regulation.—

(1) As used in this section:

Page 1 of 12

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

36-00919-20

20201124__

(a) "Occupational regulatory program" or "program" means any statutory regulatory provision or scheme which places a condition on practicing an occupation, including, but not limited to, programs that require a license, certification, registration, or credential.

(b) "Local government" means a county, municipality, special district, or political subdivision of the state.

(c) "Occupation" means a paid job, profession, work, line of work, trade, employment, position, post, career, field, vocation, or craft.

(2) There is established a schedule for systematic review of the costs and benefits of occupational regulatory programs. The Legislature intends to review each program before the scheduled date on which each occupational regulatory program is set to expire through scheduled repeal to determine whether to allow the program to expire, renew the program without modifications, renew the program with modifications, or provide for other appropriate actions.

(3) If a chapter or section scheduled for review by this act is subsequently amended or transferred, such subsequent amendment or transfer, unless otherwise expressly provided in the act amending or transferring such chapter or section, shall not eliminate the scheduled repeal of such chapter or section.

(4) Within 60 days after the date on which any occupational regulatory program is allowed to expire through scheduled repeal under this act, the personnel positions which are responsible for carrying out the program shall be abolished, and all unexpended balances of appropriations, allocations, or other funds for such program shall revert to the fund from which they

Page 2 of 12

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36-00919-20

20201124

were appropriated or, if that fund is abolished, to the General Revenue Fund. Except as authorized under this section, all regulatory activities related to the repealed program shall cease after the date of repeal.

(5) Any remaining unencumbered revenue collected under an occupational regulatory program allowed to expire through repeal shall be refunded on a pro rata basis by the Chief Financial Officer pursuant to s. 215.26, upon request of the person or entity who paid, if such request is made within 1 year after the repeal of the program.

(6) Any cause of action pending on the date the occupational regulatory program was repealed, or any cause of action brought thereafter, shall be prosecuted or defended in the name of the state by the Department of Legal Affairs, if prior to repeal such action would have been prosecuted or defended by the occupational regulatory program repealed by this act.

(7) Any occupational regulatory program that expires through scheduled repeal in accordance with this act may not be subsequently regulated by a local government. The regulation of any occupation repealed by this act is preempted to the state unless local regulation of such occupation is expressly authorized by law.

Section 3. Pursuant to the Occupational Regulation Sunset Act, the following statutes are repealed effective July 1, 2021: ss. 25.383, 25.386, 310.001, 310.0015, 310.002, 310.011, 310.032, 310.042, 310.051, 310.061, 310.071, 310.073, 310.075, 310.081, 310.091, 310.101, 310.102, 310.111, 310.1112, 310.1115, 310.121, 310.131, 310.141, 310.142, 310.146, 310.151, 310.161,

36-00919-20

20201124

310.171, 310.181, 310.183, 310.185, 320.8249, 326.001, 326.002, 326.003, 326.004, 326.005, 326.006, 401.27, 401.271, 401.2715, 401.272, 401.273, 401.465, 468.381, 468.382, 468.383, 468.384, 468.385, 468.3851, 468.3852, 468.3855, 468.386, 468.387, 468.388, 468.389, 468.391, 468.392, 468.393, 468.394, 468.395, 468.396, 468.397, 468.398, 468.399, 468.401, 468.402, 468.403, 468.404, 468.405, 468.406, 468.407, 468.408, 468.409, 468.410, 468.411, 468.412, 468.413, 468.414, 468.415, 468.431, 468.4315, 468.432, 468.433, 468.4334, 468.4336, 468.4337, 468.4338, 468.435, 468.436, 468.4365, 468.437, 468.438, 468.451, 468.452, 468.453, 468.4535, 468.4536, 468.454, 468.456, 468.4561, 468.45615, 468.4562, 468.4565, 468.457, 468.501, 468.502, 468.503, 468.504, 468.505, 468.506, 468.507, 468.508, 468.509, 468.51, 468.511, 468.512, 468.513, 468.514, 468.515, 468.516, 468.517, 468.518, 468.701, 468.703, 468.704, 468.705, 468.707, 468.709, 468.711, 468.713, 468.715, 468.717, 468.719, 468.723, 468.80, 468.801, 468.802, 468.803, 468.806, 468.808, 468.809, 468.8095, 468.811, 468.812, 468.813, 478.40, 478.41, 478.42, 478.43, 478.44, 478.45, 478.46, 478.47, 478.48, 478.49, 478.50, 478.54, 480.031, 480.032, 480.033, 480.034, 480.035, 480.036, 480.039, 480.041, 480.0415, 480.042, 480.043, 480.044, 480.046, 480.0465, 480.047, 480.0475, 480.0485, 480.049, 480.052, 480.0535, 488.01, 488.02, 488.03, 488.04, 488.045, 488.05, 488.06, 488.07, 488.08, 554.104, 554.114(1)(d), 627.7015(4), and 627.7074(1)(a), Florida Statutes.

Section 4. Pursuant to the Occupational Regulation Sunset Act, the following statutes are repealed effective July 1, 2022: ss. 61.125, 373.302, 373.303, 373.306, 373.308, 373.309, 373.313, 373.314, 373.316, 373.319, 373.323, 373.324, 373.325,

36-00919-20 20201124

117 373.326, 373.329, 373.333, 373.335, 373.336, 373.337, 373.342,
 118 399.01(16), 457.101, 457.102, 457.103, 457.104, 457.105,
 119 457.107, 457.108, 457.1085, 457.109, 457.116, 457.118, 458.301,
 120 458.303, 458.305, 458.307, 458.309, 458.310, 458.311, 458.3115,
 121 458.3124, 458.313, 458.3135, 458.3137, 458.314, 458.3145,
 122 458.3147, 458.315, 458.3151, 458.316, 458.3165, 458.317,
 123 458.3175, 458.319, 458.3191, 458.3192, 458.3193, 458.320,
 124 458.321, 458.323, 458.324, 458.325, 458.3255, 458.326, 458.327,
 125 458.328, 458.329, 458.3295, 458.331, 458.3311, 458.3312,
 126 458.335, 458.336, 458.337, 458.339, 458.341, 458.343, 458.345,
 127 458.347, 458.3475, 458.348, 458.3485, 458.351, 459.001, 459.002,
 128 459.003, 459.004, 459.005, 459.0055, 459.0066, 459.0075,
 129 459.0076, 459.00761, 459.0077, 459.008, 459.0081, 459.0082,
 130 459.0083, 459.0085, 459.009, 459.0092, 459.011, 459.012,
 131 459.0122, 459.0125, 459.013, 459.0135, 459.0138, 459.0141,
 132 459.0145, 459.015, 459.0151, 459.0152, 459.016, 459.017,
 133 459.018, 459.019, 459.021, 459.022, 459.023, 459.025, 459.026,
 134 468.1105, 468.1115, 468.1125, 468.1135, 468.1145, 468.1155,
 135 468.1165, 468.1175, 468.1185, 468.1195, 468.1205, 468.1215,
 136 468.1225, 468.1245, 468.1246, 468.1255, 468.1265, 468.1275,
 137 468.1285, 468.1295, 468.1296, 468.1315, 468.1635, 468.1645,
 138 468.1655, 468.1665, 468.1675, 468.1685, 468.1695, 468.1705,
 139 468.1715, 468.1725, 468.1735, 468.1745, 468.1755, 468.1756,
 140 468.201, 468.203, 468.204, 468.205, 468.207, 468.209, 468.211,
 141 468.213, 468.215, 468.217, 468.219, 468.221, 468.223, 468.225,
 142 468.3001, 468.3003, 468.301, 468.302, 468.303, 468.304, 468.305,
 143 468.306, 468.3065, 468.307, 468.309, 468.3095, 468.3101,
 144 468.311, 468.3115, 468.312, 468.314, 468.315, 468.35, 468.351,
 145 468.352, 468.353, 468.354, 468.355, 468.358, 468.359, 468.36,

36-00919-20 20201124

146 468.361, 468.363, 468.364, 468.365, 468.366, 468.367, 468.368,
 147 468.369, 468.520, 468.521, 468.522, 468.523, 468.524, 468.5245,
 148 468.525, 468.526, 468.527, 468.5275, 468.528, 468.529, 468.530,
 149 468.531, 468.532, 468.533, 468.534, 468.535, 468.83, 468.831,
 150 468.8311, 468.8312, 468.8313, 468.8314, 468.8315, 468.8316,
 151 468.8317, 468.8318, 468.8319, 468.832, 468.8321, 468.8322,
 152 468.8323, 468.8324, 468.8325, 468.84, 468.841, 468.8411,
 153 468.8412, 468.8413, 468.8414, 468.8415, 468.8416, 468.8417,
 154 468.8418, 468.8419, 468.842, 468.8421, 468.8422, 468.8423,
 155 468.8424, 497.144, 497.145, 497.147, 497.148, 497.168, 497.365,
 156 497.366, 497.368, 497.369, 497.370, 497.371, 497.372, 497.373,
 157 497.374, 497.375, 497.376, 497.377, 497.378, 497.379, 497.390,
 158 497.554, 497.602, 497.603, 497.605, 501.605, 501.607, 501.608,
 159 501.609, 501.612, 501.616(2) and (4), 507.01, 507.02, 507.03,
 160 507.04, 507.05, 507.06, 507.07, 507.08, 507.09, 507.10, 507.11,
 161 507.12, 507.13, 517.12(1) and (4), 548.003, 548.017, 634.171,
 162 634.318, 634.320, and 634.420, Florida Statutes.
 163 Section 5. Pursuant to the Occupational Regulation Sunset
 164 Act, the following statutes are repealed effective July 1, 2023:
 165 ss. 44.106, 450.30, 460.401, 460.402, 460.403, 460.404, 460.405,
 166 460.406, 460.4061, 460.4062, 460.407, 460.408, 460.41, 460.411,
 167 460.412, 460.413, 460.414, 460.4165, 460.4166, 460.4167,
 168 461.001, 461.002, 461.003, 461.004, 461.005, 461.006, 461.007,
 169 461.008, 461.009, 461.012, 461.013, 461.0131, 461.0134,
 170 461.0135, 461.014, 461.018, 462.01, 462.023, 462.08, 462.09,
 171 462.11, 462.13, 462.14, 462.16, 462.17, 462.18, 462.19,
 172 462.2001, 463.0001, 463.001, 463.002, 463.003, 463.004, 463.005,
 173 463.0055, 463.0057, 463.006, 463.007, 463.008, 463.009, 463.011,
 174 463.012, 463.013, 463.0135, 463.014, 463.0141, 463.015, 463.016,

36-00919-20 20201124

175 463.018, 473.301, 473.302, 473.303, 473.3035, 473.304, 473.305,
 176 473.306, 473.3065, 473.308, 473.309, 473.3101, 473.311, 473.312,
 177 473.3125, 473.313, 473.314, 473.3141, 473.315, 473.316, 473.318,
 178 473.319, 473.3205, 473.321, 473.322, 473.323, 474.201, 474.202,
 179 474.203, 474.204, 474.205, 474.206, 474.2065, 474.207, 474.211,
 180 474.2125, 474.213, 474.214, 474.2145, 474.215, 474.216,
 181 474.2165, 474.2167, 474.217, 474.2185, 474.221, 475.001, 475.01,
 182 475.011, 475.02, 475.021, 475.03, 475.04, 475.045, 475.05,
 183 475.10, 475.125, 475.15, 475.161, 475.17, 475.175, 475.180,
 184 475.181, 475.182, 475.183, 475.215, 475.22, 475.23, 475.24,
 185 475.25, 475.255, 475.2701, 475.272, 475.274, 475.2755, 475.278,
 186 475.28, 475.2801, 475.31, 475.37, 475.38, 475.41, 475.42,
 187 475.43, 475.451, 475.4511, 475.453, 475.455, 475.482, 475.483,
 188 475.4835, 475.484, 475.485, 475.486, 475.5015, 475.5016,
 189 475.5017, 475.5018, 476.014, 476.024, 476.034, 476.044, 476.054,
 190 476.064, 476.074, 476.114, 476.134, 476.144, 476.154, 476.155,
 191 476.178, 476.184, 476.188, 476.192, 476.194, 476.204, 476.214,
 192 476.234, 476.244, 476.254, 477.011, 477.012, 477.013, 477.0132,
 193 477.0135, 477.014, 477.015, 477.016, 477.017, 477.018, 477.019,
 194 477.0201, 477.0212, 477.0213, 477.022, 477.023, 477.025,
 195 477.026, 477.0263, 477.0265, 477.028, 477.029, 477.031, 483.800,
 196 483.801, 483.803, 483.805, 483.807, 483.809, 483.811, 483.812,
 197 483.813, 483.815, 483.817, 483.819, 483.821, 483.823, 483.824,
 198 483.825, 483.828, 483.901, 484.002, 484.007(3) and (4), 484.013,
 199 484.014, 484.015, 484.018(3), 486.011, 486.015, 486.021,
 200 486.023, 486.025, 486.028, 486.031, 486.041, 486.051, 486.061,
 201 486.0715, 486.081, 486.085, 486.102, 486.103, 486.104, 486.106,
 202 486.1065, 486.107, 486.108, 486.109, 486.115, 486.123, 486.125,
 203 486.135, 486.151, 486.153, 486.161, 486.171, 486.172, 496.4101,

36-00919-20 20201124

204 559.901, 559.902, 559.903, 559.904, 559.905, 559.907, 559.909,
 205 559.911, 559.915, 559.916, 559.917, 559.919, 559.920, 559.921,
 206 559.9215, 559.92201, 559.9221, 559.926, 559.927, 559.928,
 207 559.9281, 559.9285, 559.929, 559.9295, 559.931, 559.932,
 208 559.933, 559.9335, 559.934, 559.935, 559.9355, 559.936, 559.937,
 209 559.938, 559.939, 633.132, 633.216, 633.304, 633.316, 633.318,
 210 633.324, 633.328, 633.332, 633.336, 633.338, 633.406, 633.408,
 211 633.412, 633.414, 633.416, 633.418, 633.424, 633.426, 648.24,
 212 648.25, 648.26, 648.27, 648.279, 648.285, 648.29, 648.295,
 213 648.30, 648.31, 648.315, 648.33, 648.34, 648.35, 648.355,
 214 648.36, 648.365, 648.38, 648.381, 648.382, 648.383, 648.384,
 215 648.385, 648.386, 648.387, 648.388, 648.39, 648.40, 648.41,
 216 648.42, 648.421, 648.43, 648.44, 648.441, 648.442, 648.4425,
 217 648.45, 648.46, 648.48, 648.49, 648.50, 648.51, 648.52, 648.525,
 218 648.53, 648.55, 648.57, 648.571, and 648.58, Florida Statutes.
 219 Section 6. Pursuant to the Occupational Regulation Sunset
 220 Act, the following statutes are repealed effective July 1, 2024:
 221 ss. 381.0075, 381.00771, 381.00773, 381.00775, 381.00777,
 222 381.00781, 381.00783, 381.00785, 381.00787, 381.00789,
 223 381.00791, 381.0101, 395.10973, 397.4871, 402.305, 429.52(11)
 224 and (12), 464.001, 464.002, 464.003, 464.004, 464.005, 464.006,
 225 464.008, 464.009, 464.0095, 464.0096, 464.012, 464.013, 464.014,
 226 464.015, 464.016, 464.017, 464.018, 464.019, 464.0195, 464.0196,
 227 464.0205, 464.022, 464.027, 464.201, 464.202, 464.203, 464.204,
 228 464.205, 464.206, 464.207, 464.208, 465.002, 465.007, 465.0075,
 229 465.008, 465.009, 465.012, 465.0125, 465.0126, 465.013, 465.014,
 230 465.0155, 465.0252, 465.0255(2), (3), and (4), 465.026,
 231 465.0275, 465.0276, 465.186, 465.187, 465.188, 465.189,
 232 465.1893, 465.1901, 466.001, 466.002, 466.003, 466.004, 466.005,

36-00919-20

20201124

233 466.006, 466.0065, 466.0067, 466.00671, 466.00672, 466.00673,
 234 466.007, 466.0075, 466.008, 466.009, 466.011, 466.013, 466.0135,
 235 466.014, 466.015, 466.016, 466.017, 466.018, 466.019, 466.021,
 236 466.022, 466.023, 466.0235, 466.024, 466.025, 466.026, 466.027,
 237 466.0275, 466.02751, 466.028, 466.0282, 466.0285, 466.041,
 238 466.051, 467.001, 467.002, 467.003, 467.004, 467.005, 467.006,
 239 467.009, 467.011, 467.012, 467.0125, 467.013, 467.0135, 467.014,
 240 467.015, 467.016, 467.017, 467.019, 467.201, 467.203, 467.205,
 241 467.207, 468.601, 468.602, 468.603, 468.604, 468.605, 468.606,
 242 468.607, 468.609, 468.613, 468.617, 468.619, 468.621, 468.627,
 243 468.629, 468.631, 468.632, 468.633, 471.001, 471.003, 471.0035,
 244 471.005, 471.007, 471.008, 471.009, 471.011, 471.013, 471.015,
 245 471.017, 471.019, 471.0195, 471.021, 471.023, 471.025, 471.027,
 246 471.031, 471.033, 471.037, 471.038, 471.0385, 471.045, 472.001,
 247 472.003, 472.005, 472.006, 472.007, 472.0075, 472.008, 472.009,
 248 472.0101, 472.011, 472.013, 472.0131, 472.0132, 472.0135,
 249 472.015, 472.016, 472.0165, 472.017, 472.018, 472.019, 472.0201,
 250 472.02011, 472.0202, 472.0203, 472.0204, 472.021, 472.023,
 251 472.025, 472.027, 472.029, 472.031, 472.033, 472.0335, 472.0337,
 252 472.034, 472.0345, 472.0351, 472.0355, 472.036, 472.0365,
 253 472.0366, 472.037, 481.201, 481.203, 481.205, 481.2055, 481.207,
 254 481.209, 481.211, 481.213, 481.2131, 481.215, 481.217, 481.219,
 255 481.221, 481.222, 481.223, 481.225, 481.2251, 481.229, 481.231,
 256 481.301, 481.303, 481.305, 481.306, 481.307, 481.309, 481.310,
 257 481.311, 481.313, 481.315, 481.317, 481.319, 481.321, 481.323,
 258 481.325, 481.329, 482.011, 482.021, 482.032, 482.051, 482.061,
 259 482.071, 482.072, 482.0815, 482.091, 482.111, 482.121, 482.132,
 260 482.141, 482.151, 482.152, 482.155, 482.156, 482.1562, 482.157,
 261 482.161, 482.163, 482.165, 482.1821, 482.183, 482.191, 482.211,

36-00919-20

20201124

262 482.226, 482.2265, 482.2267, 482.227, 482.231, 482.2401,
 263 482.241, 482.242, 482.243, 485.001, 485.002, 485.003, 485.004,
 264 485.005, 487.011, 487.012, 487.021, 487.025, 487.031, 487.041,
 265 487.042, 487.0435, 487.0437, 487.044, 487.045, 487.046, 487.047,
 266 487.048, 487.049, 487.051, 487.064, 487.071, 487.081, 487.091,
 267 487.101, 487.111, 487.13, 487.15, 487.156, 487.1585, 487.159,
 268 487.160, 487.161, 487.163, 487.171, 487.175, 489.101, 489.103,
 269 489.105, 489.107, 489.108, 489.109, 489.111, 489.113, 489.1131,
 270 489.1136, 489.114, 489.115, 489.116, 489.117, 489.118, 489.119,
 271 489.1195, 489.121, 489.124, 489.125, 489.126, 489.127, 489.128,
 272 489.129, 489.13, 489.131, 489.132, 489.133, 489.134, 489.140,
 273 489.1401, 489.1402, 489.141, 489.142, 489.1425, 489.143,
 274 489.144, 489.145, 489.1455, 489.146, 489.501, 489.503, 489.505,
 275 489.507, 489.509, 489.510, 489.511, 489.513, 489.514, 489.515,
 276 489.516, 489.5161, 489.517, 489.518, 489.5185, 489.519, 489.520,
 277 489.521, 489.522, 489.523, 489.525, 489.529, 489.530, 489.531,
 278 489.5315, 489.532, 489.533, 489.5335, 489.537, 489.538, 489.551,
 279 489.552, 489.553, 489.554, 489.555, 489.556, 489.557, 489.558,
 280 490.001, 490.002, 490.003, 490.004, 490.005, 490.0051, 490.006,
 281 490.007, 490.0085, 490.009, 490.0111, 490.012, 490.0121,
 282 490.014, 490.0141, 490.0143, 490.0145, 490.0147, 490.0148,
 283 490.0149, 490.015, 491.002, 491.003, 491.004, 491.0045,
 284 491.0046, 491.005, 491.0057, 491.006, 491.0065, 491.007,
 285 491.008, 491.0085, 491.009, 491.0111, 491.0112, 491.012,
 286 491.014, 491.0141, 491.0143, 491.0144, 491.0145, 491.0147,
 287 491.0148, 491.0149, 491.015, 491.016, 492.101, 492.102, 492.103,
 288 492.104, 492.105, 492.1051, 492.106, 492.107, 492.108, 492.109,
 289 492.1101, 492.111, 492.112, 492.113, 492.114, 492.115, 492.116,
 290 492.1165, 626.011, 626.015, 626.016, 626.022, 626.025, 626.0428,

36-00919-20 20201124

291 626.112, 626.141, 626.161, 626.171, 626.172, 626.175, 626.181,
 292 626.191, 626.201, 626.202, 626.207, 626.211, 626.221, 626.231,
 293 626.241, 626.2415, 626.251, 626.261, 626.266, 626.271, 626.281,
 294 626.2815, 626.2816, 626.2817, 626.291, 626.292, 626.301,
 295 626.311, 626.321, 626.322, 626.331, 626.341, 626.342, 626.371,
 296 626.381, 626.382, 626.431, 626.441, 626.451, 626.461, 626.471,
 297 626.511, 626.536, 626.541, 626.551, 626.561, 626.571, 626.5715,
 298 626.572, 626.593, 626.601, 626.602, 626.611, 626.6115, 626.621,
 299 626.6215, 626.631, 626.641, 626.651, 626.6515, 626.661, 626.681,
 300 626.691, 626.692, 626.711, 626.726, 626.727, 626.728, 626.729,
 301 626.730, 626.731, 626.7315, 626.732, 626.733, 626.734, 626.7351,
 302 626.7352, 626.7353, 626.7354, 626.741, 626.742, 626.743,
 303 626.744, 626.745, 626.7451, 626.7452, 626.7453, 626.7454,
 304 626.7455, 626.748, 626.7491, 626.7492, 626.752, 626.753,
 305 626.754, 626.776, 626.777, 626.778, 626.779, 626.780, 626.781,
 306 626.782, 626.783, 626.784, 626.7845, 626.785, 626.7851, 626.788,
 307 626.789, 626.792, 626.793, 626.794, 626.795, 626.796, 626.797,
 308 626.798, 626.826, 626.827, 626.828, 626.829, 626.830, 626.8305,
 309 626.831, 626.8311, 626.833, 626.834, 626.835, 626.836, 626.837,
 310 626.8373, 626.838, 626.839, 626.841, 626.8411, 626.8412,
 311 626.8413, 626.8414, 626.8417, 626.8418, 626.8419, 626.84195,
 312 626.842, 626.84201, 626.8421, 626.8423, 626.8427, 626.843,
 313 626.8433, 626.8437, 626.844, 626.8443, 626.8447, 626.845,
 314 626.8453, 626.8457, 626.846, 626.8463, 626.8467, 626.847,
 315 626.8473, 626.851, 626.852, 626.853, 626.854, 626.8548, 626.855,
 316 626.856, 626.8561, 626.8582, 626.8584, 626.859, 626.860,
 317 626.861, 626.862, 626.863, 626.864, 626.865, 626.8651, 626.866,
 318 626.8685, 626.869, 626.8695, 626.8696, 626.8697, 626.8698,
 319 626.870, 626.871, 626.8732, 626.8734, 626.8736, 626.8737,

36-00919-20 20201124

320 626.8738, 626.874, 626.875, 626.876, 626.877, 626.878, 626.8795,
 321 626.8796, 626.8797, 626.927, 626.9271, 626.9272, 626.9912,
 322 626.9916, 626.995, 626.9951, 626.9952, 626.9953, 626.9954,
 323 626.9955, 626.9956, 626.9957, and 626.9958, Florida Statutes.

324 Section 7. Except as otherwise expressly provided in this
 325 act, this act shall take effect upon becoming 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 13, 2020

I respectfully request that **Senate Bill # 1124**, relating to Legislative Review of Occupational Regulations, be placed on the:

- ☐ Committee agenda at your earliest possible convenience.
- ☒ Next committee agenda.

A handwritten signature in black ink, appearing to read "M. Diaz", is written over a horizontal line.

Senator Manny Diaz, Jr.
Florida Senate, District 36

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-17-20

Meeting Date

1124

Bill Number (if applicable)

Topic LICENSING

Amendment Barcode (if applicable)

Name Sal Nuzzo

Job Title Vice President of Policy

Address 100 N Duval Street

Phone 850-322-9941

Street

Tallahassee

FL

32301

Email snuzzo@jamesmadison.org

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The James Madison Institute

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

02/17/2020

Meeting Date

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

SB 1124

Bill Number (if applicable)

Topic LEGISLATIVE REVIEW OF OCCUPATIONAL LICENSES.

Amendment Barcode (if applicable)

Name CESAR BRAJALES

Job Title COALITIONS DIRECTOR

Address 200 W. COLLEGE AVE

Phone 786 260-9283

Street

TALLAHASSEE

FL

City

State

Zip

Email cgrajales@belibere.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing THE LIBRE INITIATIVE

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)

2/17/20

Meeting Date

1124

Bill Number (if applicable)

Topic Legislative Review of Occupational Licenses

Amendment Barcode (if applicable)

Name Phillip Suderman

Job Title Policy Director

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing 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)

17 Feb 20
Meeting Date

SB 1124
Bill Number (if applicable)

Topic Legislative Review of Occupational Licensing Amendment Barcode (if applicable)
Name DIEGO ECHEVERRIZ

Job Title Legislative Liaison

Address _____ Phone _____
Street

City _____ State _____ Zip _____ Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Concerned Veterans For America

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)

2/19/20

Meeting Date

1124

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 104-2 CREST ST
Street

Phone 941-323-2404

TLH FL 32301
City State Zip

Email cullenasea@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/20

Meeting Date

SB 1124

Bill Number (if applicable)

Topic Legislative Review of Occupational Regulation Amendment Barcode (if applicable)

Name Joe Anne Hart

Job Title Chief Legislative Officer

Address 118 E. Jefferson Street

Street

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Tallahassee FL 32301

City

State

Zip

Email jahart@floridadental.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Florida Dental Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/19

Meeting Date

SB 1124

Bill Number (if applicable)

Topic SENATE BILL 1124

Amendment Barcode (if applicable)

Name JOHN GIRDLER

Job Title CHAIRMAN BOARD OF OPTICIANY

Address 10525 LAKE TAMONIA RD
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City State Zip

Email JBGIRDLER111@GMAIL

Speaking: ☐ For ☒ Against ☐ Information

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

Representing OPTICIANY - 484

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☐ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/2020
Meeting Date

1124
Bill Number (if applicable)

Topic Licensure of Occupations & Professions

Amendment Barcode (if applicable)

Name DAVID K SIGERSON, JR. ESQ

Job Title Lobbyist

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Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLA. Professional Opticians

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

02/17/2020

Meeting Date

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

SB 1124

Bill Number (if applicable)

Topic The Importance of Licensed Opticians in Florida

Amendment Barcode (if applicable)

Name Laurie Pierce

Job Title Professor of Opticianry

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Street

Tampa

FL

33614

Email lpierce@hccfl.edu

City

State

Zip

Speaking: ☐ For ☒ Against ☐ Information

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

Representing Professional Opticians of Florida & Hillsborough Community College

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☐ Yes ☒ No

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

SB 1124
Bill Number (if applicable)

Amendment Barcode (if applicable)

Meeting Date _____

Topic DEREGULATION OF OPTICIANS

Name JAMES M MORRIS

Job Title EXECUTIVE DIRECTOR

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Street

SMITH ROSA BERRY
City

State

FLORIDA

Zip

Phone 859 333 9600

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/2020
Meeting Date

SB 1124
Bill Number (if applicable)

Topic SUNSET

Amendment Barcode (if applicable)

Name MIKE HUEY

Job Title _____

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Street

Phone 850/577-9090

TLH FL 32301
City State Zip

Email MIKE.HUEY@GRAY-ROBINSON.COM

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FL. ASSN. OF THE AMERICAN INSTITUTE OF ARCHITECTS

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1186

INTRODUCER: Senator Baxley

SUBJECT: Drug-free Workplaces

DATE: February 14, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McMillan</u>	<u>McKay</u>	<u>CM</u>	Favorable
2. <u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3. _____	_____	<u>RC</u>	_____

I. Summary:

SB 1186 makes changes to the drug-free workplace programs in Chapters 112 and 440, F.S.

The bill amends s. 112.0455, F.S., which applies to any agency within state government, to:

- Require that prescreening and drug-screening tests meet specified standards;
- Prohibit sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards; and
- Require the Agency for Health Care Administration to adopt rules.

Currently, an employer subject to the Workers' Compensation Law who implements a drug-free workforce program pursuant to s. 440.102, F.S., is eligible for a workers' compensation insurance discount of up to 5 percent. If an employee in such a program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits. This bill:

- Amends the definition of "drug" to include substances named in state and federal law;
- Adds additional certification requirements for drug tests and specimens;
- Removes a requirement that an employee be provided a form on which to note medications, which must be taken into account in interpreting drug tests;
- Replaces a list of professions qualified to collect specimens with a requirement that such persons meet qualification standards set by specified federal agencies;
- Requires specimens from positive tests to be preserved for one year after the confirmation test was conducted, instead of 210 days after result was mailed;
- Shortens from 180 to 60 days after notification of a positive result the period during which an employee may have a specimen retested;
- Requires that prescreening and drug-screening tests meet specified standards;

- Prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards; and
- Requires the Agency for Health Care Administration to adopt rules.

The bill has an indeterminate fiscal impact. See section V.

The bill takes effect July 1, 2020.

II. Present Situation:

Drug-Free Workplace Act for State Agency Employers

The Drug-Free Workplace Act in s. 112.0455, F.S., exists to promote the goal of drug-free workplaces within government through drug-testing, and to provide opportunities for assistance to employees with alcohol or drug problems. The Act, which applies to agencies within state government,¹ specifies requirements for testing standards and procedures, notice, employee and employer protections, and remedies.

Drug-Free Workplace Program for Workers' Compensation Employers

The Workers' Compensation Law in Chapter 440, F.S., provides legislative intent to promote drug-free workplaces, and sets out the notice, educational, and procedural requirements that an employer must follow to implement the employee and applicant drug testing that is a component of such workplaces.² An "employer" means a person or entity that employs a person and that is covered by the Workers' Compensation Law.³

If an employer implements a drug-free workplace program that conforms to applicable law and rules, the employer is eligible for workers' compensation and employer's liability insurance discounts⁴ of up to five percent,⁵ and the employer may require an employee to submit to a test for the presence of drugs or alcohol. If an employee in a drug-free workplace program tests positive for drugs or alcohol, the employee may be terminated, and forfeits his or her eligibility for medical and indemnity benefits.⁶

Definitions

The following definitions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration (AHCA):

- "Drug" means alcohol, including a distilled spirit, wine, a malt beverage, or an intoxicating liquor; an amphetamine; a cannabinoid; cocaine; phencyclidine (PCP); a hallucinogen;

¹ Section 112.0455(5)(h), F.S.

² See ss. 440.101 and 440.102, F.S.

³ Section 440.102(1)(h), F.S.

⁴ Section 440.102(2), F.S. See s. 627.0915, F.S., providing that the Office of Insurance Regulation must approve rating plans for workers' compensation and employers' liability insurance that give specific identifiable consideration in the setting of rates to employers that implement a drug-free workplace program pursuant to s. 440.102 F.S., and attendant rules.

⁵ Fla. Admin Code R. 69L-5.220 (2019).

⁶ Section 440.101(2), F.S.

methaqualone; an opiate; a barbiturate; a benzodiazepine; a synthetic narcotic; a designer drug; or a metabolite of any of the substances listed in this paragraph.

- “Drug test” or “test” means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the U.S. Department of Health and Human Services or licensed by the AHCA, for the purpose of determining the presence or absence of a drug or its metabolites.
- “Specimen” means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the U.S. Food and Drug Administration or the AHCA.⁷

Notice

One time only, prior to testing, an employer must give all employees and applicants for employment a written policy statement that contains:

- A general statement of the employer’s policy on employee drug use identifying the types of drug testing an employee or applicant may be required to submit to, and the actions the employer may take against an employee or applicant on the basis of a positive confirmed drug test result;
- A statement advising the employee or job applicant of the existence of s. 440.102, F.S.;
- A general statement concerning confidentiality;
- Procedures for employees and job applicants to confidentially report to a medical review officer the use of prescription or nonprescription medications both before and after being tested;
- A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test;
- The consequences of refusing to submit to a drug test;
- A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs;
- A statement that an employee or applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee’s or applicant’s explanation or challenge is unsatisfactory to the medical review officer, the medical review officer must report a positive test result back to the employer; and that a person may contest the drug test result;
- A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to the drug-free workplace law;
- A list of all drugs for which the employer will test, described by brand name or common name, as well as by chemical name;
- A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission or applicable court; and
- A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.⁸

⁷ Section 440.102(1), F.S.

⁸ Section 440.102(3)(a), F.S.

An employer must include notice of drug testing on vacancy announcements for positions for which drug testing is required.⁹

Types of Testing

An employer is required to conduct job applicant, reasonable-suspicion, and routine fitness-for-duty drug testing. If an employee in the course of employment enters an employee assistance program for drug-related problems, or a drug rehabilitation program, the employer must require the employee to submit to a drug test as a follow-up to such program, unless the employee voluntarily entered the program. If follow-up testing is required, it must be conducted at least once a year for a 2-year period after completion of the program.¹⁰

Procedures

All specimen collection and testing for drugs pursuant to s. 440.102, F.S., must be performed in accordance with the following procedures:

- Samples must be collected with due regard to privacy of the individual providing the sample, and in a manner reasonably calculated to prevent substitution or contamination of the sample.
- Specimen collection must be documented, and the documentation procedures must include:
 - Labeling of specimen containers, and
 - A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information must not preclude the administration of the drug test, but must be taken into account in interpreting any positive confirmed test result;
- Specimen collection, storage, and transportation to the testing site must be performed in a manner that reasonably precludes contamination or adulteration of specimens;
- Each confirmation test conducted must be conducted by a licensed or certified laboratory;
- A specimen for a drug test may be taken or collected by any of the following persons:
 - A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment; or
 - A qualified person employed by a licensed or certified laboratory;
- A person who collects or takes a specimen for a drug test must collect an amount sufficient for two drug tests as determined by the AHCA.
- Every specimen that produces a positive, confirmed test result must be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 210 days after the result of the test was mailed or otherwise delivered to the medical review officer. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant must notify the laboratory and the sample must be retained by the laboratory until the case or administrative appeal is settled. During the 180-day period after written notification of a positive test result, the employee or

⁹ Section 440.102(3)(c), F.S.

¹⁰ Section 440.102(4), F.S.

job applicant who has provided the specimen must be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the AHCA, chosen by the employee or job applicant. The second laboratory must test at equal or greater sensitivity for the drug in question as the first laboratory;

- Within 5 working days after receipt of a positive confirmed test result from the medical review officer, an employer must inform an employee or job applicant in writing of such positive test result, the consequences of such results, and the options available to the employee or job applicant. The employer must provide to the employee or job applicant, upon request, a copy of the test results;
- Within 5 working days after receiving notice of a positive confirmed test result, an employee or job applicant may submit information to the employer explaining or contesting the test result, and explaining why the result does not constitute a violation of the employer's policy;
- The employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, must be provided by the employer to the employee or job applicant; and all such documentation must be kept confidential by the employer pursuant to subsection (8) and must be retained by the employer for at least 1 year;
- An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer;
- An employer that performs drug testing or specimen collection must use chain-of-custody procedures established by the AHCA;
- An employer must pay the cost of all drug tests, initial and confirmation, which the employer requires of employees. An employee or job applicant must pay the costs of any additional drug tests not required by the employer;
- An employer must not discharge, discipline, or discriminate against an employee solely upon the employee's voluntarily seeking treatment, while under the employ of the employer, for a drug-related problem if the employee has not previously tested positive for drug use, entered an employee assistance program for drug-related problems, or entered a drug rehabilitation program;
- If drug testing is conducted based on reasonable suspicion, the employer must promptly detail in writing the circumstances which formed the basis of the determination that reasonable suspicion existed to warrant the testing; and
- All authorized remedial treatment, care, and attendance provided by a health care provider to an injured employee before medical and indemnity benefits are denied under s. 440.102, F.S., must be paid for by the carrier or self-insurer.

Confirmation Testing

If an initial drug test is negative, the employer may, in its sole discretion, seek a confirmation test which may be conducted only by licensed or certified laboratories. All positive initial tests must be confirmed using gas chromatography/mass spectrometry or an equivalent or more accurate scientifically accepted method approved by the AHCA or the U.S. Food and Drug Administration as such technology becomes available in a cost-effective form. If an initial drug test of an employee or job applicant is confirmed as positive, the employer's medical review

officer must provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

Employer Protection

An employee or job applicant whose drug test result is confirmed as positive in accordance with s. 440.102, F.S., must not, by virtue of the result alone, be deemed to have a “handicap” or “disability” as defined under federal, state, or local handicap and disability discrimination laws.

An employer who discharges or disciplines an employee or refuses to hire a job applicant in compliance with this section is considered to have discharged, disciplined, or refused to hire for cause.

III. Effect of Proposed Changes:

Drug-Free Workplace Program for Agencies within State Government

Section 1 makes changes to the Drug-Free Workplace Act in s. 112.0455, F.S., by requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatinine, oxidants and detection of adulterants. This section prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.

Drug-Free Workplace Program for Workers’ Compensation Employers

Section 2 makes numerous changes to the procedures relating to drug-free workplaces for Workers’ Compensation Law employers in s. 440.102, F.S.

Definitions

The definition of “drug” is amended by specifying that alcohol means any substance containing any form of alcohol, including ethanol, methanol, propanol, and isopropanol. A controlled substance includes those identified under Schedules I, II, III, IV, or Schedule V of s. 893.03, F.S.;¹¹ and any controlled substance identified under Schedules I, II, III, IV, or V of the Controlled Substances Act, 21 U.S.C. s. 812(c).

A “drug test,” when testing for alcohol, must be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.¹²

¹¹ Section 893.03, F.S., classifies controlled substances into five categories, known as schedules. These schedules regulate the manufacture, distribution, preparation, and dispensing of the substances listed in the schedules. The most important factors in determining the schedule classification of a substance are the “potential for abuse” of the substance and whether there is a currently accepted medical use for the substance in the United States.

¹² This rule describes required procedures for conducting workplace drug and alcohol testing for the federally regulated transportation industry. See <https://www.transportation.gov/odapc/part40> (last visited January 27, 2020).

The U. S. Department of Health and Human Services (HHS) and U. S. Department of Transportation (USDOT) are added to the list of governmental agencies that can approve what “specimen” means.

Notice

The section changes the written policy statement that employers are required to give to all employees and applicants prior to testing by removing from the procedures the requirement that employees and job applicants could confidentially report to a medical review officer their use of medications *both before and after being tested*. The bill also removes the requirement that the policy contain the brand name of drugs being tested for.

Procedures

The section deletes a labeling requirement for specimen containers for saliva or breath testing when not being transported to a laboratory for analysis.

The section deletes a requirement that a form must be provided upon which an employee may provide information considered by the employee to be relevant to the test, including the use of medication, and deletes the requirement that such information be taken into account in interpreting positive confirmed test results.

The section replaces a requirement that a drug test specimen may be collected by a physician, physician assistant, registered professional nurse, licensed practical nurse, nurse practitioner, certified paramedic at scene of accident, or qualified lab employee with a requirement that a specimen may be collected by a person who meets the qualification standards for urine or oral fluid specimen collection as specified by the HHS or the USDOT. For alcohol testing, a person must meet the USDOT for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug testing laboratory. A person who directly supervises an employee subject to testing may not serve as the specimen collector for that employee unless there is no other qualified specimen collector available.

The section clarifies that a specimen amount should be sufficient for two independent drug tests - one to screen the specimen and one to confirm the screening results.

The section extends from 210 days to one year the amount of time a specimen that produces a positive, confirmed test must be preserved.

The section shortens from 180 days to 60 days the period after a positive test during which an employee or applicant may have the sample retested.

The section provides that a second lab must test the specimen at the limit of detection for the drug or analyte confirmed by the original, and if the drug or analyte is detected by the second laboratory, the result must be reported as reconfirmed positive.

The section deletes a requirement that an applicant or employee’s explanation or challenge of a positive test must be provided to the applicant or employee.

Current law provides that an employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been verified by a confirmation test and by a medical review officer. The section removes the confirmation test as a condition, and creates an exception when a confirmed positive breath alcohol test was conducted in accordance with U.S. Department of Transportation alcohol testing procedures.

An employer that performs drug testing or specimen collection must use chain-of-custody procedures established by the Agency for Health Care Administration, or, as provided by the bill, procedures established by *the HHS, or the USDOT*.

Confirmation Testing

The section removes a provision specifying that, if an initial drug test is negative, the employer may in its sole discretion seek a confirmation test, and removes a provision that only licensed or certified laboratories may conduct confirmation drug tests.

The section provides that all laboratory positive initial tests on a urine, oral fluid, blood, or hair specimen must be confirmed using gas chromatography/mass spectrometry or an equivalent or more accurate scientifically accepted method approved by the HHS or the USDOT, and removes a provision that the tests can be confirmed by methods approved by the AHCA or the U.S. Food and Drug Administration.

The section provides that for a breath alcohol test, an initial positive result must be confirmed by a second breath specimen taken and tested using an evidential breath testing device listed on the conforming products list issued by the National Highway Traffic Safety Administration and conducted in accordance with USDOT alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

Employer Protection

The section provides that an employee or job applicant whose drug test result is confirmed or *verified* as positive must not, by virtue of the result alone, be deemed to have a “handicap” or “disability” as defined under federal, state, or local handicap and disability discrimination laws.

Drug-Testing Standards

The section creates a new subsection (9) in s. 440.102, F.S., requiring sample prescreening validity tests that can detect drug testing subversion technologies in urine specimens, and requiring screening tests that meet specified criteria as to creatinine, oxidants, and detection of adulterants. The section prohibits sending urine specimens for out of state testing unless the drug-testing facility meets Florida standards, and requires the AHCA to adopt rules for these standards.

Drug-Testing Standards for Laboratories

The section removes a requirement that lab reports of drug tests must include any correlation between medication reported by the employee or applicant and the test result, consistent with

lines 277-286 of the bill, which delete the requirement than an employee or applicant be provided a form to list currently or recently used medication.

Cross Reference

Section 3 updates a cross reference in s. 443.101, F.S.

Effective date

Section 4 provides that 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 a state tax shares 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:

Indeterminate. If the amended testing standards in the bill reduce the number of drug-testing facilities that can comply, those drug-testing facilities that can comply should see an increase in the number of tests they perform.

C. Government Sector Impact:

Indeterminate; no agency analysis has been completed on the fiscal impact of this bill. The Agency for Health Care Administration will have an indeterminate negative fiscal impact from any required rulemaking authorized by this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 112.0455, 440.102, and 443.101 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Baxley

12-00779A-20

20201186__

1 A bill to be entitled
 2 An act relating to drug-free workplaces; amending s.
 3 112.0455, F.S.; requiring licensed drug-testing
 4 facilities to perform prescreening tests on urine
 5 specimens to determine the specimens' validity;
 6 specifying requirements for such tests; authorizing
 7 such facilities to rely on such tests to determine if
 8 confirmation testing is required; providing that urine
 9 specimens may not be sent to an out-of-state facility
 10 unless the facility complies with certain
 11 requirements; authorizing the Agency for Health Care
 12 Administration to adopt rules; conforming cross-
 13 references; amending s. 440.102, F.S.; revising
 14 definitions; revising information required in a
 15 written policy statement provided to employees and job
 16 applicants before drug testing; revising procedures
 17 for specimen collection, testing, and preservation;
 18 revising qualifications for persons who may take or
 19 collect specimens for a drug test; revising
 20 requirements and procedures for retesting specimens;
 21 deleting and revising confidentiality requirements for
 22 employers relating to certain information; revising
 23 circumstances under which an employer may take certain
 24 actions as to an employee or a job applicant on the
 25 sole basis of certain positive test results; revising
 26 standards for chain-of-custody procedures; revising
 27 requirements and authorized actions relating to
 28 confirmation testing; requiring licensed drug-testing
 29 facilities to perform prescreening tests on urine

Page 1 of 18

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

12-00779A-20

20201186__

30 specimens to determine the specimens' validity;
 31 specifying requirements for such tests; authorizing
 32 such facilities to rely on such tests to determine if
 33 confirmation testing is required; providing that urine
 34 specimens may not be sent to an out-of-state facility
 35 unless the facility complies with certain
 36 requirements; authorizing the agency to adopt rules;
 37 conforming provisions to changes made by the act;
 38 amending s. 443.101, F.S.; conforming a cross-
 39 reference; providing an effective date.

40
 41 WHEREAS, the State of Florida has a profound interest in
 42 the health and welfare of its citizens, and

43 WHEREAS, new and emerging drug-testing subversion
 44 technologies represent a significant threat to the ability to
 45 properly identify those suffering from addiction and drug abuse,
 46 and

47 WHEREAS, the Legislature, therefore, seeks to require urine
 48 sample validity testing, such that those persons being tested
 49 can be properly and promptly identified for referral to drug
 50 treatment programs and other health care services, NOW,
 51 THEREFORE,

52
 53 Be It Enacted by the Legislature of the State of Florida:

54
 55 Section 1. Present subsections (13) through (17) of section
 56 112.0455, Florida Statutes, are redesignated as subsections (14)
 57 through (18), respectively, a new subsection (13) is added to
 58 that section, and paragraph (b) of subsection (6) and paragraph

Page 2 of 18

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

12-00779A-20

20201186__

(a) of present subsection (15) are amended, to read:

112.0455 Drug-Free Workplace Act.—

(6) NOTICE TO EMPLOYEES.—

(b) Prior to testing, all employees and job applicants for employment shall be given a written policy statement from the employer which contains:

1. A general statement of the employer's policy on employee drug use, which shall identify:

a. The types of testing an employee or job applicant may be required to submit to, including reasonable suspicion or other basis; and

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report the use of prescription or nonprescription medications both before and after being tested. Additionally, employees and job applicants shall receive notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications shall be developed by the Agency for Health Care Administration.

5. The consequences of refusing to submit to a drug test.

6. Names, addresses, and telephone numbers of employee assistance programs and local alcohol and drug rehabilitation programs.

12-00779A-20

20201186__

7. A statement that an employee or job applicant who receives a positive confirmed drug test result may contest or explain the result to the employer within 5 working days after written notification of the positive test result. If an employee or job applicant's explanation or challenge is unsatisfactory to the employer, the person may contest the drug test result as provided by subsections (15) ~~(14)~~ and (16) ~~(15)~~.

8. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil actions brought pursuant to this section.

9. A list of all drugs for which the employer will test, described by brand names or common names, as applicable, as well as by chemical names.

10. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the Public Employees Relations Commission.

11. A statement notifying employees and job applicants of their right to consult the testing laboratory for technical information regarding prescription and nonprescription medication.

(13) DRUG-TESTING STANDARDS; SAMPLE VALIDITY PRESCREENING.—
Before a drug-testing facility licensed under part II of chapter
408 may perform any drug-screening test on a urine specimen
collected in this state, prescreening tests must be performed to
determine the validity of the specimen. The prescreening tests
must be capable of detecting, or detecting and defeating, novel
or emerging urine drug-testing subversion technologies as
described in this subsection.

12-00779A-20

20201186__

(a) The drug-testing facility shall use urine sample validity screening tests that meet all of the following criteria:

1. A urine sample validity screening test for creatinine must use a 20 mg/dL cutoff concentration and must have minimal interferences from bilirubin and blood in the urine. The urine sample validity screening test must be able to discriminate between a creatinine level from an unadulterated urine sample and a creatinine level arising from overhydration or creatine or protein loading.

2. A urine sample validity screening test for oxidants must be able to detect the presence or effects of oxidant adulterants up to 6 days after sample collection, under the sample storage conditions outlined in the laboratory standards guideline adopted by rule by the Agency for Health Care Administration, and after any sample transport that is routinely involved.

3. Urine sample validity screening tests must be able to detect synthetic or freeze-dried urine substituted for the donor's urine for drug testing.

4. Urine sample validity screening tests must be validated for the detection of all of the additional adulterant classes represented by glutaraldehyde, salt, heavy metals, cationic detergents, protease, strong alkaline buffers, and strong acidic buffers. The detection limits of these classes must be at a sufficient level to detect a nonphysiologic sample or interference with enzyme immunoassay drug screening tests.

(b) The drug-testing facility may use only urine sample validity screening tests that have undergone validation studies conducted by the manufacturer to document the product's

12-00779A-20

20201186__

conformance to the requirements of this subsection.

(c) A drug-testing facility may rely on urine sample validity screening tests to determine if confirmation testing is required for any urine sample that has been deemed invalid for drug screening.

(d) Urine specimens collected in this state may not be sent for drug screening tests to a drug-testing facility located outside of this state unless such drug-testing facility complies with all requirements of this subsection.

(e) The Agency for Health Care Administration shall adopt rules necessary for the implementation and enforcement of this subsection.

~~(16)-(15)~~ NONDISCIPLINE REMEDIES.-

(a) Any person alleging a violation of ~~the provisions of~~ this section, that is not remediable by the commission or an arbitrator pursuant to subsection ~~(15)~~ ~~(14)~~, must institute a civil action for injunctive relief or damages, or both, in a court of competent jurisdiction within 180 days of the alleged violation, or be barred from obtaining the following relief. Relief is limited to:

1. An order restraining the continued violation of this section.

2. An award of the costs of litigation, expert witness fees, reasonable attorney ~~attorney's~~ fees, and noneconomic damages provided that damages shall be limited to the recovery of damages directly resulting from injury or loss caused by each violation of this section.

Section 2. Present subsections (9) through (15) of section 440.102, Florida Statutes, are redesignated as subsections (10)

12-00779A-20

20201186__

through (16), respectively, a new subsection (9) is added to that section, and paragraphs (c), (e), and (q) of subsection (1), paragraph (a) of subsection (3), paragraphs (b) through (h), (j), (k), and (l) of subsection (5), subsection (6), paragraph (a) of subsection (7), and paragraphs (b) and (c) of present subsection (9) of that section are amended, to read:

440.102 Drug-free workplace program requirements.—The following provisions apply to a drug-free workplace program implemented pursuant to law or to rules adopted by the Agency for Health Care Administration:

(1) DEFINITIONS.—Except where the context otherwise requires, as used in this act:

(c) "Drug" means any form of alcohol, as defined in s. 322.01(2), including a distilled spirit, wine, a malt beverage, or an intoxicating preparation; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of s. 893.03; any controlled substance identified under Schedule I, Schedule II, Schedule III, Schedule IV, or Schedule V of the Controlled Substances Act, 21 U.S.C. s. 812(c) liquor, an amphetamine, a cannabinoid, cocaine, phenylclidine (PCP), a hallucinogen, methaqualone, an opiate, a barbiturate, a benzodiazepine, a synthetic narcotic, a designer drug; or a metabolite of any of the substances listed in this paragraph. An employer may test an individual for any or all of such drugs.

(e) "Drug test" or "test" means any chemical, biological, or physical instrumental analysis administered, by a laboratory certified by the United States Department of Health and Human Services or licensed by the Agency for Health Care

12-00779A-20

20201186__

Administration, for the purpose of determining the presence or absence of a drug or its metabolites. In the case of testing for the presence of alcohol, the test must be conducted in accordance with the United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(q) "Specimen" means tissue, hair, or a product of the human body capable of revealing the presence of drugs or their metabolites, as approved by the United States Food and Drug Administration, ~~or~~ the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation.

(3) NOTICE TO EMPLOYEES AND JOB APPLICANTS.—

(a) One time only, before ~~prior to~~ testing, an employer shall give all employees and job applicants for employment a written policy statement that ~~which~~ contains:

1. A general statement of the employer's policy on employee drug use, which must identify:

a. The types of drug testing an employee or job applicant may be required to submit to, including reasonable-suspicion drug testing or drug testing conducted on any other basis.

b. The actions the employer may take against an employee or job applicant on the basis of a positive confirmed drug test result.

2. A statement advising the employee or job applicant of the existence of this section.

3. A general statement concerning confidentiality.

4. Procedures for employees and job applicants to confidentially report to a medical review officer the use of

12-00779A-20

20201186__

prescription or nonprescription medications ~~to a medical review officer both before and after being tested.~~

5. A list of the most common medications, by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. A list of such medications as developed by the Agency for Health Care Administration shall be available to employers through the department.

6. The consequences of refusing to submit to a drug test.

7. A representative sampling of names, addresses, and telephone numbers of employee assistance programs and local drug rehabilitation programs.

8. A statement that an employee or job applicant who receives a positive confirmed test result may contest or explain the result to the medical review officer within 5 working days after receiving written notification of the test result; that if an employee's or job applicant's explanation or challenge is unsatisfactory to the medical review officer, the medical review officer shall report a positive test result back to the employer; and that a person may contest the drug test result pursuant to law or to rules adopted by the Agency for Health Care Administration.

9. A statement informing the employee or job applicant of his or her responsibility to notify the laboratory of any administrative or civil action brought pursuant to this section.

10. A list of all drugs for which the employer will test, described by ~~brand name or~~ common name, as applicable, as well as by chemical name.

11. A statement regarding any applicable collective bargaining agreement or contract and the right to appeal to the

12-00779A-20

20201186__

Public Employees Relations Commission or applicable court.

12. A statement notifying employees and job applicants of their right to consult with a medical review officer for technical information regarding prescription or nonprescription medication.

(5) PROCEDURES AND EMPLOYEE PROTECTION.—All specimen collection and testing for drugs under this section shall be performed in accordance with the following procedures:

(b) Specimen collection must be documented, and the documentation procedures shall include the:

1. labeling of specimen containers so as to reasonably preclude the likelihood of erroneous identification of test results. For saliva or breath alcohol testing, a specimen container is not required if the specimen is not being transported to a laboratory for analysis

2. A form for the employee or job applicant to provide any information he or she considers relevant to the test, including identification of currently or recently used prescription or nonprescription medication or other relevant medical information. The form must provide notice of the most common medications by brand name or common name, as applicable, as well as by chemical name, which may alter or affect a drug test. The providing of information shall not preclude the administration of the drug test, but shall be taken into account in interpreting any positive confirmed test result.

(c) Specimen collection, storage, and transportation to a laboratory ~~the testing site~~ shall be performed in a manner that reasonably precludes contamination or adulteration of specimens.

(d) Each confirmation test conducted under this section,

12-00779A-20

20201186__

not including the taking or collecting of a specimen to be tested, shall be conducted by a licensed or certified laboratory as described in subsection (10) ~~(9)~~.

(e) A specimen for a drug test may be taken or collected by any person who meets the qualification standards for urine or oral fluid specimen collection as specified by the United States Department of Health and Human Services or the United States Department of Transportation. For alcohol testing, a person must meet the United States Department of Transportation standards for a screening test technician or a breath alcohol technician. A hair specimen may be collected and packaged by a person who has been trained and certified by a drug-testing laboratory. A person who directly supervises an employee subject to testing may not serve as the specimen collector for that employee unless there is no other qualified specimen collector available of the following persons:

1. ~~A physician, a physician assistant, a registered professional nurse, a licensed practical nurse, or a nurse practitioner or a certified paramedic who is present at the scene of an accident for the purpose of rendering emergency medical service or treatment.~~

2. ~~A qualified person employed by a licensed or certified laboratory as described in subsection (9).~~

(f) A person who collects or takes a specimen for a drug test shall collect an amount sufficient for two independent drug tests, one to screen the specimen and one for confirmation of the screening test results, at a laboratory as determined by the Agency for Health Care Administration.

(g) Every specimen that produces a positive, confirmed test

12-00779A-20

20201186__

result shall be preserved by the licensed or certified laboratory that conducted the confirmation test for a period of at least 1 year after the confirmation test was conducted ~~210 days after the result of the test was mailed or otherwise delivered to the medical review officer~~. However, if an employee or job applicant undertakes an administrative or legal challenge to the test result, the employee or job applicant shall notify the laboratory and the sample shall be retained by the laboratory until the case or administrative appeal is settled. During the 60-day ~~180-day~~ period after written notification of a positive test result, the employee or job applicant who has provided the specimen shall be permitted by the employer to have a portion of the specimen retested, at the employee's or job applicant's expense, at another laboratory, licensed and approved by the Agency for Health Care Administration, chosen by the employee or job applicant. The second laboratory must test the specimen at the limit of detection for the drug or analyte confirmed by the original at equal or greater sensitivity for the drug in question as the first laboratory. If the drug or analyte is detected by the second laboratory, the result must be reported as reconfirmed positive. The first laboratory that performed the test for the employer is responsible for the transfer of the portion of the specimen to be retested, and for the integrity of the chain of custody during such transfer.

(h) Within 5 working days after receipt of a positive verified ~~confirmed~~ test result from the medical review officer, an employer shall inform an employee or job applicant in writing of such positive test result, the consequences of such result ~~results~~, and the options available to the employee or job

12-00779A-20

20201186__

applicant. The employer shall provide to the employee or job applicant, upon request, a copy of the test results.

(j) ~~The employee's or job applicant's explanation or challenge of the positive test result is unsatisfactory to the employer, a written explanation as to why the employee's or job applicant's explanation is unsatisfactory, along with the report of positive result, shall be provided by the employer to the employee or job applicant; and All such documentation of a positive test shall be kept confidential by the employer pursuant to subsection (8) and shall be retained by the employer for at least 1 year.~~

(k) An employer may not discharge, discipline, refuse to hire, discriminate against, or request or require rehabilitation of an employee or job applicant on the sole basis of a positive test result that has not been reviewed and verified by a confirmation test and by a medical review officer, except when a confirmed positive breath alcohol test was conducted in accordance with United States Department of Transportation alcohol testing procedures.

(l) An employer that performs drug testing or specimen collection shall use chain-of-custody procedures established by the Agency for Health Care Administration, the United States Department of Health and Human Services, or the United States Department of Transportation to ensure proper recordkeeping, handling, labeling, and identification of all specimens tested.

(6) CONFIRMATION TESTING.—

(a) ~~If an initial drug test is negative, the employer may in its sole discretion seek a confirmation test.~~

~~(b) Only licensed or certified laboratories as described in~~

12-00779A-20

20201186__

~~subsection (9) may conduct confirmation drug tests.~~

~~(e) All laboratory positive initial tests on a urine, oral fluid, blood, or hair specimen shall be confirmed using gas chromatography/mass spectrometry (GC/MS) or an equivalent or more accurate scientifically accepted method approved by the United States Department of Health and Human Services or the United States Department of Transportation Agency for Health Care Administration or the United States Food and Drug Administration as such technology becomes available in a cost-effective form.~~

~~(b)(d)~~ If a ~~an~~ initial drug test of an employee or job applicant is confirmed by the laboratory as positive, the employer's medical review officer shall provide technical assistance to the employer and to the employee or job applicant for the purpose of interpreting the test result to determine whether the result could have been caused by prescription or nonprescription medication taken by the employee or job applicant.

(c) For a breath alcohol test, an initial positive result must be confirmed by a second breath specimen taken and tested using an evidential breath testing device listed on the conforming products list issued by the National Highway Traffic Safety Administration and conducted in accordance with United States Department of Transportation alcohol testing procedures authorized under 49 C.F.R. part 40, subparts J through M.

(7) EMPLOYER PROTECTION.—

(a) An employee or job applicant whose drug test result is confirmed or verified as positive in accordance with this section shall not, by virtue of the result alone, be deemed to

12-00779A-20

20201186

have a "handicap" or "disability" as defined under federal, state, or local handicap and disability discrimination laws.

(9) DRUG-TESTING STANDARDS; SAMPLE VALIDITY PRESCREENING.— Before a drug-testing facility licensed under part II of chapter 408 may perform any drug screening test on a urine specimen collected in this state, prescreening tests must be performed to determine the validity of the specimen. The prescreening tests must be capable of detecting, or detecting and defeating, novel or emerging urine drug-testing subversion technologies as described in this subsection.

(a) The drug-testing facility shall use urine sample validity screening tests that meet all of the following criteria:

1. A urine sample validity screening test for creatinine must use a 20 mg/dL cutoff concentration and must have minimal interferences from bilirubin and blood in the urine. The urine sample validity screening test must be able to discriminate between a creatinine level from an unadulterated urine sample and a creatinine level arising from overhydration or creatine or protein loading.

2. A urine sample validity screening test for oxidants must be able to detect the presence or effects of oxidant adulterants up to 6 days after sample collection, under the sample storage conditions outlined in the laboratory standards guideline adopted by rule by the Agency for Health Care Administration, and after any sample transport that is routinely involved.

3. Urine sample validity screening tests must be able to detect synthetic or freeze-dried urine substituted for the donor's urine for drug testing.

12-00779A-20

20201186

4. Urine sample validity screening tests must be validated for the detection of all of the additional adulterant classes represented by glutaraldehyde, salt, heavy metals, cationic detergents, protease, strong alkaline buffers, and strong acidic buffers. The detection limits of these classes must be at a sufficient level to detect a nonphysiologic sample or interference with enzyme immunoassay drug-screening tests.

(b) The drug-testing facility may use only urine sample validity screening tests that have undergone validation studies conducted by the manufacturer to document the product's conformance to the requirements of this subsection.

(c) A drug-testing facility may rely on urine sample validity screening tests to determine if confirmation testing is required for any urine sample that has been deemed invalid for drug screening.

(d) Urine specimens collected in this state may not be sent for drug-screening tests to a drug-testing facility located outside of this state unless such drug-testing facility complies with all requirements of this subsection.

(e) The Agency for Health Care Administration shall adopt rules necessary for the implementation and enforcement of this subsection.

~~(10)-(9)~~ DRUG-TESTING STANDARDS FOR LABORATORIES.—

(b) A laboratory may analyze initial or confirmation test specimens only if:

1. The laboratory obtains a license under part II of chapter 408 and s. 112.0455(18) ~~s. 112.0455(17)~~. Each applicant for licensure and each licensee must comply with all requirements of this section, part II of chapter 408, and

12-00779A-20

20201186__

applicable rules.

2. The laboratory has written procedures to ensure the chain of custody.

3. The laboratory follows proper quality control procedures, including, but not limited to:

a. The use of internal quality controls, including the use of samples of known concentrations which are used to check the performance and calibration of testing equipment, and periodic use of blind samples for overall accuracy.

b. An internal review and certification process for drug test results, conducted by a person qualified to perform that function in the testing laboratory.

c. Security measures implemented by the testing laboratory to preclude adulteration of specimens and drug test results.

d. Other necessary and proper actions taken to ensure reliable and accurate drug test results.

(c) A laboratory shall disclose to the medical review officer a written positive confirmed test result report within 7 working days after receipt of the sample. All laboratory reports of a drug test result must, at a minimum, state:

1. The name and address of the laboratory that performed the test and the positive identification of the person tested.

2. Positive results on confirmation tests only, or negative results, as applicable.

3. A list of the drugs for which the drug analyses were conducted.

4. The type of tests conducted for both initial tests and confirmation tests and the minimum cutoff levels of the tests.

~~5. Any correlation between medication reported by the~~

12-00779A-20

20201186__

~~employee or job applicant pursuant to subparagraph (5)(b)2. and a positive confirmed drug test result.~~

A report must not disclose the presence or absence of any drug other than a specific drug and its metabolites listed pursuant to this section.

Section 3. Paragraph (b) of subsection (11) of section 443.101, Florida Statutes, is amended to read:

443.101 Disqualification for benefits.—An individual shall be disqualified for benefits:

(11) If an individual is discharged from employment for drug use as evidenced by a positive, confirmed drug test as provided in paragraph (1)(d), or is rejected for offered employment because of a positive, confirmed drug test as provided in paragraph (2)(c), test results and chain of custody documentation provided to the employer by a licensed and approved drug-testing laboratory is self-authenticating and admissible in reemployment assistance hearings, and such evidence creates a rebuttable presumption that the individual used, or was using, controlled substances, subject to the following conditions:

(b) Only laboratories licensed and approved as provided in s. 440.102(10) ~~s. 440.102(9)~~, or as provided by equivalent or more stringent licensing requirements established by federal law or regulation may perform the drug tests.

Section 4. 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 29, 2020

The Honorable Chairman Ed Hooper
326 Senate Office Building
Tallahassee, FL 32309

Dear Chairman Hooper

I would like to request that SB 1186 Drug Free Workplaces be heard in the next Governmental Oversight and Accountability Committee meeting.

This bill is to align Florida Statute 440.102 with the drug testing regulations and procedures of the U.S. Department of Health and Human Services (HHS) and the U.S. Department of Transportation (DOT) as the recognized regulatory and procedural authorities for federal drug-free workplace standards.

I appreciate your favorable consideration.

Onward & Upward,



Senator Dennis 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)

2/17/2020

Meeting Date

1186

Bill Number (if applicable)

Topic Drug-free work place

Amendment Barcode (if applicable)

Name Melissa Villar

Job Title Executive Director

Address PO Box 11254

Phone (850) 354-8424

Street

TUM

FL

32302

City

State

Zip

Email NORMLTallahassee@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing NORML Tallahassee

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)

2/18/20

Meeting Date

1186

Bill Number (if applicable)

Topic DRUG FREE WORKPLACES

Amendment Barcode (if applicable)

Name RJ MYERS

Job Title LOBBYIST

Address 113 EAST COLLEGE AVE, SUITE 300
Street

Phone 850/938-0883

TALLAHASSEE
City

FL
State

32301
Zip

Email RJ@SVSEFFCONSULTING.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing SAVE OUR SOCIETY

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)

2/17/2010
Meeting Date

SB 1186
Bill Number (if applicable)

Topic DRUG FREE WORKPLACE

Amendment Barcode (if applicable)

Name MIKE HUET

Job Title _____

Address 301 S. BRUNNEN
Street

Phone 850/577-9090

TLH FL 32301
City State Zip

Email MIKE.HUET@ERA1-ROBINSON.COM

Speaking: ☐ For ☐ Against ☒ Information

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

Representing LABORATORY CORP. OF AMERICA

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 _____

1186
Bill Number (if applicable) _____

Topic _____

Amendment Barcode (if applicable) _____

Name ROBBIE SUGGS

Job Title CEO

Address _____

Phone _____

Street

BRANTFORD

FL

32008

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing VDX

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)

From: [Dennis, Debbie](#)
To: [Hooper, Ed](#); [McVaney, Joe](#)
Cc: [Redig, Tamra](#)
Subject: SB 1186 Drug Free Workplaces
Date: Monday, February 17, 2020 3:06:14 PM

Senator Hooper,

I would like to request that Senator Albritton be allowed to present SB 1186 Drug Free Workplaces as I am in Education presenting another bill.

Thank you for your consideration.

*Debbie Dennis, Chief Legislative Assistant
Senator Bailey, SD 12
(850) 487-5012*

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 1272

INTRODUCER: Senators Montford and Albritton

SUBJECT: Statewide Emergency Shelter Task Force

DATE: February 14, 2020

REVISED: _____

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

I. Summary:

SB 1272 creates a 7-member task force within the Department of Management Services. The Statewide Emergency Shelter Task Force (Task Force) is tasked with making recommendations to the Governor and the Legislature regarding the establishment and operation of state-designated emergency shelters. The recommendations must include, but are not limited to, a review of the local, state, and federal activities organized, planned, and executed at emergency shelters during the past 10 years with a focus on a review of all resources (including financial) and a quantification of expenditures.

The Task Force must provide recommendations regarding the establishment and operation of state-designated emergency shelters to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2020.

The bill provides for the termination of the Task Force on May 15, 2021.

The Department of Management Services will experience an indeterminate negative fiscal impact as the agency responsible for the reimbursement of travel expenses and other administrative matters.

The bill takes effect July 1, 2020.

II. Present Situation:

Task Force Requirements under Section 20.03, Florida Statutes

Section 20.03(8), F.S., defines “task force” to mean an “advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution

or policy alternative related to that problem.” This provision specifies that the existence of the task force terminates upon the completion of its assignment. Further, members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation and are authorized to receive only per diem and reimbursement for travel expenses.¹

Public Shelters

The Florida Legislature has declared its intent that the State not have a deficit of safe public hurricane evacuation shelter space in any region of the State.² The Division of Emergency Management (division), established in the Executive Office of the Governor, serves as the state’s emergency management agency³ and is directed by the State Emergency Management Act⁴ to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

The division must administer a program for surveying existing public and private buildings, with the owner’s written agreement, to identify which facilities are appropriately designed and located to serve as shelters in the event of an emergency. The state university boards of trustees, district school boards, community college boards of trustees, and the Department of Education are responsible for coordinating and implementing the survey of public schools, universities, and community colleges with the division or the local emergency management agency.⁵

Annually, the Division must provide to the President of the Senate, the Speaker of the House of Representatives, and the Governor a list of facilities recommended to be retrofitted using state funds.⁶ State Funds are to be maximized and targeted to regional planning council regions with hurricane evacuation shelter deficits.⁷ The owner or lessee of a public hurricane evacuation shelter that is included on the list of facilities recommended for retrofitting is not required to perform any recommended improvements⁸

Additionally, by January 31 of each even-numbered year, the division must prepare and submit a statewide emergency shelter plan⁹ (the Plan) to the Governor and Cabinet for approval.¹⁰ The plan must identify the general location and square footage of special needs shelters, by regional planning council region, during the next five years.¹¹ The plan must also include information on the availability of shelters that accept pets.¹² The Department of Health is required to assist the division in determining the estimated need for special needs shelter space and the adequacy of

¹ Section 20.052(2)(d), F.S.

² Section 252.385(1), F.S.

³ Section 14.2016, F.S.

⁴ Section 252.31, F.S., through s. 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

⁵ Section 252.385(2)(a), F.S.

⁶ Section 252.385(3), F.S.

⁷ *Id.*

⁸ *Id.*

⁹ 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited January 29, 2020).

¹⁰ Section 252.385(2)(b), F.S.

¹¹ *Id.*

¹² *Id.*

facilities to meet the needs of persons with special needs based on information from the registries of persons with special needs and other information.¹³

Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies, who also must coordinate with these entities to ensure that designated facilities are ready to activate prior to a specific hurricane or disaster. Local emergency management agencies must also coordinate with the appropriate school board, university, community college, state agency, or local governing board when requesting the use of such public facilities as public hurricane evacuation shelters.¹⁴

The Department of Management Services (DMS) is required to incorporate provisions for the use of suitable leased public facilities as public hurricane evacuation shelters into lease agreements for state agencies. Suitable leased public facilities include leased public facilities that are solely occupied by state agencies and have at least 2,000 square feet of net floor area in a single room or in a combination of rooms having a minimum of 400 square feet in each room. The net square footage of floor area must be determined by subtracting from the gross square footage the square footage of spaces such as mechanical and electrical rooms, storage rooms, open corridors, restrooms, kitchens, science or computer laboratories, shop or mechanical areas, administrative offices, records vaults, and crawl spaces.¹⁵

The DMS must, in consultation with local and state emergency management agencies, assess DMS facilities to identify the extent to which each facility has public hurricane evacuation shelter space. The DMS must submit proposed facility retrofit projects that incorporate hurricane protection enhancements to the division for assessment.¹⁶

The DMS is required to include in the annual state facilities inventory report required under ss. 216.015-216.016, F.S., a separate list of state-owned facilities, including, but not limited to, meeting halls, auditoriums, conference centers, and training centers that have unoccupied space suitable for use as an emergency shelter during a storm or other catastrophic event. Facilities must be listed by the county and municipality where the facility is located and the list must be updated by May 31 of each year.¹⁷

The division is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government.¹⁸ The CEMP¹⁹ must be submitted to the President of the Senate, the

¹³ *Id.*

¹⁴ Section 252.385(4)(a), F.S.

¹⁵ Section 252.385(4)(b), F.S.

¹⁶ Section 252.385(4)(c), F.S.

¹⁷ Section 252.385(4)(d), F.S.

¹⁸ Section 252.35(2)(a), F.S.; *see also* s. 1013.372, F.S.

¹⁹ Rule 27P-2.002, F.A.C., incorporates the CEMP by reference; *See* Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited January 29, 2020).

Speaker of the House of Representatives, and the Governor on February 1 of every even-numbered year.²⁰ The CEMP must be operations oriented and:

- Include an evacuation component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of activities.
- Include a shelter component that includes specific regional and interregional planning provisions and promotes coordination of shelter activities between the public, private, and nonprofit sectors.²¹
- Include a postdisaster response and recovery component that includes specific regional and interregional planning provisions and promotes intergovernmental coordination of postdisaster response and recovery activities.
- Include provisions addressing aspects of preparedness, response, recovery, and mitigation as determined necessary by the division.
- Address the need for coordinated and expeditious deployment of state resources, including the Florida National Guard.
- Establish a system of communications and warnings.
- Establish guidelines and schedules for annual exercises that evaluate the ability of the state and its political subdivisions to respond to minor, major, and catastrophic disasters and support local emergency management agencies.
- Assign lead and support responsibilities to state agencies and personnel for emergency support functions and other support activities.

Federal Public Assistance for Emergency Shelters

The Federal Emergency Management Agency (FEMA) provides Public Assistance (PA) funding to State, Territorial, Tribal, and local government Applicants for costs related to emergency sheltering for survivors. Typically, such sheltering occurs in facilities with large open spaces, such as schools, churches, community centers, armories, or other similar facilities. FEMA refers to these shelters as congregate shelters.²²

Generally, FEMA does not provide PA funding for emergency sheltering in non-congregate environments, which are locations where each individual or household has living space that offers some level of privacy (e.g., hotels, motels, casinos, dormitories, retreat camps, etc.).²³ In limited circumstances, such as when congregate shelters are not available or sufficient, FEMA may reimburse costs related to emergency sheltering provided in non-congregate environments. FEMA's Assistant Administrator for Recovery has the authority to approve this policy exception. The applicant must submit a request for PA funding for costs related to emergency,

²⁰ Section 252.35(2)(a), F.S.

²¹ This component must, at a minimum: contain strategies to ensure the availability of adequate public shelter space in each region of the state; establish strategies for refuge-of-last-resort programs; provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel; provide for a postdisaster communications system for public shelters; establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and set forth policy guidance for sheltering people with special needs. Section 252.35(2)(a)2., F.S.

²² Federal Emergency Management Agency, *Public Assistance Program and Policy Guide*(FP 104-009-2 / April 2018), available at https://www.fema.gov/media-library-data/1525468328389-4a038bbef9081cd7dfe7538e7751aa9c/PAPPG_3.1_508_FINAL_5-4-2018.pdf (last visited February 12, 2020).

²³ *Id.* at 66.

non-congregate sheltering and obtain FEMA approval prior to sheltering survivors in non-congregate facilities.²⁴

FEMA provides for the reimbursement of costs (all or part, depending on the length of time after the event and the FEMA Disaster Declaration²⁵) associated with the operation of a shelter facility and the cleaning and restoration of a shelter facility to pre-congregate shelter conditions.²⁶

Eligible costs related to sheltering include, but are not limited to, the following²⁷:

- Facility lease or rent, including space for food preparation;
- Utilities such as power, water, and telephone;
- Minor facility modifications if necessary to make the facility habitable, compliant with the Americans with Disabilities Act, functional as a child care facility, or functional as an animal shelter;
- Restoration to return the facility to its condition prior to use;
- Generator costs; and
- Secure storage space for medical supplies.²⁸

III. Effect of Proposed Changes:

The bill creates the Statewide Emergency Shelter Task Force to make recommendations to the Governor and the Legislature regarding the establishment and operation of state-designated emergency shelters. The recommendations must include, but are not limited to, a review of the local, state, and federal activities organized, planned, and executed at emergency shelters during the past ten years, with a specific focus on the following:

- A review of all resources, including financial resources, provided in the designation and operation of emergency shelters, and whether the process used to designate and operate emergency shelters was effective in the preparation, operation, and cleanup of such shelters; and
- A quantification of any expenditures for the operation and cleanup of emergency shelters, including repair expenditures for any damage caused by the emergency shelter's occupation which have been less than the actual costs of completing such tasks; the governmental entity that was responsible for paying such uncovered costs; and whether the deficit was due to a lack of resources or a local, state, or federal policy.

The Task Force is established adjunct to the DMS.

The Task Force is composed of:

- One member representing state facilities, who shall serve as chair, appointed by the secretary of the Department of Management Services.
- One public school superintendent, appointed by the Commissioner of Education.

²⁴ *Id.*

²⁵ 44 C.F.R. Part §206, Subpart B., available at <https://www.ecfr.gov/cgi-bin/text-idx?SID=5a67508b6441bcdafc43c537b610741c&mc=true&node=sp44.1.206.b&rgn=div6> (last visited January 30, 2020).

²⁶ Federal Emergency Management Agency, *FEMA Disaster Assistance Policy*, Disaster Assistance Policy DAP9523.15 at Page 4 of 5, available at <https://www.fema.gov/pdf/government/grant/pa/policy.pdf> (last visited January 30, 2020).

²⁷ Sheltering and caring for household pets is only eligible while the pet owner is in an emergency shelter. See *Supra* note 22 at 67.

²⁸ *Id.*

- One member representing Florida College System institutions and state universities, appointed by the Chancellor of the State University System.
- One member representing charter schools, appointed by the Commissioner of Education.
- One member representing independent postsecondary institutions, appointed by the Commissioner of Education.
- One member representing emergency response agencies, appointed by the director of the Division of Emergency Management.
- One member representing facilities constructed with the assistance of state funds, appointed by the Governor.

Members serve at the pleasure of their appointing authority. Any vacancy must be filled in the same manner as the original appointment. A member of the Legislature or a registered legislative or executive branch lobbyist may not be appointed to the Task Force. In accordance with s. 20.052(4)(d), F.S., members shall serve without compensation but are entitled to reimbursement of travel and per diem expenses as provided in s. 112.061, F.S., in the performance of their duties and responsibilities under this section.

The Task Force must report its recommendations regarding the establishment and operation of state-designated emergency shelters to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 15, 2020.

The Task Force expires on May 15, 2021.

The bill provides an effective date of 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 DMS may incur a minor amount of travel and other administrative expenses as the Task Force is housed within the DMS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates an undesignated section of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Montford

3-01161B-20

20201272__

A bill to be entitled

An act relating to the Statewide Emergency Shelter Task Force; establishing the task force adjunct to the Department of Management Services; specifying the task force's purpose; providing for the membership of the task force; providing requirements and restrictions for members of the task force; authorizing reimbursement for per diem and travel expenses; requiring the task force to report recommendations to the Governor and the Legislature by a specified date; providing for expiration; providing an effective date.

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

Section 1. (1) The Statewide Emergency Shelter Task Force, a task force as defined in s. 20.03(8), Florida Statutes, is established adjunct to the Department of Management Services. The purpose of the task force is to make recommendations to the Governor and the Legislature regarding the establishment and operation of state-designated emergency shelters. The recommendations must include, but are not limited to, a review of the local, state, and federal activities organized, planned, and executed at emergency shelters during the past 10 years, with a specific focus on the following:

(a) A review of all resources, including financial resources, provided in the designation and operation of emergency shelters, and whether the process used to designate and operate emergency shelters was effective in the preparation, operation, and cleanup of such shelters; and

Page 1 of 3

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3-01161B-20

20201272__

(b) A quantification of any expenditures for the operation and cleanup of emergency shelters, including repair expenditures for any damage caused by the emergency shelter's occupation which have been less than the actual costs of completing such tasks; the governmental entity that was responsible for paying such uncovered costs; and whether the deficit was due to a lack of resources or a local, state, or federal policy.

(2) The task force is composed of the following members:

(a) One member representing state facilities, who shall serve as chair, appointed by the secretary of the Department of Management Services.

(b) One public school superintendent, appointed by the Commissioner of Education.

(c) One member representing Florida College System institutions and state universities, appointed by the Chancellor of the State University System.

(d) One member representing charter schools, appointed by the Commissioner of Education.

(e) One member representing independent postsecondary institutions, appointed by the Commissioner of Education.

(f) One member representing emergency response agencies, appointed by the director of the Division of Emergency Management.

(g) One member representing facilities constructed with the assistance of state funds, appointed by the Governor.

(3) Members shall serve at the pleasure of their appointing authority. Any vacancy must be filled in the same manner as the original appointment. A member of the Legislature or a registered legislative or executive branch lobbyist may not be

Page 2 of 3

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3-01161B-20 20201272__

59 appointed to the task force. In accordance with s. 20.052(4)(d),
60 Florida Statutes, members shall serve without compensation but
61 are entitled to reimbursement of travel and per diem expenses as
62 provided in s. 112.061, Florida Statutes, in the performance of
63 their duties and responsibilities under this section.

64 (4) The task force shall report its recommendations
65 regarding the establishment and operation of state-designated
66 emergency shelters to the Governor, the President of the Senate,
67 and the Speaker of the House of Representatives by December 15,
68 2020.

69 (5) This section expires May 15, 2021.

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

From: [Murphy, Ryan](#)
To: [Hooper, Ed](#)
Cc: [McVaney, Joe](#); [Redig, Tamra](#)
Subject: SB 1272 - Senator Montford
Date: Monday, February 17, 2020 10:54:06 AM
Attachments: [image003.png](#)

Chair Hooper,

On behalf of Senator Montford, I would like to request permission for Senator Albritton to present Senate Bill 1272 for Senator Montford.

Best,

Ryan Murphy | Legislative Aide

Senator Bill Montford | Florida Senate 3rd District

410 Senate Office Building | 404 South Monroe Street
850-487-5003



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: SJR 1502

INTRODUCER: Senator Diaz

SUBJECT: Information About Counties and Municipalities

DATE: February 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Toman</u>	<u>Ryon</u>	<u>CA</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SJR 1502 proposes an amendment to the Florida Constitution to require the Chief Financial Officer to provide annual information about counties and municipalities to residents, as prescribed by general law. The required information will allow residents to compare economic and non-economic factors of each local government.

If this joint resolution is agreed to by three-fifths of the membership of each house of the Legislature, the proposed amendment will be placed on the 2020 General Election ballot or at an earlier special election specifically authorized by law for that purpose. If approved by at least 60 percent of the votes cast on the measure, the proposed amendment will take effect on January 5, 2021.

II. Present Situation:

The Chief Financial Officer (CFO) is an elected member of the Cabinet, serving as the chief fiscal officer of the state and the head of the Department of Financial Services (DFS).¹ The CFO is responsible for settling and approving accounts against the state and keeping all state funds and securities.² The CFO is also designated as the State Fire Marshal.³ The office of CFO was created by Amendment 8 in 1998, which merged the offices of state treasurer and state comptroller.⁴ In 2002, the Florida Legislature merged the state Departments of Insurance, Treasury and State Fire Marshal with the Department of Banking and Finance to create a new Department of Financial Services.

¹ FLA. CONST., art. IV, s. 4. and s. 20.121, F.S.

² FLA. CONST., art. IV, s. 4.

³ Section 633.104(1), F.S.

⁴ Florida Division of Elections, *Restructuring the State Cabinet*, available at <https://dos.elections.myflorida.com/initiatives/initdetail.asp?account=11&seqnum=4> (last visited Feb. 5, 2020).

Section 20.121, F.S., establishes the following divisions within DFS:

- Accounting and Auditing;
- Consumer Services;
- Funeral, Cemetery, and Consumer Services;
- Insurance Agent and Agency Services;
- Investigative and Forensic Services;⁵
- Public Assistance Fraud;
- Rehabilitation and Liquidation;
- Risk Management;
- State Fire Marshal;
- Treasury;⁶
- Unclaimed Property;
- Workers' Compensation;
- Administration; and
- Office of the Insurance Consumer Advocate.

DFS is also the parent agency for the Financial Services Commission, which consists of the Governor, Attorney General, CFO, and Commissioner of Agriculture.⁷ The Financial Services Commission has two subunits, the Office of Insurance Regulation and the Office of Financial Regulation.⁸ Both subunits are managed by directors selected by the commission and must have at least 5 years of relevant experience in the previous 10 years.⁹

Local Government Financial Reporting

Current Law

Local governments are accountable for the manner in which they spend public funds, and the submission of financial reports required by state law is one method of demonstrating accountability. Section 218.39, F.S., requires the completion of an annual financial audit of accounts and records within nine months after the end of the fiscal year for counties, district school boards, charter schools, and charter technical career centers and certain municipalities and special districts. The statute requires filing of these annual financial audit reports with the State of Florida's Auditor General.

Section 218.32, F.S., requires counties, municipalities, and special districts to complete and submit to DFS a copy of its annual financial report (AFR) for the previous fiscal year no later

⁵ The Division of Investigative and Forensic Services is considered a criminal justice agency for purposes of ss. 943.045-943.08, F.S., and may conduct investigations within and outside of the state. The division includes the Bureau of Forensic Services; Bureau of Fire, Arson, and Explosives Investigations; Office of Fiscal Integrity; Bureau of Insurance Fraud; and Bureau of Workers' Compensation Fraud.

⁶ The Division of Treasury includes the Bureau of Deferred Compensation, which is responsible for administering the Government Employees Deferred Compensation Plan established under s. 112.215, F.S. for state employees.

⁷ Section 20.121(3), F.S.

⁸ Section 20.121(3)(a), F.S.

⁹ Section 20.121(3)(d), F.S.

than nine months after the end of the fiscal year. The AFR is not an audit but rather a unique financial document completed using a format prescribed by the DFS.¹⁰

The DFS's Bureau of Local Government has created a web-based AFR system called Local Government Electronic Reporting (LOGER) where local government entities complete and electronically submit AFRs.¹¹ DFS personnel verify an entity's data entered in LOGER by comparing the data to the financial statements included in the submitted audit report, or with other prescribed information from those entities not subject to the audit requirement and contact the entities for clarification when the comparisons yield significant differences.¹²

In addition to the above local government financial reporting, ch. 2019-56, L.O.F., amended ss. 129.03 and 166.241, F.S., to require counties and municipalities respectively to report certain economic status information to the Office of Economic and Demographic Research. This includes information on government spending and debt per resident, median income, average local government employee salary, percentage of budget spent on employee salaries and benefits, and the number of taxing districts.

Proposed Legislation (2020)

SB 1512 (2020) creates s. 218.323, F.S., to require cities and counties to submit electronically to the DFS the following information:

- Government spending per resident (and the rank for the city or county compared to other cities and counties, respectively);
- Government debt per resident (with the comparative rank among peers);
- Average county/municipal employee salary (with the comparative rank among peers);
- Median income (with comparative rank among peers);
- Average school grade for the city or county;
- Crime rate for the county and the rank for the county compared to all counties;
- Population of the city or county;
- Unemployment rate for the city or county;
- Percent of the budget spent on salaries and benefits for public employees (with the comparative rank);
- Number of special taxing districts within the city or county; and
- Government revenue per resident for the city or county (with the comparative rank).

III. Effect of Proposed Changes:

The joint resolution proposes an amendment to Article IV, section 4 of the Florida Constitution to require the Chief Financial Officer to provide annual information about counties and municipalities to residents, as prescribed by general law. The required information would allow residents to compare economic and non-economic factors of each local government.

¹⁰ See Department of Financial Services Bureau of Financial Reporting, *Uniform Accounting System Manual for Florida Local Governments* (2014), available at https://www.myfloridacfo.com/Division/AA/Manuals/2014UASManual-7-31-15_FINAL.pdf (last visited Jan. 6, 2020).

¹¹ LOGER is available at <https://apps.fldfs.com/LocalGov/Reports/> (last visited Jan. 6, 2020).

¹² See Florida Auditor General, *Local Government Financial Reporting System: Performance Audit Report 2019-028* (Sep. 2019), available at https://flauditor.gov/pages/pdf_files/2019-028.pdf (last visited Jan. 6, 2020).

If this joint resolution is agreed to by three-fifths of the membership of each house of the Legislature, the proposed amendment will be placed on the 2020 General Election ballot or at an earlier special election specifically authorized by law for that purpose. If approved by at least 60 percent of the votes cast on the measure, the proposed amendment will take effect on January 5, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The mandates provisions in Article VII, section 18 of the State Constitution, do not apply to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Article XI, section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the Florida Constitution by joint resolution approved by a three-fifths vote of the membership of each house. Article XI, section 5(a) of the Florida Constitution requires the amendment be placed before the electorate at the next general election held more than 90 days after the proposal has been filed with the Secretary of State or at a special election held for that purpose. Section 101.161(1), F.S., requires constitutional amendments submitted to the electors to be printed in clear and unambiguous language on the ballot. In determining whether a ballot title and summary are in compliance with the accuracy requirement, Florida courts utilize a two-prong test, asking “first, whether the ballot title and summary ‘fairly inform the voter of the chief purpose of the amendment,’ and second, ‘whether the language of the title and summary, as written, misleads the public.’”

Article XI, section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10th week and again in the 6th week immediately preceding the week the election is held.

Article XI, section 5(e) of the Florida Constitution requires approval by 60 percent of voters for a constitutional amendment to take effect. The amendment, if approved, becomes effective on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Division of Elections (division) is required to advertise the full text of proposed constitutional amendments in English and Spanish twice in a newspaper of general circulation in each county before the election in which the amendment shall be submitted to the electors. The division is also required to provide each Supervisor of Elections with English and Spanish booklets or posters displaying the full text of proposed amendments, for each polling room or early voting area in each county. The division is also responsible for translating the amendments into Spanish. The statewide average cost to advertise constitutional amendments, in English and in Spanish, in newspapers for the 2018 election cycle was \$92.93 per English word of the originating document.¹³

Using 2018 election cycle rates, the cost to advertise this amendment in newspapers and produce booklets for the 2020 general election could be, at a minimum, \$63,378.26.¹⁴ Accurate cost estimates cannot be determined until the total number of amendments to be advertised is known.¹⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

None.

¹³ E-mail from Brittany N. Dover, Legislative Affairs Director, Florida Department of State (Oct. 2, 2019) (on file with the Senate Committee on Community Affairs).

¹⁴ *Id.*

¹⁵ *Id.*

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Diaz

36-01766-20

20201502__

Senate Joint Resolution

A joint resolution proposing an amendment to Section 4 of Article IV of the State Constitution to require the Chief Financial Officer, as prescribed by general law, to annually provide information about counties and municipalities to residents in a manner that allows residents to compare economic and noneconomic factors of each local government.

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

That the following amendment to Section 4 of Article IV of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE IV

EXECUTIVE

SECTION 4. Cabinet.—

(a) There shall be a cabinet composed of an attorney general, a chief financial officer, and a commissioner of agriculture. In addition to the powers and duties specified herein, they shall exercise such powers and perform such duties as may be prescribed by law. In the event of a tie vote of the governor and cabinet, the side on which the governor voted shall be deemed to prevail.

(b) The attorney general shall be the chief state legal officer. There is created in the office of the attorney general the position of statewide prosecutor. The statewide prosecutor

Page 1 of 3

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36-01766-20

20201502__

shall have concurrent jurisdiction with the state attorneys to prosecute violations of criminal laws occurring or having occurred, in two or more judicial circuits as part of a related transaction, or when any such offense is affecting or has affected two or more judicial circuits as provided by general law. The statewide prosecutor shall be appointed by the attorney general from not less than three persons nominated by the judicial nominating commission for the supreme court, or as otherwise provided by general law.

(c) The chief financial officer shall serve as the chief fiscal officer of the state, and shall:

(1) Settle and approve accounts against the state; ~~and shall~~

(2) Keep all state funds and securities; and

(3) As prescribed by general law, annually provide information about counties and municipalities to residents in a manner that allows residents to compare economic and noneconomic factors of each local government.

(d) The commissioner of agriculture shall have supervision of matters pertaining to agriculture except as otherwise provided by law.

(e) The governor as chair, the chief financial officer, and the attorney general shall constitute the state board of administration, which shall succeed to all the power, control, and authority of the state board of administration established pursuant to Article IX, Section 16 of the Constitution of 1885, and which shall continue as a body at least for the life of Article XII, Section 9(c).

(f) The governor as chair, the chief financial officer, the

Page 2 of 3

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36-01766-20

20201502__

attorney general, and the commissioner of agriculture shall constitute the trustees of the internal improvement trust fund and the land acquisition trust fund as provided by law.

(g) The governor as chair, the chief financial officer, the attorney general, and the commissioner of agriculture shall constitute the agency head of the Department of Law Enforcement. The Office of Domestic Security and Counterterrorism is created within the Department of Law Enforcement. The Office of Domestic Security and Counterterrorism shall provide support for prosecutors and federal, state, and local law enforcement agencies that investigate or analyze information relating to attempts or acts of terrorism or that prosecute terrorism, and shall perform any other duties that are provided by law.

BE IT FURTHER RESOLVED that the following statement be placed on the ballot:

CONSTITUTIONAL AMENDMENT

ARTICLE IV, SECTION 4

DUTIES OF THE CHIEF FINANCIAL OFFICER.—Proposing an amendment to the State Constitution to require the Chief Financial Officer, as prescribed by general law, to annually provide information about counties and municipalities to residents in a manner that allows residents to compare economic and noneconomic factors of each local government.

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 1624

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Perry

SUBJECT: Economic Self-sufficiency

DATE: February 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	Fav/CS
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1624 requires the Auditor General to review the state's economic assistance, health care, and housing programs at least once every three years. The bill requires the Auditor General to submit a report to the Governor and Legislature within 30 days of completing each review.

The bill provides a priority for subsidized child care to parents who have an Intensive Service Account or an Individual Training Account. Such accounts are used by the state's workforce program, CareerSource Florida, Inc., to assist persons with job referral and placement.

The bill is to have a minimal impact on expenditures by the Auditor General.

The bill takes effect July 1, 2020.

II. Present Situation:

Florida Auditor General

Section 2, Art. III of the State Constitution provides for the Legislature to appoint an auditor who shall audit the public records and perform related duties as prescribed by law or concurrent resolution. Section 11.42, Florida Statutes, designates the constitutional auditor as the Auditor General, and ss. 11.42 through 11.47, Florida Statutes, set forth the Auditor General's authority

and duties. Independently, and in accordance with applicable professional standards, the Auditor General:

- Conducts financial audits of the accounts and records of state government, state universities, state colleges, and school districts.
- Conducts operational and performance audits of public programs, activities, and functions and information technology systems.
- Adopts rules, in consultation with the Florida Board of Accountancy, for audits performed by independent certified public accountants of local governmental entities, charter schools and technical career centers, school districts, and certain nonprofit and for-profit organizations.
- Conducts reviews of audit reports of local governmental entities, charter schools and technical career centers, school districts, and certain nonprofit and for profit organizations.
- Conducts examinations of school districts' and other entities' records to evaluate compliance with state requirements governing the Florida Education Finance Program student enrollment and student transportation funding allocations.
- Conducts quality assessment reviews of the internal audits performed by state agency offices of inspectors general.

Pursuant to the Federal Single Audit Act, the Office of Management and Budget requires an audit of major state-administered federal awards programs, as described in Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.¹ Accordingly, the Auditor General performs an annual financial and federal awards audit of the State of Florida, which encompasses all state agencies, universities, and colleges, most recently in Report No. 2019-186. With the exception of the Section 8 program, this audit includes the state-administered federal programs listed in the bill. The Section 8 program is administered by local housing authorities rather than the state. As a result, each of the listed programs except Section 8 is audited by the Auditor General at least once every 3 years.²

Early Learning

The Department of Education's Office of Early Living (OEL) oversees three programs—the school readiness program, the Voluntary Prekindergarten Education Program (VPK), and child care resource and referral services—and an annual budget of \$1.3 billion.³ The OEL is the lead agency in Florida for administering the federal Child Care and Development Block Grant Trust Fund.⁴ The OEL adopts rules as required for the establishment and operation of the school readiness program and the VPK program.⁵ The executive director of the OEL is responsible for administering early learning programs at the state level.

¹ Letter from the Auditor General, dated Jan. 21, 2020. On file with the Senate Committee on Children, Families and Elder Affairs

² *Id.*

³ Early Learning Services Program Total, s. 2, ch. 2019-115, L.O.F.

⁴ Section 1002.82(1), F.S.

⁵ The OEL is required to submit the rules to the State Board of Education for approval or disapproval. If the state board does not act on a rule within 60 days after receipt, the rule shall be immediately filed with the Department of State. Section 1001.213, F.S.

The OEL governs the day-to-day operations of statewide early learning programs and administers federal and state child care funds. Across the state, 30 regional early learning coalitions are responsible for delivering local services, including the VPK program and the school readiness program.⁶ Each coalition is governed by a board of directors comprised of various stakeholders and community representatives.⁷ The State Board of Education does not have authority over the coalitions, and early learning data is not collected in the K-20 student database as part of the management information databases governed by the board.⁸

The school readiness program provides subsidies for child care services and early childhood education for children of low-income families, children in protective services who are at risk of abuse, neglect, or abandonment, and children with disabilities.⁹ The school readiness program offers financial assistance for child care to support working families and children to develop skills for success in school and provides developmental screening and referrals to health and education specialists where needed.¹⁰ To participate in the school readiness program, a provider must execute a school readiness contract.¹¹ During the 2017-2018 academic year, 7,668 school readiness providers served 201,474 children enrolled in a school readiness program.¹² For Fiscal Year 2019-2020, a total of \$760.8 million was appropriated for the school readiness program from state and federal funds.¹³

III. Effect of Proposed Changes:

Section 1 amends 11.45, F.S., to require the Auditor General to conduct, at least every three years, performance audits of each of the following economic assistance and health care programs:

- The Supplemental Nutrition Assistance Program (SNAP) that helps low-income individuals and families buy healthy food.
- The Temporary Cash Assistance Program that provides cash assistance to families with children under the age of 18 that meet the technical, income, and asset requirements.
- The Medicaid Program that provides medical coverage to low-income individuals and families.
- The School Readiness Program that provides subsidies for child care services and early childhood education for children of low-income families, children in protective services who are at risk of abuse, neglect, or abandonment, and children with disabilities.
- The U.S. Department of Housing and Urban Development Section 8 Housing Program that provides housing assistance to low income individuals and families. The U.S. Department of Housing and Urban Development Section 8 Housing Program is operated by the federal

⁶ The Office of Early Learning, *Coalitions*, <http://www.floridaearlylearning.com/coalitions.aspx> (last visited Jan. 30, 2020). See also 1002.83(1), F.S.

⁷ Section 1002.83(3), F.S.

⁸ Florida Department of Education, *Agency Legislative Bill Analysis for HB 1013* (2020), at 13.

⁹ Section 1002.87, F.S.

¹⁰ Section 1002.86, F.S.

¹¹ Rule 6M-4.610, F.A.C. Form OEL-SR 20, *Statewide School Readiness Provider Contract*, available at http://www.floridaearlylearning.com/Content/Uploads/floridaearlylearning.com/files/Form%20OEL-SR%202020_%20Statewide%20School%20Readiness%20Provider%20Contract_12-19-18_Fi....pdf.

¹² Florida Office of Early Learning, *Early Learning Programs Profile: Monthly State Report* (June 2018), https://factbook.floridaearlylearning.com/oel_1.aspx, (last visited Jan. 30, 2020).

¹³ Specific Appropriation 86, s. 2, ch. 2019-115, L.O.F.

government through local organizations in Florida. It is unclear if the Florida Auditor General would have the authority to conduct such reviews or audits.

The bill requires the Auditor General to review eligibility criteria, review how the programs document eligibility, how frequently the programs determine eligibility, how clear the programs communicate requirements to the program beneficiaries, review ways to improve efficiency and effectiveness through data sharing, and the number of families receiving assistance from more than one of the programs.

The bill directs the Auditor General to determine the number of families receiving assistance from these programs that also receive Earned Income Tax credits. It is unclear whether the Internal Revenue Service (IRS) would be able to provide information on Floridians who receive the Earned Income Tax credit. Taxpayers have the right to confidentiality regarding federal income tax information. A taxpayer can expect that any information he or she provides to the IRS will not be disclosed to outside parties, unless authorized by the taxpayer or by law.¹⁴ The right to confidentiality requires:

- In general, the IRS may not disclose a taxpayer's tax information to third parties, unless the taxpayer gives the agency permission.
- In general, the IRS cannot contact third parties, such as a taxpayer's employer, neighbor, or bank, to get information about a taxpayer unless it provides the taxpayer with reasonable notice before making the contact.
- When dealing with a federally authorized tax practitioner, a taxpayer can expect the same confidentiality protection that he or she would have with an attorney.

The bill requires the Auditor General to report the results of such audits to the Governor and Legislature within 30 days after the completion of each audit.

Section 2 amends s. 1002.87, F.S., relating to the School Readiness Program, to provide a priority for subsidized child care to parents who have an Intensive Service Account or an Individual Training Account. Such accounts are used by the state's workforce program, CareerSource Florida, Inc., to assist persons with job referral and placement.

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 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.

¹⁴ U.S. Internal Revenue Service website. See <https://www.irs.gov/newsroom/the-right-to-confidentiality-taxpayer-bill-of-rights-8> (last visited Jan. 30, 2020).

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 proposed changes require the Auditor General to conduct a performance audit every 3 years on each of various state-administered federal public assistance programs. However, the bill is expected to have a minimal impact on the operations of the Auditor General because many of the issues raised in the bill have been or are currently subject to audit.¹⁵

VI. Technical Deficiencies:

The U.S. Department of Housing and Urban Development Section 8 Housing Program is operated by the federal government. It is unclear if the Florida Auditor General has the authority to conduct reviews or audits of the program.

The Auditor General is not able to access information on Floridians who receive the Earned Income Tax credit in order to determine if such individuals also participate in the economic assistance and health care programs. Tax information is confidential under federal law and may only be released by the IRS under certain circumstances.

¹⁵ Letter from the Auditor General, dated Jan. 21, 2020. On file with the Senate Committee on Children, Families and Elder Affairs

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 11.45, and 1002.87 of the Florida Statutes.

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

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

CS by Children, Families, and Elder Affairs on February 4, 2020:

The CS removes from the bill amendments to s. 1002.81, F.S., that would have removed the definitions of “earned income” and “unearned income” from the statutes governing the School Readiness Program.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs; and
Senator Perry

586-03121-20

20201624c1

A bill to be entitled

An act relating to economic self-sufficiency; amending s. 11.45, F.S.; requiring the Auditor General to perform audits of specified programs at specified intervals; requiring the audits to review specified elements of such programs; requiring the Auditor General to make a specified determination, if possible; providing reporting requirements for the results of such audits; amending s. 1002.87, F.S.; revising the criteria for a child to be given priority for participation in the school readiness program; providing an effective date.

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

Section 1. Paragraph (m) is added to subsection (2) of section 11.45, Florida Statutes, to read:

11.45 Definitions; duties; authorities; reports; rules.—

(2) DUTIES.—The Auditor General shall:

(m) At least every 3 years, conduct performance audits of the Supplemental Nutrition Assistance Program established under 7 U.S.C. ss. 2011 et seq., the Temporary Cash Assistance Program provided under s. 414.095, the Medicaid program designated in s. 409.963, the School Readiness Program set forth in part VI of chapter 1002, and the Housing Choice Voucher Program established under 42 U.S.C. s. 1437. Such audits shall include a review of eligibility criteria; the manner by which each program establishes and documents eligibility and disbursement policies; the frequency of eligibility determinations; the clarity of both

Page 1 of 3

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

586-03121-20

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written and verbal communication in which eligibility requirements are conveyed to current and potential program recipients; opportunities for improving service efficiency and efficacy made possible by improved integration of state data system platforms, processes, and procedures related to data collection, analysis, documentation, and interagency sharing; and a review of the number and family size of families receiving multiple program services compared to all eligible families, including whether they are single-parent or two-parent households. If possible, the Auditor General also shall determine the number of families receiving services who are claiming the Earned Income Tax Credit. The Auditor General shall provide the results of the audits in a report to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Chief Financial Officer, and the Legislative Auditing Committee within 30 days after completion of the audit, but no later than December 31, 2020, and every 3 years thereafter.

The Auditor General shall perform his or her duties independently but under the general policies established by the Legislative Auditing Committee. This subsection does not limit the Auditor General's discretionary authority to conduct other audits or engagements of governmental entities as authorized in subsection (3).

Section 2. Paragraph (a) of subsection (1) of section 1002.87, Florida Statutes, is amended to read:

1002.87 School readiness program; eligibility and enrollment.—

Page 2 of 3

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

586-03121-20

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59 (1) Each early learning coalition shall give priority for
60 participation in the school readiness program as follows:

61 (a) Priority shall be given first to a child younger than
62 13 years of age from a family that includes a parent who is
63 receiving temporary cash assistance under chapter 414 and
64 subject to the federal work requirements or a parent who
65 receives an Intensive Service Account or an Individual Training
66 Account under s. 445.009.

67 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: February 5, 2020

I respectfully request that **Senate Bill #1624**, relating to Economic Self-sufficiency, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry". The signature is written in a cursive style with a long, sweeping underline.

Senator Keith Perry
Florida Senate, District 8

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/2020
Meeting Date

1624
Bill Number (if applicable)

Topic Economic Self Sufficiency

Amendment Barcode (if applicable)

Name Michael Williams

Job Title Director of the Florida Prosperity Initiative

Address 136 S Bronough
Street

Phone _____

JLH
City

FL
State

32301
Zip

Email mwilliams@flfoundation.org

Speaking: ☐ For ☐ Against ☒ Information

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

Representing FL Chamber Foundation Prosperity Initiative

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)

APPEARANCE RECORD

2/17/2020

Meeting Date

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

1624

*Bill Number (if applicable)*Topic Economic Self-Sufficiency*Amendment Barcode (if applicable)*Name Matthew ChoyJob Title Policy DirectorAddress 136 S Bronough StPhone 561-386-3451*Street*TallahasseeFL32311Email mchoy@flchamber.com*City**State**Zip*Speaking: ☐ For ☐ Against ☐ InformationWaive Speaking: ☒ In Support ☐ Against
(The Chair will read this information into the record.)Representing Florida Chamber of CommerceAppearing 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
APPEARANCE RECORD

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

2-17-20

Meeting Date

1624

Bill Number (if applicable)

Topic Economic Self-Sufficiency

Amendment Barcode (if applicable)

Name Matt Guse (Guzi)

Job Title CEO

Address 1126 Lee Ave.

Phone 850-577-3199

Street

Tallahassee FL 32303

City

State

Zip

Email mguse@flbridgesc.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Children's Council

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.

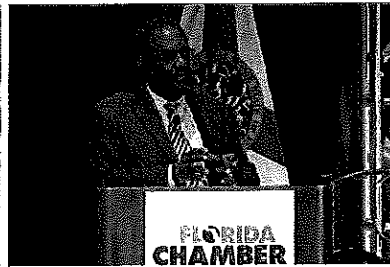
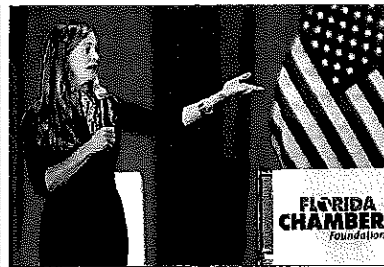
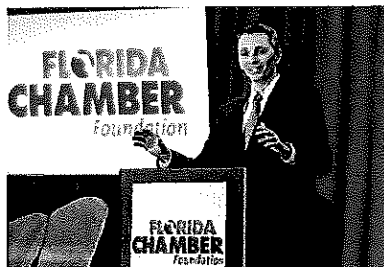
This form is part of the public record for this meeting.

S-001 (10/14/14)



Florida Chamber Foundation

LESS POVERTY, MORE PROSPERITY: The Florida Fiscal Cliffs Report



**FLORIDA
CHAMBER**
Foundation

www.FLFoundation.org

EXECUTIVE SUMMARY

In many ways, Florida is moving in the right direction. Florida is the 16th largest economy in the world and creates one out of every 10 jobs in the United States. Florida is the third largest state in the nation and welcomes more than 1,000 new residents each day. For many, this is the Florida they live in- one that is prosperous, creates jobs and economic opportunity.

Yet, there is a very different reality many Floridians live in.

The latest available data shows that Florida has more than 3.129 million people living in poverty, with 944,415 of that total under the age of 18. This is compared to the national overall poverty rate of 13.5 percent and 19.7 percent for national under-18. The sheer number of Floridians living in poverty in our state impacts not only individual families, but also businesses, Florida's economy and our state's global competitiveness. Most policymakers, state and business leaders, and the general public are unaware of the complexity of how social programs may distort labor markets and make it difficult for families in poverty to move toward economic self-sufficiency. The path to prosperity in Florida relies on work-based solutions, but distortions in the labor market hinder that process.

Many social services designed to help low-income working individuals and families have "cliffs," where small increases in incomes will disqualify families from receiving any level of financial assistance. This "cliff" is especially profound in relation to child care tuition subsidies such as Florida's School Readiness program – a program specifically designed to offset the high cost of quality child care for low-income working families providing children with foundational early learning experiences that support kindergarten readiness and later positive educational outcomes.

The importance to business and industry leaders is the distortions in the labor market caused by these cliffs. A potential employee who may be qualified for a job, or the current employee of a Florida business who may be eligible for a raise, or may qualify for a higher-paying job may well feel compelled to pass on that opportunity given the overall financial implications to their economic stability. Employers are also penalized, as they may find a qualified and productive employee who will turn down a job, a raise, or a promotion because it makes them ineligible for a program that is designed to help their children.

This report is intended to identify the challenges Florida faces now and will face in the future, and to help Floridians understand what challenges families in poverty face in working to achieve economic self-sufficiency.

This report is not meant to provide exhaustive analysis of all the social service programs designed to support adults and children in poverty in Florida.

Florida has opportunities to change policies related to access and eligibility that benefit low-income working families, Florida businesses, our economy and our global competitiveness. Amending current policies could help significantly change the amount of distortions in the labor markets if, rather than losing access to a program, more families could keep access and pay increasing amounts of co-payments, thus removing large penalties for marginal increases in family income. Revising eligibility policies to eliminate or greatly reduce the "cliff effect" for social services that support children and families in poverty would incentivize efforts to increase earnings and create a pathway to economic self-sufficiency.

The Complex Nature of Poverty

The latest available data shows that Florida has more than 3.129 million people living in poverty, with 944,415 of that total under the age of 18. This is compared to the national overall poverty rate of 13.5 percent and 19.7 percent for national under-18. The sheer number of Floridians living in poverty in our state impacts not only individual families, but also businesses, Florida's economy and our state's global competitiveness. There is significant need to better understand the number of children and families in poverty, where they reside, and potential limitations in current social service delivery that might impede economic self-sufficiency. There are two general types of poverty in Florida: situational, or poverty resulting from temporary setbacks like loss of a job or home foreclosure, and generational, a cycle that is born into. There is also compelling need to contemplate two-generational strategies — that is the intentional focus on more effective policies and alignment of services supporting both children and their parents — helping both generations of families in poverty move toward economic independence.

This report is intended to identify the challenges Florida faces now and will face in the future, and to help Floridians understand what challenges families in poverty face in working to achieve economic self-sufficiency. This report is not meant to provide exhaustive analysis of all the social service programs designed to support adults and children in poverty in Florida. There are a multitude of programs with differing benefits, varying income requirements, and differing levels of participation.

Florida State University graduate students¹ in the Applied Masters of Economics program recently conducted meaningful research analyzing 13 social service programs: *Poverty, Benefit Cliffs, and the Incentives Problem for Families in Florida*. The lengthy analysis included federal and state eligibility requirements, both financial and length of service, as well as any resulting fiscal “cliff.” This “cliff” occurs when a marginal increase in income results in a loss in public benefits, often times leaving families with fewer resources as income increases. Having a job with upward mobility is important. But unfortunately, this “cliff” becomes a disincentive for many.

Due to the complex and diverse way that benefit allotments are calculated, a system was developed to categorize the structure of the social benefit allotments as “soft cliff” or “hard cliff.” A soft cliff results when benefits slowly phase out as income increases. The analysis demonstrated that soft cliffs are a more favorable benefit structure, as the family is not significantly penalized when their income increases. Hard cliffs occur when a marginal increase in income results in a significant or complete loss in benefits, meaning that a small increase in income can result in thousands of dollars in lost resources. The hard cliff benefit structure is detrimental to family resources, yet hard cliffs are the types most often faced by Florida families in poverty.

¹ *Poverty, Benefit Cliffs, and the Incentives Problem for Families in Florida*. Nicholas Hyder, M.S., Erin Mahagan, M.S., Cesar Marques, M.S., and Sebastian Builes, M.S. (2016)

The results of the analysis documented that for many individuals in poverty, there can be a fairly straightforward projection line of how social services can support pathways to economic stability. However, for families with young children, there is not a linear upward trajectory or pathway — there is a profound fiscal cliff. Therefore, what many Floridians with young children in poverty experience as they work and improve their incomes is that marginal increases in wages result in substantial losses in program benefits.

According to the United Way of Florida's *Asset Limited, Income Constrained, Employed (ALICE)*² analysis, child care is often the greatest cost impediment to economic stability for families with young children.

In most Florida counties, the least expensive child care is a budget expense more costly than the least expensive rent. This is an important consideration for low-income working families. For this reason, the impact of child care is analyzed in this report as a significant example of how existing public policies can disrupt the pathway toward economic self-sufficiency for families with young children in poverty.

Of particular significance is Florida's School Readiness program — a taxpayer subsidized tuition program designed to help low-income working families pay for quality child care and provide young children foundational early learning experiences that support later school success. Floridians living in poverty with young children experience large benefit "cliffs," where marginal increases in income can cause the total loss of eligibility for the School Readiness program — impacting the economic stability of the family and the educational development of the child or children.

The importance to business and industry leaders is the distortions in the labor market caused by these cliffs. An employee who may be eligible for a raise, or may qualify for a higher-paying job, may well feel compelled to decline that opportunity given the overall financial implications to their economic stability. Employers are also penalized, as they may find a qualified and productive employee who will turn down a job, a raise, or a promotion because it makes them ineligible for a program that is designed to help their children.

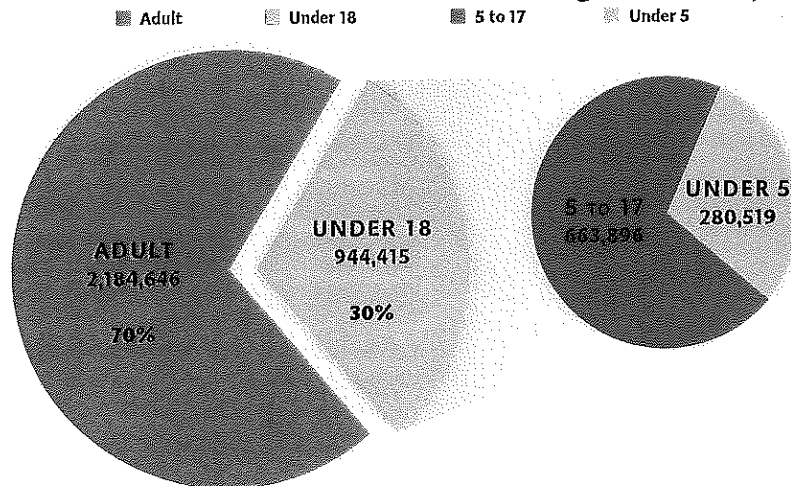
Redesigning the qualifications for social service programs could help significantly change the amount of distortions in the labor markets if, rather than losing access to a program, more families could keep access and pay increasing amounts of co-payments, thus removing the large penalty for marginal increases in family income. Revising eligibility policies to eliminate or greatly reduce the "cliff effect" for social services that support children and families trying to work their way out of poverty would incentivize efforts to increase wages and create a pathway to economic self-sufficiency.

² *Asset Limited, Income Constrained, Employed: Florida*. United Way of Florida. 2017.

Floridians Living in Poverty

The most recent data available from the U.S. Census* shows that there are 3.129 million people in Florida who live in poverty — 15.8 percent of all Floridians, or nearly 1 in 6. Of that number, 944,415 are under the age of 18 — 23.4 percent of the total in this age group. Those under age 5 living in poverty total 280,898 — indicating a 26.0 percent poverty rate for those under age 5 in Florida.

3.129 Million Floridians are Living in Poverty³



The above chart shows that of those in Florida living in poverty, 70 percent are adults and 30 percent are under 18 years old. Of that 30 percent in the under-18 population, age 5 to 17 makes up around 70 percent of this group, with the other 30 percent of the under-18 age group under 5 years old.

Florida's poverty rates in all age categories are higher than U.S. rates — the below table shows Florida's poverty rates compared to the U.S. rate using the latest available census data.*

2015 POVERTY RATE		All Ages	Under 18	Under 5
	Florida	15.8%	23.4 %	26.0%
	U.S.	14.7%	20.7%	22.8%

Poverty rates in Florida have improved slightly since 2014.

FLORIDA POVERTY RATE		All Ages	Under 18	Under 5
	2014	16.6%	24.2%	26.5%
	2015	15.8%	23.4%	26.0%

³ Of the age 5 to 17 Floridians in poverty, 646,658 of them are living with families. Subtracting them from the total leaves 17,238 not living with a family.

*2015 is latest available U.S. Census data

Poverty Income Guidelines

People are counted as being in poverty when their annual income falls below the federal poverty guideline. These poverty guidelines are issued each year by the U.S. Department of Health and Human Services. The table of poverty guidelines by family size shown to the right applies to 48 states and the District of Columbia. **An important item to note is the poverty income guidelines are the same regardless of the differences in cost of living between states or between differing areas in the state. There is no indexing for cost of living differences between states or by region.** The 2017 poverty income guidelines are the same as the 2016 guidelines for this group.

48 STATES:* 2017 POVERTY INCOME GUIDELINES

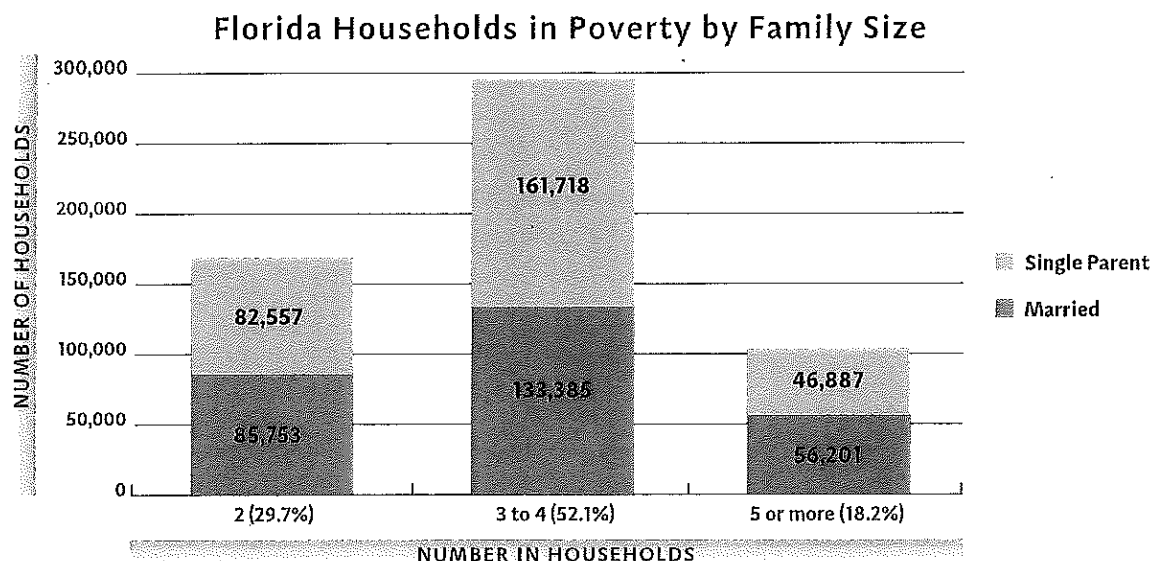
Persons in family/household	Income
1	\$11,880
2	\$16,020
3	\$20,160
4	\$24,300
5	\$28,440
6	\$32,580
7	\$36,730
8	\$40,890

For households with more than 8 persons, add \$4,160 for each additional person

*does not include Hawaii or Alaska

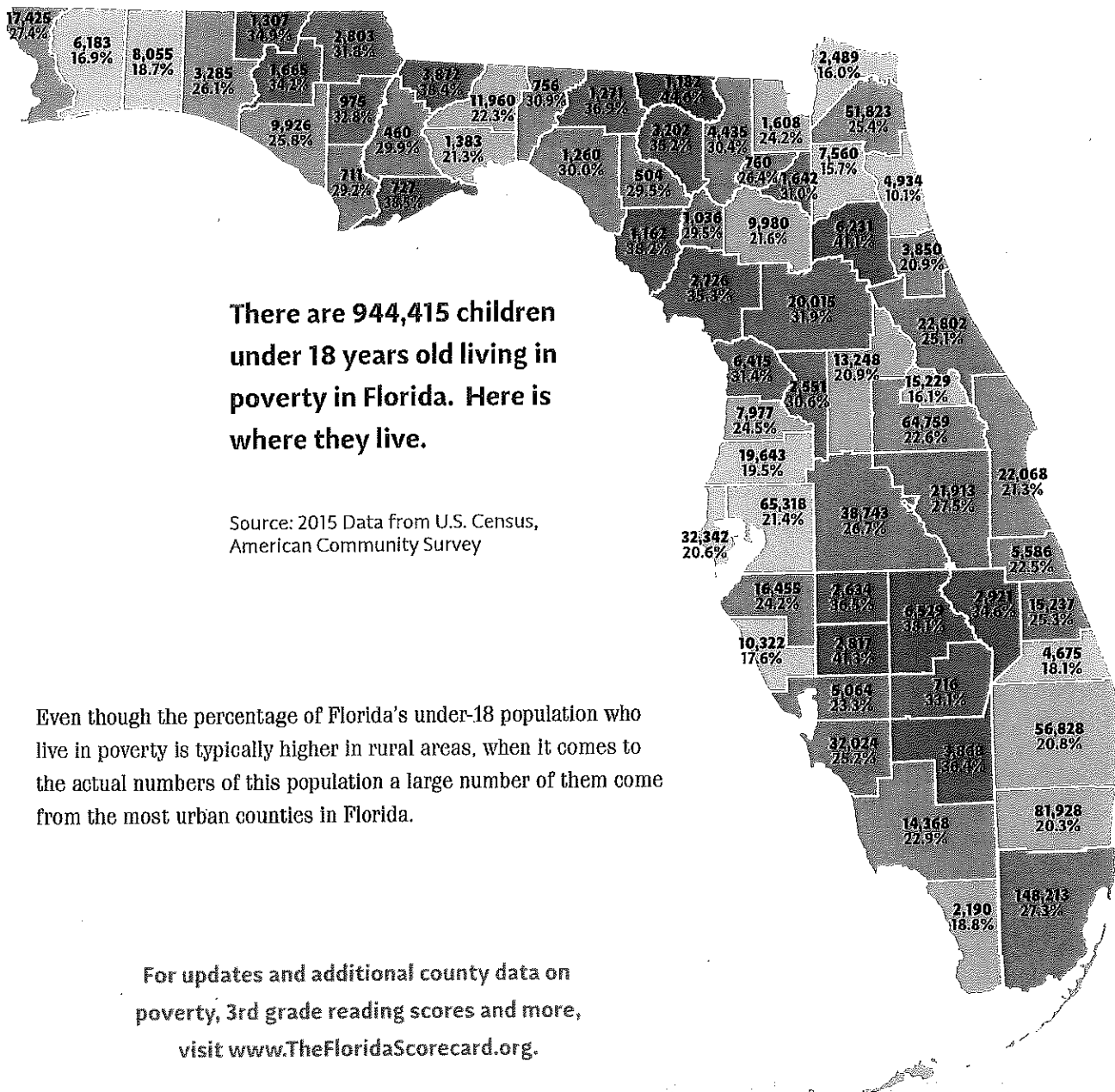
Household Size of Families Living in Poverty

The more than 3.1 million Floridians living in poverty are made up of 566,501 Florida households. Of those households, 81.8 percent of them have 4 or fewer people. Those headed by a single parent make up 51.4 percent of the total.



Using 2014 data

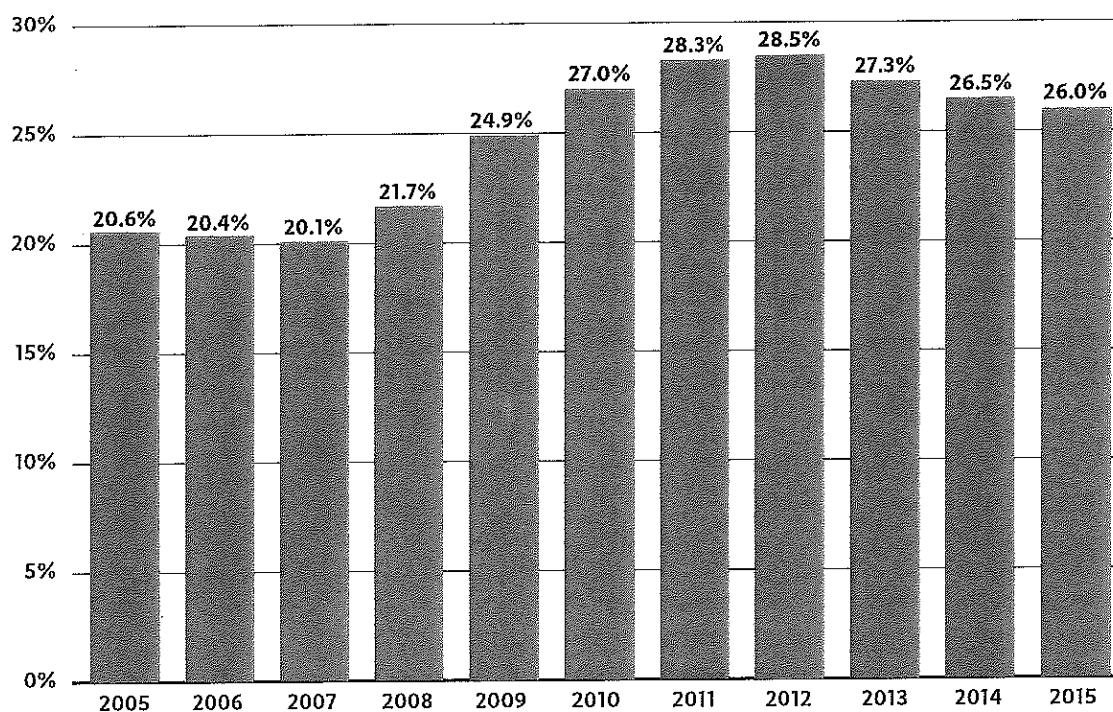
The map below shows the number of people under 18 years old living in poverty as well as the poverty rate, by county, of Florida's under-18 population. **Poverty rates for Florida's under-18 population range from a low of 10.1 percent in St. John's County, to a high of 44.6% in Hamilton County.** The median under-18 poverty rate for Florida counties is 26.3 percent, and the state average is 23.4 percent.



Generational Poverty: Children Under Age 5 in Florida

Of particular concern to Florida's future is the poverty rate of children under 5 years old. The sooner we can move them from poverty, the sooner society can see the benefits of keeping children in a positive environment. This population will be part of Florida's workforce for the year 2030 and beyond. The chart below shows the trend in poverty rates since 2005 in Florida for the under-age-5 population. Florida experienced significant increases in this poverty rate during the Great Recession and, although rates peaked in 2012, the rates have not dropped to pre-recession levels.

Florida: Percent of Children Under Age 5 in Poverty



In the under-5 age category, there is only official data for the 40 most-populated counties in Florida. These 40 counties cover approximately 96 percent of Florida's population. Just as in the under-18 age category, the number of under-5 children in poverty is highly concentrated. In this category, the top 6 counties make up 50.5 percent of the total amount of children in Florida under age 5 who are living in poverty.

Florida in 2030

Florida is currently experiencing substantial population growth with a net growth of just over 1,000 people per day. This growth provides substantial opportunities for Florida, yet simultaneously presents challenges because it will further strain our education and training programs, and the programs designed to help families out of poverty. Estimates from the Population Studies Center at the Bureau of Economic and Business Research (BEBR) at the University of Florida include a growth of 16.2 percent in the age birth-4 category between now and 2030, and a growth of 13.8 percent in the age 5 to 9 category. Growth for the 10 to 14 age category is expected to be 13.7%, and the 15-17 age group at 11.1% between now and 2030. This means there will be more people in the under-18 age category, so the consequences will be even greater in the future than they are at present.

Children birth to age 9 should be a focus with the projections for growth in poverty populations given Florida will have to prepare if it wants to be ready for 2030. Age 9 is an important milestone given it typically aligns to the third grade. Third grade reading proficiency has been correlated with high school graduation rates and career success and is critical to alleviating future poverty. According to TheFloridaScorecard.org, currently only 52 percent of Florida's 3rd graders are reading at or above a 3rd grade reading level.

A growing population of young children in poverty may indeed leave Florida worse off if changes are not made to programs like School Readiness to increase access for children and families. With an additional 180,000 children in the age group birth to 4, an unknown number of them will be living in poverty. Unless Florida's poverty rate changes substantially, that will mean more than 46,000 more children in poverty in this age group than are currently in the state. And if down the line, work-based solutions toward prosperity aren't realized, those who are behind will always stay behind or never catch up.

UNDER-18 POVERTY RATE	Age Group	Estimated Population Growth, 2030	Current Poverty Rate	Estimated Additional Children in Poverty 2030
	Birth-4	180,159	26.0%	46,841
	5-9	157,531	22.0%	34,657
	10-14	158,049	22.0%	34,771
	15-17	77,544	22.0%	17,060
	Total	573,283		133,329

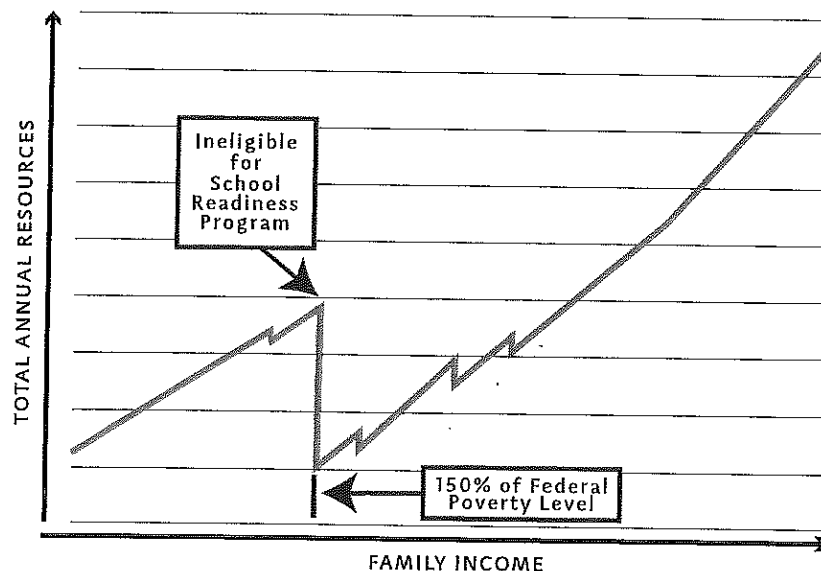
Unless Florida makes collective progress toward lowering poverty rates, there could be an additional 133,329 more Florida children living in poverty by 2030 – an increase of more than 14 percent more than the current number of 944,415.

The Complexity of Analyzing Multiple Programs

Because of the complexity in analyzing multiple social programs and the impacts changes in family income have on benefits, there is little extensive analysis done on this issue in Florida or most other states. The lack of information contributes to the difficulty for state leaders, policymakers and business people to understand how changes in family income impact the amount of social services and the associated funding households in poverty can access.

Policymakers and business leaders are also unlikely to understand the effects on families living in poverty because of the complexity and the differing qualification levels for programs. Most employers don't understand that if they have employees or applicants who are receiving social program benefits, those employees or potential employees could be faced with cliffs, where a marginal increase in their pay may mean the loss of substantial benefits for them. Employers are unlikely to understand why employees might turn down a job or an increase in salary. Employees might do this because a salary increase could disqualify them from programs, most especially for the child care programs that are expensive to replace for young families.

Example of Loss of State-Funded Program as Family Income Rises



The chart above shows the path of the gain and loss of family resources that a Florida family in poverty with young children would face as they raise their family income above poverty levels. The large "cliff" shows where benefits would be lost for the School Readiness Program. This program is worth thousands of dollars per year to families in poverty who have young children. There are small cliffs for many other programs, but the loss of child care programs as incomes rise can cause the greatest losses in resources for families as they improve their incomes.

These cliffs are important because the largest loss of support for low-income families are those meant to help children become ready for school. Not only is this a critical time in a child's development, but access to quality child care also has the proven benefit of increasing productivity and attendance for employees, given that employees with stable child care are less likely to lose focus on their jobs from worrying about their children's care during the work week.

As shown in the above chart, at the time of applying for the School Readiness program, only those families who have incomes less than 150 percent of the federal poverty level are typically accepted. One thing positive for those families who are already using the School Readiness programs is their income can raise to 200 percent of the federal poverty level before being disqualified. However, as families are applying and becoming certified for this program, there still exists a substantial distortion in the labor market near the 150 percent of poverty level income cutoff. If there existed a soft cliff, where marginal increases in income did not cause substantial changes in resources for families, but instead resulted in higher co-payments for families, then their children would be able to receive School Readiness services without drastic changes in family annual resources. The positive result of such a change is increasing the upward mobility of parents and the foundational learning of children.

At 200 percent of the federal poverty level, a parent or parents who must pay full price for quality child care will be using substantial percentages of their income for this expense. Policymakers wanting to end generational poverty should consider this, so that the labor market distortions caused by marginal increases in parental incomes are not met with substantial changes to families' financial positions. We recommend rethinking the "cliff" and re-engineering a "bridge" to opportunities for prosperity for parents and children.

Florida's Opportunities for Improving its Future Workforce

Florida has the opportunity to improve its future, by addressing these issues as it prepares for the year 2030. By continuously improving the following elements by making investments in Florida's workforce and creating work-based solutions, Florida will become prepared for its future. Some of the key opportunities are:

1. **Two-Generational Strategies:** The poverty rate for children is substantially higher than the overall poverty rate for Florida. One of the emerging strategies to better support children and families in poverty in America is the two-generation approach to poverty. This type of approach recognizes that focusing on interventions for children living in poverty without addressing the needs of the parents of those children leads to sub-optimal results. Dual focus enables family and economic stability that supports short- and long-term outcomes for the entire family, and particularly the children.^{4,5}
2. **Early Learning:** There have been documented successes with early learning interventions such as the federal Head Start program. Brookings Institute recently released a report that shows children who participate in Head Start show higher high school graduation rates, and it is especially advantageous for minority students.⁶ The benefits of keeping children in a positive environment include that they have higher probabilities of graduating from high school and higher probabilities of going on to post-secondary education. Recent research shows that children in Head Start retain advantages in later school years.⁷
3. **Early Learning Investments:** Nobel Laureate James J. Heckman and others have demonstrated the economic benefits of early education. Heckman's research shows intervening earlier in a child's life equates to a longer and better return on investment. For states such as Florida, which depends upon 77 percent of its General Revenue, and more than one-fourth of total revenue, from sales and use taxes – it is clear that it's in the best interest of the state to help all Florida children get the best start they can, and get the education that will qualify them for jobs in the higher tier of salaries.
4. **Transportation:** One of the big issues facing low-income families is that of transportation. A serious disruption in transportation leads to less ability for workers to get to their jobs and less ability to access services such as job training.
5. **Access to Services:** There is often an issue of access of services in the rural areas. Access is not solely a transportation issue, it is often a logistics issue with offices for programs in many different places with multiple application processes.

⁴ Creating Opportunities for Families: A Two-Generation Approach. The Annie E. Casey Foundation, 2014.

⁵ W.K. Kellogg Foundation's Secure Families is a leader in this effort.

⁶ The Long-Term Impact of the Head Start Program. Bauer L. and Schanzenback, D. Brookings Institution. Aug. 2016. <https://www.brookings.edu/research/the-long-term-impact-of-the-head-start-program/>

⁷ Phillips, D., Gormley, W., and Anderson, S. (2016). "The Effects of Tulsa's CAP Head Start Program on Middle-School Academic Outcomes and Progress," *Journal of Developmental Psychology*, Vol. 52, No. 8, 1247-1261.

State and County	ALL AGES		UNDER 18		AGE 5-17	
	Count	Percent	Count	Percent	Count	Percent
Florida	3,129,061	15.8	944,415	23.4	646,658	22.0
Alachua	52,258	21.1	9,980	21.6	6,770	21.4
Baker	4,189	16.8	1,608	24.2	1,129	23.1
Bay	29,301	16.5	9,926	25.8	6,528	23.9
Bradford	5,013	21.3	1,642	31.0	1,169	30.6
Brevard	75,268	13.4	22,068	21.3	15,495	20.0
Broward	263,607	14.0	81,928	20.3	54,609	18.7
Calhoun	2,781	22.2	975	32.8	670	30.0
Charlotte	20,980	12.4	5,064	23.3	3,546	21.5
Citrus	24,249	17.5	6,415	31.4	4,346	28.8
Clay	23,388	11.6	7,560	15.7	5,236	14.1
Collier	48,198	13.6	14,368	22.9	9,599	20.8
Columbia	12,413	19.7	4,435	30.4	3,172	30.0
DeSoto	9,821	30.5	2,817	41.3	1,908	38.3
Dixie	4,264	29.3	1,162	38.2	798	37.0
Duval	142,660	16.0	51,823	25.4	34,875	24.4
Escambia	44,835	15.4	17,475	27.4	11,827	26.3
Flagler	12,213	11.7	3,850	20.9	2,744	19.4
Franklin	2,351	23.7	727	38.5	505	36.1
Gadsden	10,596	24.5	3,872	38.4	2,725	37.2
Gilchrist	3,102	19.2	1,036	29.5	744	28.3
Glades	2,683	22.1	716	33.1	483	28.3
Gulf	2,724	21.9	711	29.2	496	28.2
Hamilton	3,685	31.8	1,182	44.6	839	44.5
Hardee	6,636	25.9	2,634	36.5	1,833	35.0
Hendry	9,945	25.8	3,868	36.4	2,685	34.8
Hernando	25,217	14.3	7,977	24.5	5,782	23.4
Highlands	22,419	22.9	6,529	38.1	4,731	37.6
Hillsborough	209,040	15.8	65,318	21.4	43,582	19.8
Holmes	4,535	25.9	1,307	34.9	864	31.3
Indian River	19,051	13.0	5,586	22.5	3,958	21.4
Jackson	9,032	22.5	2,803	31.8	1,852	28.8
Jefferson	2,479	19.4	756	30.9	513	29.0
Lafayette	1,645	23.8	504	29.5	339	26.6

APPENDIX 1, PAGE 2

State and County	ALL AGES		UNDER 18		AGE 5-17	
	Count	Percent	Count	Percent	Count	Percent
Lake	41,272	12.8	13,248	20.9	9,484	20.1
Lee	110,398	15.9	32,024	25.2	22,455	23.9
Leon	59,366	21.8	11,960	22.3	8,179	21.2
Levy	8,725	22.1	2,726	35.3	1,869	32.8
Liberty	1,422	22.6	460	29.9	322	28.8
Madison	4,437	27.0	1,271	36.9	877	35.8
Manatee	53,080	14.8	16,455	24.2	11,448	22.8
Marion	62,271	18.7	20,015	31.9	13,746	29.9
Martin	17,125	11.2	4,675	18.1	3,262	16.7
Miami-Dade	529,850	20.0	148,213	27.3	102,636	26.5
Monroe	8,638	11.3	2,190	18.8	1,525	19.0
Nassau	8,407	10.8	2,489	16.0	1,733	14.8
Okaloosa	21,966	11.3	8,055	18.7	5,472	18.4
Okeechobee	8,534	23.2	2,921	34.6	1,922	32.0
Orange	196,882	15.6	64,759	22.6	44,113	21.3
Osceola	59,226	18.5	21,913	27.5	15,340	26.0
Palm Beach	189,355	13.5	56,828	20.8	39,092	19.5
Pasco	71,760	14.6	19,463	19.5	13,008	17.4
Pinellas	127,287	13.6	32,342	20.6	21,093	18.5
Polk	109,907	17.3	38,743	26.7	27,002	25.1
Putnam	19,291	27.3	6,231	41.1	4,311	39.0
St. Johns	22,001	9.8	4,934	10.1	3,376	8.9
St. Lucie	48,570	16.4	15,237	25.3	10,808	24.1
Santa Rosa	19,681	12.3	6,183	16.9	4,172	15.2
Sarasota	38,874	9.7	10,322	17.6	7,266	16.6
Seminole	51,205	11.5	15,229	16.1	10,410	14.6
Sumter	11,178	10.1	2,551	30.6	1,754	29.2
Suwannee	9,499	23.6	3,202	35.2	2,224	34.0
Taylor	4,061	21.2	1,260	30.0	878	29.0
Union	2,710	26.2	760	26.4	511	24.6
Volusia	82,326	16.3	22,802	25.1	15,667	23.4
Wakulla	4,623	16.5	1,383	21.3	927	19.1
Walton	9,104	14.8	3,285	26.1	2,248	24.7
Washington	5,451	24.8	1,665	34.2	1,176	32.1

APPENDIX 2: FLORIDA UNDER AGE 5 POVERTY RATE 2005, 2008, 2011, 2014

Under-5 Poverty Rate Percent	2005	2008	2011	2014
Florida	20.5	21.5	28.1	26.5
Alachua	40.1	27.8	20.2	27.2
Bay	25.1	15.8	23.6	25.0
Brevard	15.0	16.7	23.2	26.7
Broward	16.9	16.9	23.1	20.6
Charlotte	18.9	11.9	15.4	16.0
Citrus	20.2	53.4	45.0	31.9
Clay	16.6	14.8	12.7	17.6
Collier	22.3	17.7	38.6	33.6
Columbia	n/a	37.1	48.4	40.2
Miami-Dade	24.8	21.8	29.1	27.5
Duval	18.1	17.4	28.9	30.4
Escambia	28.2	29.3	32.8	26.3
Flagler	16.4	19.0	55.0	8.5
Hernando	14.6	27.1	38.0	19.6
Highlands	29.3	35.2	27.6	25.0
Hillsborough	20.9	24.0	27.9	27.3
Indian River	23.1	33.0	15.4	25.6
Lake	30.1	21.0	7.8	25.3
Lee	19.5	19.8	30.6	27.6
Leon	21.0	16.6	29.0	27.0
Manatee	19.1	23.9	34.9	24.5
Marion	30.6	48.5	35.6	30.8
Martin	14.8	20.5	27.5	27.4
Monroe	7.6	2.9	18.7	16.6
Nassau	n/a	22.0	21.1	11.5
Okaloosa	21.3	8.5	32.4	24.4
Orange	17.6	17.0	29.2	30.0
Osceola	27.0	11.1	25.9	26.8
Palm Beach	19.4	18.2	28.1	23.2
Pasco	15.9	20.5	26.9	18.8
Pinellas	15.3	20.6	24.8	18.8
Polk	29.4	30.9	35.8	35.0
Putnam	15.8	40.5	54.0	56.3
Saint Johns	7.6	9.5	18.6	6.2
Saint Lucie	17.5	20.7	40.1	38.3
Santa Rosa	11.4	22.4	17.2	8.3
Sarasota	11.1	23.2	19.6	26.8
Seminole	15.5	15.6	16.1	14.1
Sumter	0.0	15.0	15.9	29.0
Volusia	18.4	24.0	28.5	32.0



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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 1656

INTRODUCER: Governmental Oversight and Accountability Committee; Innovation, Industry, and Technology Committee and Senator Albritton

SUBJECT: Reclaimed Water

DATE: February 18, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Imhof</u>	<u>IT</u>	<u>Fav/CS</u>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1656 prohibits domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge beginning January 1, 2026, with stated exceptions.

The bill provides for potable water reuse, deeming reclaimed water to be a water source for public water supply systems, declaring potable reuse to be an alternative water supply, declaring potable reuse projects to be eligible for alternative water supply funding, and prohibiting exclusion of use of potable reuse water from regional water supply planning. It requires the Florida Department of Environmental Protection (DEP) to review existing rules governing reclaimed water and potable reuse for necessary modifications and repeals and to adopt new rules. It requires the DEP to initiate rulemaking by December 31, 2020, and submit the adopted rules to the President of the Senate and the Speaker of the House of Representatives by December 12, 2021, for approval and incorporation into ch. 403, F.S. The rules may not be published as administrative rules by the DEP. The bill also sets out legislative intent on how the DEP is to perform these functions.

The bill requires the DEP and the water management districts to develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project.

The bill provides for permitting, tax, and funding benefits for a potable reuse project developed as a qualifying project.

The bill requires that the DEP coordinate with one or more technical working groups to adopt rules for the implementation of the potable reuse statute and sets out requirements for these rules.

The bill requires each county, municipality, and special district to promote the beneficial reuse of water by authorizing the use of residential graywater technologies within its jurisdiction, requiring such technologies to meet certain requirements, and providing incentives to developers to fully offset the capital costs of the technology.

The bill provides for requirements for the residential use of graywater technologies.

The bill states that the Legislature determines and declares that this act fulfills an important state interest.

The bill takes effect upon becoming a law.

II. Present Situation:

Drinking Water

The federal Safe Drinking Water Act (SDWA) was passed by Congress in 1974 to protect public health by regulating the nation's public drinking water supply.¹ The SDWA applies to all public water systems in the U.S., which are regulated by the Environmental Protection Agency (EPA).² However, the most direct oversight of water systems is conducted by state drinking water programs. States can apply to the EPA for "primacy," or the authority to implement the SDWA within their jurisdictions, if they can show that they will adopt standards at least as stringent as the EPA's and ensure their water systems meet these standards. All states and territories, except Wyoming and the District of Columbia, have received primacy.³

The Florida Safe Drinking Water Act (the Act)⁴ provides that it is the intent of the legislature to provide a water supply program. The DEP is charged with the primary responsibility for the safe drinking water program with support from the Department of Health and its units, including county health departments.⁵ The Act is intended to:

- Give effect to the federal Safe Drinking Water Act;
- Encourage cooperation between federal, state, and local agencies, not only in their enforcement role, but also in their service and assistance roles to city and county elected bodies; and
- Provide for safe drinking water at all times throughout the state, with due regard for economic factors and efficiency in government.

¹ United States Environmental Protection Agency, *Understanding the Safe Drinking Water Act* (June 2004), available at <https://www.epa.gov/sites/production/files/2015-04/documents/epa816f04030.pdf> (last visited February 11, 2020).

² *Id.*

³ *Id.* at 2.

⁴ Sections 403.850 – 403.891, F.S.

⁵ Section 403.851, F.S.

The Act establishes the Drinking Water State Revolving Fund (DWSRF) which is a federal-state partnership providing financial support to water systems and state drinking water programs. The federal Department of Environmental Protection oversees each state's DWSRF program. In Florida, DEP administers the program and receives requests for funding throughout the year.⁶

State Objectives

Sections 403.064(1) and 373.250(1), F.S., establish the encouragement and promotion of water reuse as formal state objectives. These sections further provide that the use of reclaimed water⁷ provided by wastewater treatment plants permitted and operated under a reuse program by the DEP shall be considered environmentally acceptable and not a threat to public health and safety.

Section 403.064(1), F.S., also provides that the reuse of reclaimed water is a critical component of meeting the state's water supply needs, and encourages incentive-based programs for reuse implementation.

Water Reuse

Water reuse is an important component of both wastewater management and water resource management in Florida. Reuse is the deliberate application of reclaimed water for a beneficial purpose.⁸ Reuse offers an environmentally sound means for managing wastewater that dramatically reduces environmental impacts associated with discharge of wastewater effluent to surface waters.⁹ Thus, reuse involves taking what is considered to be wastewater, giving it a high degree of treatment and using the resulting high-quality reclaimed water for a new, beneficial use.¹⁰

Additionally, the use of reclaimed water provides an alternative water supply for activities that do not require potable quality water (e.g. irrigation, industrial use, fire protection etc.) which serves to conserve available supplies of potable quality water.¹¹ Reclaimed water is water from a domestic wastewater¹² treatment facility that has received at least secondary treatment¹³ and

⁶ Department of Environmental Protection, State Revolving Fund, DWSRF Program, <https://floridadep.gov/wra/srf/content/dwsrf-program> (last visited February 10, 2020).

⁷ Rule 62-610.200, F.A.C., provides that except as specifically provided in Chapter 62-610, F.A.C., "reclaimed water" means "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility."

⁸ Rule 62-610.200(52), F.A.C.

⁹ Reuse Coordinating Committee, the Water Conservation Initiative Water Reuse Work Group, *Water Reuse for Florida: Strategies for Effective Use of Reclaimed Water* (June 2003), https://floridadep.gov/sites/default/files/valued_resource_FinalReport_508C.pdf (last visited February 11, 2020).

¹⁰ Department of Environmental Protection, *Water Reuse*, https://floridadep.gov/sites/default/files/reusebrochure2010_reading.pdf (last visited February 11, 2020).

¹¹ *Id.* at 4.

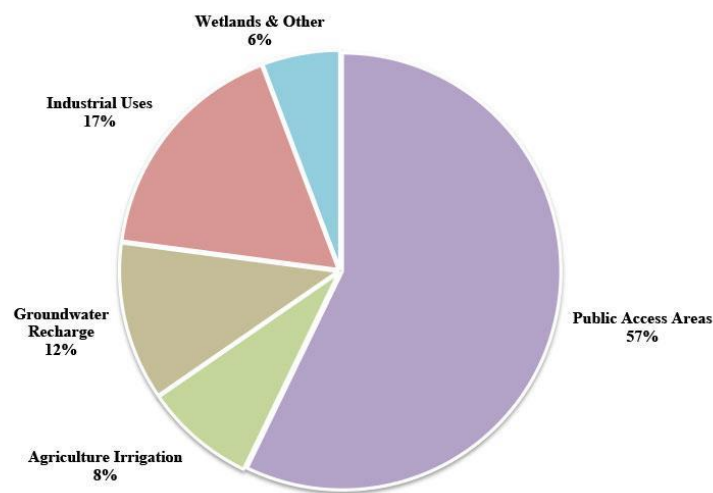
¹² Section 367.021(5), F.S., defines the term "domestic wastewater" to mean wastewater principally from dwellings, business buildings, institutions, and sanitary wastewater or sewage treatment plants.

¹³ Rule 62-610.200(54), F.A.C., defines the term "secondary treatment" to mean "wastewater treatment to a level that will achieve the effluent limitations specified in paragraph 62-600.420(1)(a), F.A.C."

basic disinfection¹⁴ for reuse.¹⁵ Thus, water reuse represents the intersection of the full range of water programs – surface water, ground water, underground injection control, wetlands, and drinking water.¹⁶

According to the DEP report, over the past 30 years, Florida has made great strides in the expansion of reclaimed water systems and reuse is now an integral part of wastewater management, water resource management, and ecosystem management in Florida. In 2013, Florida reused approximately 719 million gallons per day (MGD) of reclaimed water, which represents approximately 45 percent of the total domestic wastewater flow in the state. Today Florida is recognized as a national leader in water reuse.¹⁷ The chart below shows the percentage of reclaimed water utilization by flow for each reuse type.¹⁸

Figure 1: Reclaimed Water Utilization by Flow



Note: Agriculture irrigation includes edible crops (e.g., citrus) as well as feed and fodder crops (e.g., spray fields).

Reuse and other alternative resources plays a critical role in Florida’s “water resource caution areas” (WRCAs). These are areas designated as having current or future critical water supply problems where traditional water sources may not be adequate to meet expected water needs. The map below shows the water resource caution areas.¹⁹

¹⁴ Rule 62-600.440(5), F.A.C., provides the requirements for basic disinfection.

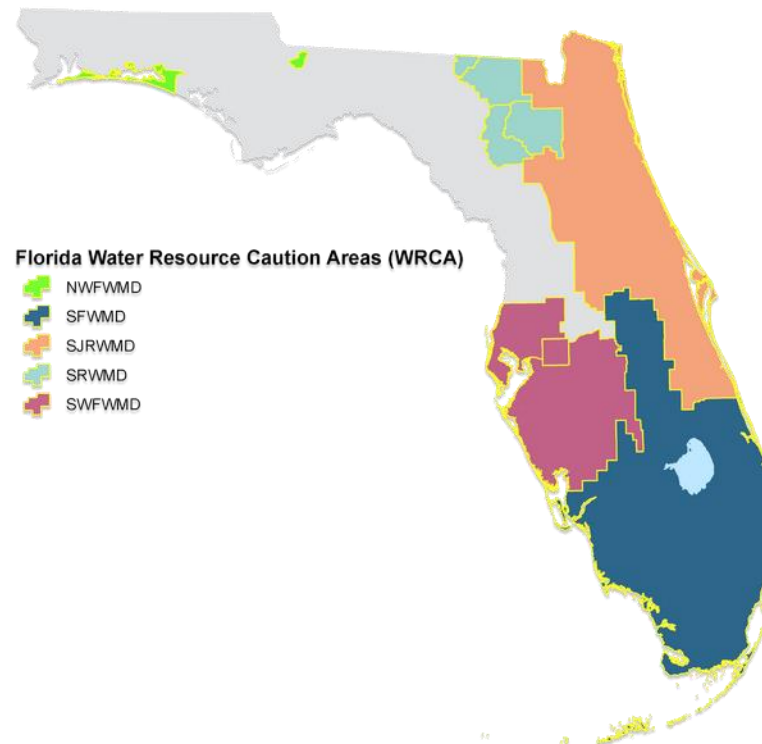
¹⁵ Section 373.019(17), F.S.; Rule 62-610.200(48), F.A.C.

¹⁶ Reuse Coordinating Committee, the Water Conservation Initiative Water Reuse Work Group, *Water Reuse for Florida: Strategies for Effective Use of Reclaimed Water*, *supra* note 9 at 8.

¹⁷ *Id.* at 19.

¹⁸ This chart is available from DEP’s *Florida’s Reuse Activities*, <https://floridadep.gov/water/domestic-wastewater/content/floridas-reuse-activities>.

¹⁹ This map is DEP’s In-house graphic map of water resource caution areas, available at <https://floridadep.gov/water/water/media/house-graphic-map-water-resource-caution-areas>.



Reuse Projects

Both the DEP and the water management districts (WMDs) – as entities who play a major role in the management of water resources – have been involved in promoting reuse and the use of reclaimed water.²⁰

The DEP classifies the following as “reuse” projects:

- Slow-rate land application projects with restricted access permitted under Part II of Chapter 62-610, F.A.C.
- Projects permitted under Part III of Chapter 62-610, F.A.C.
- Rapid-rate land application systems permitted under Part IV of Chapter 62-610, F.A.C.
- Projects making reclaimed water from domestic wastewater sources available for industrial applications, as described in Part VII of Chapter 62-610, F.A.C.
- Ground water recharge projects permitted under Part V of Chapter 62-610, F.A.C.
- Indirect potable reuse projects permitted under Part V of Chapter 62-610, F.A.C.
- Wetlands creation, restoration, and enhancement projects, if the applicant provides an affirmative demonstration that reclaimed water will be used to create, restore, or enhance wetlands. The wetlands creation, restoration, or enhancement aspects shall be described in detail and documented.
- Projects previously identified as “reuse.”
- Uses specifically addressed in Part III of Chapter 62-610, F.A.C., such as toilet flushing, fire protection, construction dust control, aesthetic purposes, and recreational uses.

²⁰ Department of Environmental Protection, Office of Water Policy, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 16 (December 1, 2015) available at <https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf>.

- Uses not addressed elsewhere in Chapter 62-610, F.A.C., if the applicant provides an affirmative demonstration that reclaimed water will be used for a beneficial purpose or the use of reclaimed water will eliminate the need for use of a potable water or a water that could be used as a source of potable water.²¹

Additionally, Rule 62-610.480, F.A.C., provides for a framework of approval of other uses of reclaimed water not specifically identified in Chapter 62-610, F.A.C. The rule specifies that the DEP must approve other uses of reclaimed water if the: (i) all requirements of Part III of Chapter 62-610, F.A.C., are met and (ii) the engineering report provides reasonable assurance that the intended use will meet applicable rules of the Department and will protect the public health.²²

Florida's Water Reuse Program

A key component to Florida's reuse program are reuse feasibility studies which are conducted to evaluate the capability of a domestic wastewater treatment plant to implement reuse.²³ Section 403.064(2), F.S., requires reuse feasibility studies to meet the DEP's guidelines and to include:

- Evaluation of monetary costs and benefits for several levels and types of reuse.
- Evaluation of water savings if reuse is implemented.
- Evaluation of rates and fees necessary to implement reuse.
- Evaluation of environmental and water resource benefits associated with reuse.
- Evaluation of economic, environmental, and technical constraints.
- A schedule for implementation of reuse that considers phased implementation.

Feasibility studies are required by:

- Section 403.064, F.S., for domestic wastewater facilities located within, serving a population within, or discharging within designated WRCAs;
- The Indian River Lagoon system and Basin Act, contained in Chapter 90-262, L.O.F.;
- The antidegradation policy in Rules 62-4.242 and 62-302.300, F.A.C., for new or expanded surface water discharges; and
- By rules of the applicable water management district.

A reuse feasibility study is not required if the domestic wastewater treatment facility has an existing or proposed permitted or design capacity less than 0.1 MGD or the permitted reuse capacity equals or exceeds the total permitted capacity of the domestic wastewater treatment facility.²⁴

Potable Reuse

The use of reclaimed water for the purpose of directly or indirectly augmenting drinking water supplies is known as potable reuse. Indirect potable reuse is the planned discharge of reclaimed water to ground or surface waters for the development or supplementation of potable water supply. Direct potable reuse is the introduction of advanced treated reclaimed water into a raw

²¹ Rule 62-610.810(2), F.S.

²² Rule 62-610.480(1), F.A.C.

²³ Department of Environmental Protection, *Reuse Feasibility Studies*, <https://floridadep.gov/water/domestic-wastewater/content/reuse-feasibility> (last visited February 11, 2020).

²⁴ Section 403.064(5), F.S.,

water supply immediately upstream of a drinking water treatment facility or directly into a potable water distribution system.²⁵

Although regulations currently exist in Florida for using reclaimed water for indirect potable reuse for augmenting surface water, there are no regulations that address using reclaimed water for indirect potable reuse involving groundwater replenishment or direct potable reuse.²⁶

Potable Reuse Commission

The Potable Reuse Commission (PRC) was organized “to create a consensus driven partnership to develop the framework for implementation of potable reuse in Florida.”²⁷ The framework will support the use of potable reuse as a water supply alternative in Florida to meet future supply needs while protecting public health and environment. The PRC identified a number of proposed regulatory changes needed to ensure protection of public health and the environment:

- Move Florida’s existing reclaimed water regulations that apply to potable reuse into the appropriate drinking water regulations.
- Create new regulations addressing potable reuse to be placed within Florida’s drinking water program regulations.
- Revise existing drinking water regulations to specify reclaimed water as a water supply source and employ appropriate treatment technologies to address pathogens (such as bacteria and viruses) and emerging constituents²⁸ (such as pharmaceuticals and personal care products).
- Require potable reuse to meet drinking water standards.
- Provide pathogen treatment to meet drinking water standards.
- Make existing industrial pretreatment requirements apply to potable reuse projects and make domestic wastewater facilities used for potable reuse also implement source control.
- Address emerging constituents, such as pharmaceuticals and personal care products, in potable reuse.²⁹

The PRC also recommended to:

- Continue the exemption of direct potable reuse from having to obtain a consumptive use permit or water use permit.
- Revise existing regulations to clarify that indirect potable reuse projects must comply with existing spring discharge standards.
- Expand the current definition of “indirect potable reuse” to include groundwater so that all types of indirect potable reuse projects fit within the definition.

²⁵ *Id.* at xxiv.

²⁶ *Id.*

²⁷ Potable Reuse Commission (2019), *Framework for the Implementation of Potable Reuse in Florida, Prepared for Florida Potable Reuse Commission*, Published by the WaterReuse Association, Alexandria, VA (January 2020), xxvii-xxviii, available at <http://prc.watereuseflorida.com/wp-content/uploads/Framework-for-Potable-Reuse-in-Florida-FINAL-January-2020-web10495.pdf> (last visited February 10, 2020).

²⁸ The term “emerging constituents” is defined to mean pharmaceuticals, personal care products, and other unregulated chemicals. Also referred to as constituents of emerging concern. *Id.* at xx.

²⁹ Potable Reuse Commission (2019), *Framework for the Implementation of Potable Reuse in Florida, Prepared for Florida Potable Reuse Commission*, *supra* note 35, at xxvii-xxviii.

- Specify a point of compliance with drinking water standards for potable reuse - at the point where finished potable water is finally discharged from the drinking water treatment facility.
- Have the DEP and the water management districts enter into a memorandum of agreement to coordinate permitting for indirect potable water projects.
- Have the DEP review current groundwater recharge requirements in Chapter 62-610, F.A.C.³⁰

Wastewater Treatment Facilities

The proper treatment and disposal or reuse of domestic wastewater is an important part of protecting Florida's water resources. The majority of Florida's domestic wastewater is controlled and treated by centralized treatment facilities regulated by the DEP. Florida has approximately 2,000 permitted domestic wastewater treatment facilities.^{31,32}

Unless exempted by rule or statute, any facility or activity which discharges wastes into waters of the State or which will reasonably be expected to be a source of water pollution must obtain a permit from the DEP.³³ Generally, persons who intend to collect, transmit, treat, dispose, or reuse wastewater are required to obtain a wastewater permit. A wastewater permit issued by the DEP is required for both operation and certain construction activities associated with domestic or industrial wastewater facilities or activities. A DEP permit must also be obtained prior to construction of a domestic wastewater collection and transmission system.³⁴

The National Pollution Discharge Elimination System (NPDES) Program is a federal program established by the Clean Water Act (CWA) to control point source and stormwater discharges.³⁵ Under section 402 of the CWA, any discharge of a pollutant from a point source to surface waters (i.e., the navigable waters of the United States or beyond) must obtain an NPDES permit. NPDES permit requirements for most wastewater facilities or activities (domestic or industrial) that discharge to surface waters are incorporated into a state-issued permit, thus giving the permittee one set of permitting requirements rather than one state and one federal permit.³⁶ The DEP issues operation permits for a period of 5 years for facilities regulated under the NPDES program and up to 10 years for other domestic wastewater treatment facilities.³⁷

³⁰ *Id.* at xxix.

³¹ Department of Environmental Protection, *General Facts and Statistics about Wastewater in Florida*, available at <https://floridadep.gov/water/domestic-wastewater/content/general-facts-and-statistics-about-wastewater-florida> (last visited February 10, 2020).

³² For purposes of permitting, wastewater facilities are categorized as either industrial or domestic based on the type of wastewater the facility handles. Domestic wastewater is wastewater from dwellings, business buildings, and the like, commonly referred to as sanitary wastewater or sewage. All wastewater that is not defined as domestic wastewater is considered industrial wastewater.

³³ See Section 403.087, F.S.

³⁴ Department of Environmental Protection, *Wastewater Permitting*, available at <https://floridadep.gov/water/domestic-wastewater/content/wastewater-permitting> (last visited February 10, 2020).

³⁵ 33 U.S.C. s. 1342.

³⁶ Sections 403.061 and 403.087, F.S.

³⁷ Section 403.087(3), F.S.

Consumptive Use Permits

The State's five WMDs implement the consumptive use permitting program. A consumptive water use permit allows the holder to withdraw a specified amount of water from the ground (aquifers) or a canal, lake, river (surface water) for reasonable-beneficial uses.³⁸ The DEP or the governing board of a WMD may require permits for the consumptive use of water and may impose reasonable conditions necessary to assure such use is consistent with the overall objectives of the WMD or the DEP and is not harmful to the water resources of the area.³⁹ To obtain a consumptive use permit (CUP), the applicant must establish that the proposed use of water:

- Is a reasonable beneficial use as defined in s. 373.019;⁴⁰
- Will not interfere with any presently existing legal use of water; and
- Is consistent with the public interest.⁴¹

It is possible for consumptive use to lower the flows and levels of water bodies to a point that the resource values are significantly harmed. To prevent this harm, the WMDs are responsible for identifying and establishing the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area, known as the minimum flow⁴² or minimum level (MFL).⁴³

For water bodies that are below their MFL, or are projected to fall below it within 20 years, the WMDs are required to implement a recovery or prevention strategy to ensure the MFL is maintained.⁴⁴ A recovery or prevention strategy must include the development of additional water supplies and other actions to achieve recovery to the established MFL as soon as practicable or prevent the existing flow or water level from falling below the established MFL.⁴⁵ A recovery or prevention strategy must also include a phased-in approach or a timetable that will allow for the provision of sufficient water supplies for all existing and projected reasonable-beneficial uses, including implementation of conservation and other efficiency measures to offset reductions in permitted withdrawals.⁴⁶

³⁸ South Florida Water Management District, *Consumptive Water Use Permits*, <https://www.sfwmd.gov/doing-business-with-us/permits/water-use-permits> (last visited February 11, 2020).

³⁹ Section 373.219(1), F.S.; No permit is required for domestic consumption of water by individual users.

⁴⁰ Section 373.019(16), F.S., defines "reasonable-beneficial use" to mean "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner that is both reasonable and consistent with the public interest."

⁴¹ Section 373.223(1), F.S.

⁴² Section 373.042(1)(a), F.S., provides that the minimum flow for a given watercourse is the limit at which further water withdrawals would be significantly harmful to the water resources or ecology of the area.

⁴³ Section 373.042(1)(b), F.S., provides that the minimum level is the level of groundwater in an aquifer or the level of a surface waterbody at which further withdrawals will significantly harm the water resources of the area. DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 27, 2020).

⁴⁴ DEP, *Minimum Flows and Minimum Water Levels and Reservations*, available at <https://floridadep.gov/water-policy/water-policy/content/minimum-flows-and-minimum-water-levels-and-reservations> (last visited Jan. 27, 2020).

⁴⁵ Section 373.042(2), F.S.

⁴⁶ *Id.*

Aquifer Storage and Recovery and Aquifer Recharge

DEP has general regulatory authority over underground water, lakes, rivers, streams, canals, ditches, and coastal waters under the jurisdiction of the state to the extent that the pollution of these waters may impact public health or impair the interests of the public or persons lawfully using the waters.⁴⁷ Accordingly, through its Aquifer Protection Program, DEP regulates the disposal of appropriately treated fluids, such as reclaimed water, through underground injection wells while also protecting underground sources of drinking water.⁴⁸ The program is aimed at preventing degradation of the quality of aquifers adjacent to the injection zone.⁴⁹

Aquifer storage and recovery (ASR) is the underground injection and storage of water into a subsurface formation for the purpose of withdrawing the water for beneficial purposes at a later date.⁵⁰ ASR provides for storage of large quantities of water for both seasonal and long-term storage and ultimate recovery that would otherwise be unavailable due to land limitations, loss to tides, or evaporation.⁵¹ Similar to ASR, aquifer recharge (AR) is the underground injection and storage of water into an aquifer, but the water used to recharge the aquifer is not being stored for the purpose of withdrawing the water from the same facility at a later date.⁵² AR is primarily considered a water resource development and conservation strategy used to preserve and enhance water resources and natural systems (e.g., sustain water levels, meet MFLs) and to attenuate flooding.⁵³

For both ASR and AR, the aquifer acts as an underground reservoir for the recharged water. Whereas ASR is most commonly utilized near major population centers requiring storage to ensure water system reliability (e.g., public supply and commercial/industrial/mining uses), AR is most effective as a water management strategy in sparsely populated rural areas whose water resources rely on stable regional aquifer levels.⁵⁴

ASR and AR wells are regulated as Class V injection wells, which include all wells that inject non-hazardous fluids into or above formations that contain underground sources of drinking water. While ASR wells are all wells associated with an ASR facility, AR wells include:

- Recharger wells, which replenish, augment, or store water in an aquifer;
- Saltwater intrusion barrier wells, which inject water into a fresh water aquifer to prevent the intrusion of salt water into the fresh water;
- Subsidence control wells, which inject fluids into a zone that does not produce oil or gas to reduce or eliminate subsidence associated with the overdraft of fresh water; and

⁴⁷ Section 403.062, F.S.

⁴⁸ Rule 62-528.200(66), F.A.C., defines the term “underground source of drinking water” to mean aquifer. DEP, *Aquifer Protection Program – UIC*, available at <https://floridadep.gov/water/aquifer-protection> (last visited Jan. 27, 2020).

⁴⁹ Department of Environmental Protection, *Aquifer Protection Program -UIC*, available at <https://floridadep.gov/water/aquifer-protection> (last visited February 11, 2020); see ch. 62-528, F.A.C., for underground injection control permitting requirements.

⁵⁰ Office of Water Policy, *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, *supra* note 20 at 83.

⁵¹ Department of Environmental Protection, *Aquifer Protection Program –UIC*, *supra* note 66.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

- Connector wells, which connect two aquifers to allow the interchange of water between them.⁵⁵

Fiscally Constrained Counties

A rural area of opportunity (RAO) is a rural community, or a region composed of rural communities, designated by the Governor that presents a unique economic development opportunity of regional impact or that has been adversely affected by an extraordinary economic event, severe or chronic distress, or a natural disaster.⁵⁶ The three designated RAOs are the:

- Northwest RAO, which includes Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Wakulla, and Washington Counties, and the City of Freeport;
- South Central RAO, which includes DeSoto, Glades, Hardee, Hendry, Highlands, and Okeechobee Counties, and the Cities of Pahokee, Belle Glade, South Bay, and Immokalee; and
- North Central RAO, which includes Baker, Bradford, Columbia, Dixie, Gilchrist, Hamilton, Jefferson, Lafayette, Levy, Madison, Putnam, Suwannee, Taylor, and Union Counties.⁵⁷

A fiscally constrained county is a county that is entirely within a RAO or a county for which the value of a mill will raise no more than \$5 million in revenue.⁵⁸

Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida

Carollo Engineers, Inc.,⁵⁹ at the request of the Florida Water Environment Association Utility Council,⁶⁰ evaluated the ramifications and developed planning level costs associated with eliminating the discharge of treated effluent to surface waters from domestic wastewater treatment facilities (DWWTFs).⁶¹ This bill as well as House Bill 715 were the impetus for the evaluation. The final evaluation notes the following limitations on different alternative effluent management practices and methods:

- Public access reclaimed water systems provide a tremendous benefit in offsetting the use of potable water for non-potable uses, but experiences significant fluctuations in demand and requires an alternative effluent management or reuse mechanism during low-demand periods.

⁵⁵ Rule 62-528.300(1)(e), F.A.C.

⁵⁶ Section 288.0656(2)(d), F.S.

⁵⁷ Florida Department of Economic Opportunity, *RAO*, available at <http://www.floridajobs.org/business-growth-and-partnerships/rural-and-economic-development-initiative/rural-areas-of-opportunity> (last visited Jan. 16, 2019).

⁵⁸ Section 218.67(1), F.S.

⁵⁹ Carollo Engineers is an environmental engineering firm that specializes in the planning, design, and construction of water and wastewater facilities. See <https://www.carollo.com/who-we-are> (last visited January 31, 2020).

⁶⁰ According to its website, the “Florida Water Environment Association Utility Council was formed in 1998 to promote sound public policy in the water quality and wastewater industry. The Utility Council consists of wastewater utilities throughout the state who are working together to address legislative and regulatory issues. The Utility Council monitors proposed legislation and regulations and keeps its members informed of the latest developments. The Utility Council also works to educate policy makers about the intricacies of water quality and wastewater management.” See <https://www.fwea.org/history.php> (last visited January 31, 2020).

⁶¹ Florida Water Environment Association Utility Council, Carollo Engineers, Inc., *Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida* (Jan. 2020).

- Public access reclaimed water systems are most cost effective when used with new development, and extension into existing, densely urbanized areas provides little benefit at a very high cost. Many existing surface water discharges are located in developed areas far from new development.
- In the 1980s, other alternatives such as rapid infiltrations basis (RIBs) were developed in reaction to studies showing that the historical use of surface water discharge was degrading surface water quality. Surface water discharges have been all but eliminated in Central Florida by pairing urban and agricultural irrigation with RIBs. Use of RIBs, however, depends on the existence of hydrogeology which favors ground water recharge, and this is limited to Central Florida. Similarly, another method that was developed, deep well injection, can provide exceptional reliability but is dependent on suitable subsurface conditions and is becoming increasingly limited across the state.
- Active surface discharge permits are located where these methods cannot be used, and where there are large receiving water bodies which can accommodate the discharge without environmental degradation.⁶²

Based on limitations on effluent management and reuse alternatives, the evaluation determined that potable reuse provided a strategy for elimination of existing surface water discharges. Potable reuse is relatively expensive related to existing reuse practices, but avoids many of the limitations of other reuse and effluent management practices, and is the most viable option.⁶³

The report recognized four significant challenges.

- Implementing potable reuse will require revisions to current regulations to allow direct potable reuse and to clarify the requirements for indirect potable reuse. DWWTFs will be unable to begin the facility design and permitting process until the new rules are adopted.
- Public acceptance will require education and time.
- Technical challenges will arise in developing new treatments to turn reclaimed water into potable water.
- Costs may be significant.⁶⁴

A project schedule for transitioning from surface water discharge to potable reuse must include:

- Time for Florida to adopt new reuse regulations which will allow direct potable reuse and clarify existing regulations for indirect potable reuse. To assure compliance with these new regulations, it will be necessary to defer design and permitting potable reuse projects until the new regulations have been adopted.
- Securing project funding will require an additional twelve to eighteen months. This would include major rate adjustments and related public meetings. The magnitude of debt may affect bond ratings and will require financial analysis to ensure financial solvency.
- Typical project upgrades would include:
 - Preliminary and final design;
 - A twelve-month pilot project currently required for all potable reuse projects;
 - Permitting;

⁶² *Id.* at 40-41.

⁶³ *Id.* at 41.

⁶⁴ *Id.* at 41 and 45-48.

- Advertising, bidding, and awarding the project; and
- Construction and startup.

The report concludes that the earliest a potable water reuse project could be completed is September 2026, and the latest June 2028.⁶⁵

Cost projections are based on use of a potable reuse treatment process that, while more expensive, is a proven technology capable of treating almost any waste stream to potable quality. The report also discusses design capacity for projects, planning level cost estimates, and treatment infrastructure components. The report projects that the total statewide cost will be \$28,010,000,000. As mentioned above, the magnitude of debt may affect bond ratings and will require financial analysis to ensure financial solvency. Also, the high cost of these improvements would put a significant burden on the ratepayers of the DWWTFs affected by the discharge elimination requirement.⁶⁶

III. Effect of Proposed Changes:

Prohibition against Surface Water Discharge

Section 1 prohibits domestic wastewater treatment facilities from disposing of effluent, reclaimed water, or reuse water by surface water discharge beginning January 1, 2026, except the prohibition does not apply to:

- Indirect potable reuse projects;
- Domestic wastewater treatment facility discharges during wet weather which occur in accordance with the applicable department permit;
- Discharges into a stormwater management system which are subsequently withdrawn by a user for irrigation purposes;
- Domestic wastewater treatment facilities located in fiscally constrained counties;
- Projects where reclaimed water is recovered from an aquifer recharge system and subsequently discharged into a surface water for potable reuse;
- Wetlands creation, restoration, and enhancement projects;
- Minimum flows and levels recovery or prevention strategy plan projects;
- Domestic wastewater treatment facilities with reuse systems that provide a minimum of 90 percent of a facility's annual average flow for authorized reuse purposes;
- Domestic wastewater treatment facilities located in municipalities that have less than \$10 million in total revenue; or
- Domestic wastewater treatment facilities located in municipalities that are entirely within a rural area of opportunity.

Potable Reuse

Section 2 creates section 403.8531, F.S., to provide for potable water reuse recognizing that sufficient water supply is imperative to the future of the state and that potable reuse is one source of water which may assist in meeting future demands.

⁶⁵ *Id.* at 48.

⁶⁶ *Id.* at 46 and 42.

The section sets forth the legislative intent that the DEP adopt rules for potable reuse which:

- Protect the public health and environment by ensuring that the potable reuse rules meet federal and state drinking water and water quality standards, including, but not limited to, the Clean Water Act, the Safe Drinking Water Act, and water quality standards pursuant to chapter 403, and, when possible, implement such rules through existing regulatory programs.
- Support reclaimed water being used for potable reuse purposes.
- Implement the recommendations set forth in the Potable Reuse Commission's 2020 report "Advancing Potable Reuse in Florida: Framework for the Implementation of Potable Reuse in Florida."
- Require that the point of compliance with drinking water standards for potable reuse projects is the final discharge point for finished water from the water treatment facility.
- Protect the aquifer and Florida's springs and surface waters by ensuring that potable reuse projects do not cause or contribute to violations of water quality standards in surface waters, including groundwater discharges that flow by interflow and affect water quality in surface waters, and that potable reuse projects shall be designed and operated to ensure compliance with groundwater quality standards.

This section provides the following definitions:

- "Advanced treated reclaimed water" means the water produced from an advanced water treatment process for potable reuse applications.
- "Advanced treatment technology" means the treatment technology selected by a utility to address emerging constituents and pathogens in reclaimed water as part of a potable reuse project.
- "Direct potable reuse" means the introduction of advanced treated reclaimed water into a raw water supply immediately upstream from a drinking water treatment facility or directly into a potable water supply distribution system.
- "Emerging constituents" means pharmaceuticals, personal care products, and other chemicals not regulated as part of drinking water quality standards.
- "Indirect potable reuse" means the planned delivery or discharge of reclaimed water to groundwater or surface waters for the development of, or to supplement, the potable water supply.
- "Off-spec reclaimed water" means reclaimed water that does not meet the standards for potable reuse.
- "Potable reuse" means the augmentation of a drinking water supply with advanced treated reclaimed water from a domestic wastewater treatment facility, and consists of direct potable reuse and indirect potable reuse.
- "Reclaimed water" has the same meaning as in s. 373.019.

To comply with drinking water quality standards, the section deems reclaimed water to be a water source for public water supply systems.

The bill provides that existing water quality protections that prohibit discharges from causing or contributing to violations of water quality standards in groundwater and surface water apply to potable reuse projects. Additionally, the bill specifies that when reclaimed water is released or discharged into groundwater or surface water for portable reuse purposes, there must be a

consideration of emerging constituents and impact to other users of such groundwater or surface water.

The section declares potable reuse to be an alternative water supply as defined in s. 373.709.⁶⁷

The section requires DEP to:

- Adopt rules that authorize potable reuse projects;
- Review existing rules governing reclaimed water and potable reuse to identify obsolete and inconsistent requirements and adopt rules that revise existing potable reuse rules to eliminate such inconsistencies, while maintaining existing public health and environmental protections;
- Review aquifer recharge rules, and, if revisions are necessary to ensure continued compliance with existing public health and environmental protection rules when reclaimed water is used for aquifer recharge, adopt such rules; and
- Initiate rulemaking by December 31, 2020, and submit the adopted rules to the President of the Senate and the Speaker of the House of Representatives by December 12, 2021, for approval and incorporation into ch. 403, F.S. Such rules may not be published as administrative rules by the DEP.

The section requires the DEP and WMDs are required to develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The bill states the purpose of the coordinated review is to: share information, avoid the redundancy of information requested from the permittee, and ensure consistency in the permit for the protection of the public health and the environment. The DEP and the WMDs must develop and execute the memorandum of agreement by December 31, 2022.

The section provides that to encourage investment in the development of potable reuse projects by private entities, a potable reuse project developed as a qualifying project⁶⁸ is:

- Beginning January 1, 2025, eligible for expedited permitting under s. 403.973 (using a permit application processing period of 90-days after receipt of a completed application).
- Granted an annual credit against the corporate income tax in an amount equal to five percent of the eligible capital costs⁶⁹ generated by a qualifying project for a period not to exceed 20 years after the date that project operations begin. The tax credit applies only to the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying

⁶⁷ “Alternative water supplies” means salt water; brackish surface and groundwater; surface water captured predominately during wet-weather flows; sources made available through the addition of new storage capacity for surface or groundwater, water that has been reclaimed after one or more public supply, municipal, industrial, commercial, or agricultural uses; the downstream augmentation of water bodies with reclaimed water; stormwater; and any other water supply source that is designated as nontraditional for a water supply planning region in the applicable regional water supply plan. Section 373.019 (1), F.S.

⁶⁸ Section 255.065, F.S., provides for public-private partnerships involving public property and buildings, with the stated intent to encourage private entity investment in the development and operation of qualifying projects. “Qualifying project” is defined to include a variety of specific types of facilities or projects that serve a public purpose, including a water, wastewater, or surface water management facility, or other related infrastructure.

⁶⁹ Section s. 220.191(1)(c), F.S., defines “eligible capital costs” to mean all expenses incurred by a qualifying business in connection with the acquisition, construction, installation, and equipping of a qualifying project during the period from the beginning of construction of the project to the commencement of operations, including specified types of costs.

project, and the sum of all tax credits provided pursuant to this section may not exceed 100 percent of eligible capital costs. Any credit granted may not be carried forward or backward.

- Granted a three-year extension of applicable deadlines.
- Eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding, as consistent with s. 373.707, F.S., which encourages alternative water supply development.

Section 4 requires that, in implementing this new statute, the DEP, in coordination with one or more technical working groups, adopt rules for the implementation of potable reuse projects. The DEP is required to:

- Revise the appropriate chapters in the Florida Administrative Code, including chapter 62-610, Florida Administrative Code, to ensure that all rules implementing potable reuse are in the Florida Administrative Code chapter 62 governing drinking water regulation.
- Revise existing drinking water rules to include reclaimed water as a source water for the public water supply and require such treatment of the water as is necessary to meet existing drinking water rules, including rules for pathogens.
- Include in the potable reuse rules the implementation of a log reduction credit system using advanced treatment technology to meet pathogen treatment requirements, and must require a public water supplier to provide an approach to meet the pathogen treatment requirements in an engineering report as part of its public water supply permit application for authorization of potable reuse. To ensure protection of the public health, as part of the public water supply permit application to authorize potable reuse, a public water supplier shall provide a department-specified level of treatment or propose an approach to achieving the log reduction targets based on source water characterization that is sufficient for a pathogen risk of infection which meets the national drinking water criteria of less than 1×10^{-4} annually.
- Prescribe the means for using appropriate treatment technology to address emerging constituents in potable reuse projects. The advanced treatment technology must be technically and economically feasible and must provide for flexibility in the specific treatment processes employed to recognize different project scenarios, emerging constituent concentrations, desired finished water quality, and the treatment capability of the facility. The advanced treatment technology may also be used for pathogen removal or reduction.

The section provides that the rules must require appropriate monitoring to evaluate the performance of the advanced treatment technology, including the monitoring of surrogate parameters and controls, which monitoring must occur either before or after the advanced treatment technologies treatment process, or both, as appropriate.

For direct potable reuse projects, the bill provides the rules must require reclaimed water to be included in the source water characterization for a drinking water treatment facility and, if that source water characterization indicates the presence of emerging constituents at levels of public health interest, must specify how appropriate treatment technology will be used to address those emerging constituents.

For indirect potable reuse projects, the DEP must amend the existing monitoring requirements contained within part V of chapter 62-610, F.A.C., to require monitoring for one or more representative emerging constituents. The utility responsible for the indirect potable reuse project

shall develop an emerging constituent monitoring protocol consisting of the selection of one or more representative emerging constituents for monitoring and the identification of action levels associated with such emerging constituents. The monitoring protocol must provide that, if elevated levels of the representative emerging constituent are detected, the utility must report the elevated detection to the department and investigate the source and cause of such elevated emerging constituent. The utility shall submit the monitoring protocol to the department for review and approval and shall implement the monitoring protocol as approved by the DEP. If the monitoring protocol detects an elevated emerging constituent, and if the utility's investigation indicates that the use of the reclaimed water is the cause of such elevated emerging constituent, the utility must develop a plan to address or remedy that cause. The utility's monitoring results, investigation of any detected elevated emerging constituent levels, determination of cause, and any plan developed to address or remedy the cause must be submitted to the department for review and approval.

The rules also must specify industrial pretreatment requirements for potable reuse projects which must match the industrial pretreatment requirements contained in chapter 62-625, F.A.C., as of the effective date. If necessary, the DEP also must require the utility operating a potable reuse project to implement a source control program, and the utility shall identify the sources that need to be addressed.

Additionally, section states that the rules must:

- Provide off-spec reclaimed water requirements for potable reuse projects which include the immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water based on operating protocols established by the public water supplier and approved by the DEP.
- Revise existing rules to specify the point of compliance with drinking water standards for potable reuse projects as the point where the finished water is finally discharged from the drinking water treatment facility to the water distribution system.
- Ensure that, as rules for potable reuse projects are implemented, chapter 62-610.850, F.A.C., is applicable.
- Revise the definition of the term "indirect potable reuse" provided in chapter 62-610, F.A.C., to match the definition created in the bill.

The department must convene and lead one or more technical advisory committees to coordinate the required rulemaking and review of rules. The technical advisory committees, which must assist in the development of such rules, must be composed of knowledgeable representatives of a broad group of interested stakeholders, including, but not limited to, representatives from the water management districts, the wastewater utility industry, the water utility industry, the environmental community, the business community, the public health community, and the agricultural community, and consumers.

Graywater Incentives

Section 3 creates s. 403.892, F.S., to provide incentives for the use of graywater technologies.

This section defines the terms “developer” to have the same meaning as in s. 380.031, F.S.⁷⁰ and “graywater” to have the same meaning as in s. 381.0065(2)(e), F.S.⁷¹

The section requires a county, municipality, and special district to promote the beneficial reuse of water in this state by authorizing graywater technologies and providing incentives to developers.

Specifically, the section requires a county, municipality, and special district must:

- Authorize the use of residential graywater technologies in their jurisdictions which meet the applicable requirements of subsections (3) through (7)⁷², the Florida Building Code, and the Department of Health and which have received all applicable regulatory permits or authorizations;
- Provide incentives to fully offset the capital costs of the technology, including the costs of installation if the developer submits a proof of purchase within 6 months after incurring such costs, to fully realize the beneficial reuse of water contribution where the developer or homebuilder installs graywater technology and meets the requirements of subsections (3) through (7) in at least 25 residential units of a proposed development. Incentives may include, but need not be limited to, density or intensity bonus incentives or more air-conditioned and living space.

The bill requires residential graywater technologies to be wholly located on an individual residential lot or structure and used solely to reuse graywater for use in toilets located within the residential lot or structure. The quality of water discharged by the system for reuse must meet the NSF 350 standard for toilet flushing.

The bill requires the developer to provide to the applicable governmental entity:

- As part of its application for development approval for proposed residential properties, a manufacturer’s warranty or data providing reasonable assurance that the proposed residential graywater system will function as designed, including an estimate of anticipated potable water savings for each system. A submittal of the manufacturer’s warranty or data from a building code official or governmental entity that has monitored or measured the residential graywater system is acceptable as reasonable assurance.
- As part of the developer’s application for development approval for the proposed residential units, documentation that the individual graywater system will be maintained for the life of the system in accordance with the manufacturer’s or installer’s recommendations.

The bill provides that the residential property owner, homeowners’ association, or manufacturer is responsible for the maintenance of the system. The developer must provide an operation and maintenance manual for the system to the initial residential property owner. The bill specifies that the manual must provide a method of contracting the installer or manufacturer and must

⁷⁰ Section 381.0065, F.S., defines “graywater” to mean “that part of domestic sewage that is not blackwater, including waste from the bath, lavatory, laundry, and sink, except kitchen sink waste.”

⁷¹ Section 380.031, F.S., defines “developer” to mean any person, including a governmental agency, undertaking any development as defined in this chapter.

⁷² Subsections (3) through (7) set forth requirements for the residential use of graywater systems and technologies.

include directions to the owner or occupant that the manual must remain with the residence throughout the life cycle of the system.

The bill provides that the installation of residential graywater systems in a county or municipality in accordance with this section shall qualify as a water conservation measure in a public water utility's water conservation plan pursuant to s. 373.227. The efficiency of the conservation measure must be commensurate with the amount of potable water savings estimated for each system as required to be provided by the developer.

Rules for Injection of Reclaimed Water into Groundwater

Section 5 provides to further promote the reuse of reclaimed water for irrigation purposes, the rules that apply when reclaimed water is injected into a receiving groundwater having 1,000 to 3,000 mg/L total dissolved solids are applicable to reclaimed water aquifer storage and recovery wells injecting into a receiving groundwater of less than 1,000 mg/L total dissolved solids if the applicant demonstrates that it is injecting into a confined aquifer, there are no public supply wells within 3,500 feet of the aquifer storage and recovery wells and that it has implemented institutional controls to prevent the future construction of public supply wells within 3,500 feet of the aquifer storage and recovery wells. The bill specifies that this section may not be construed to exempt the reclaimed water aquifer storage and recovery wells from requirements that prohibit the causing or contribution to violations of water quality standards in surface water, including groundwater discharges that flow by interflow and affect water quality in surface water.

Declaration of Important State Interest

Section 7 states that the Legislature determines and declares that this act fulfills an important state interest.

Effective Date / Direction to Division of Law Revision

The bill takes effect upon becoming a law, and the Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in the act with the date the act becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in pertinent part, that "no county or municipality shall be bound by any general law requiring such county or municipality to spend funds or take an action requiring the expenditure of funds unless the Legislature has determined that such law fulfills an important state interest and the law requiring such expenditure is approved by two-thirds of the membership in each house of the Legislature." Section 7 contains a finding that the bill fulfills an important state interest.

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 cost projections in *Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida* are that the total statewide cost of compliance with the elimination of surface water discharge will be \$28 billion. The report maintains that these costs will be passed on to the ratepayers of the DWWTFs affected by the discharge elimination requirement.

These cost figures have not been evaluated by other sources.

Neither the DEP nor the WMDs have supplied cost projections.

C. Government Sector Impact:

It is likely that some of the costs of implementation of the bill will be borne by municipal utilities. Additionally, the DEP will experience an administrative burden and indeterminate negative fiscal impact in complying with the rulemaking requirements under the bill.

VI. Technical Deficiencies:

The bill directs DEP to adopt rules that authorize potable reuse projects⁷³ and to:

[i]nitiate rulemaking by December 31, 2020, and submit the adopted rules to the President of the Senate and the Speaker of the House of Representatives by

⁷³ Lines 192-193.

December 12, 2021, for approval and incorporation into chapter 403 by the Legislature. Such rules may not be published as administrative rules by the department.⁷⁴

Thus, DEP will establish by rule, pursuant to Chapter 120, F.S., the authorization of potable reuse projects and then submit the adopted rules by December 12, 2021. The DEP will be required to file rules for final adoption with the Department of State⁷⁵ and those rules are *adopted* upon being filed.⁷⁶ (emphasis added).

The language in the bill is a bit confusing given the rulemaking process. The language of the bill suggests that the Legislature may approve the rules. But other language suggests that the Legislature will not act upon the rules but will codify all or a portion of those rules into ch. 403, F.S. It is suggested that this portion of the bill – lines 203 to 208 - be clarified.

VII. Related Issues:

The engineering report, *Evaluation of the Impacts of Eliminating Surface Water Discharges from Domestic Wastewater Facilities in Florida*, points out that it will take a significant amount of time to comply with the elimination of surface water discharge provisions in Section 2. The report concludes that the earliest date a potable water reuse project could be completed is September 2026, and the latest is June 2028. Part of the issue is that surface water discharge elimination project activities cannot be begun until all rulemaking activities on potable reuse are completed.

VIII. Statutes Affected:

This bill substantially amends section 403.064 of the Florida Statutes.

This bill creates sections 403.8531 and 403.892 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 17, 2020:

The committee substitute:

- Amends the definition of “reclaimed water” to have the same meaning as in s. 373.019, F.S.;
- Revises the obligations of a county, municipality or special district in their promotion of the beneficial reuse of water; and

⁷⁴ Lines 203-208.

⁷⁵ Section 120.54(3)(e)1., F.S.

⁷⁶ Section 120.54(3)(e)6., F.S. The rule becomes effective 20 days after filing, on a later date as specified in the rule, or as provided by law.

- Revises the provisions promoting the reuse of reclaimed water for irrigation purposes and specifies that the section may not be construed to exempt the reclaimed water aquifer storage and recovery wells from certain requirements ; and
- Makes other non-substantive changes.

CS by Innovation, Industry, and Technology on February 3, 2020:

The committee substitute:

- Creates additional exemptions from the prohibition against surface water discharge for wastewater treatment facilities with reuse systems that provide a minimum of 90 ninety percent of a facility's annual average flow and for treatment facilities located in municipalities that have less than \$10 million in total revenue;
- Changes the date by which DEP must submit the required rules to the Legislature from December 12, 2022 to December 12, 2021, and changes the Legislature's treatment of these rules from "ratification" to "approval and incorporation into chapter 403 by the Legislature;"
- Creates graywater incentives; and
- Makes a finding of an important state interest.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 172 - 398

and insert:

(h) "Reclaimed water" has the same meaning as in s.
373.019.

(3) To comply with drinking water quality standards,
reclaimed water is deemed a water source for public water supply
systems.

(4) Existing water quality protections that prohibit



672040

discharges from causing or contributing to violations of water quality standards in groundwater and surface water apply to potable reuse projects. In addition, when reclaimed water is released or discharged into groundwater or surface water for potable reuse purposes, there shall be a consideration of emerging constituents and impacts to other users of such groundwater or surface water.

(5) Potable reuse is an alternative water supply as defined in s. 373.019, and potable reuse projects are eligible for alternative water supply funding. The use of potable reuse water may not be excluded from regional water supply planning under s. 373.709.

(6) The department shall:

(a) Adopt rules that authorize potable reuse projects that are consistent with this section.

(b) Review existing rules governing reclaimed water and potable reuse to identify obsolete and inconsistent requirements and adopt rules that revise existing potable reuse rules to eliminate such inconsistencies, while maintaining existing public health and environmental protections.

(c) Review aquifer recharge rules and, if revisions are necessary to ensure continued compliance with existing public health and environmental protection rules when reclaimed water is used for aquifer recharge, adopt such rules.

(d) Initiate rulemaking by December 31, 2020, and submit the adopted rules to the President of the Senate and the Speaker of the House of Representatives by December 12, 2021, for approval and incorporation into chapter 403 by the Legislature. Such rules may not be published as administrative rules by the



672040

department.

(7) The department and the water management districts shall develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The purpose of the coordinated review is to share information, avoid the redundancy of information requested from the permittee, and ensure consistency in the permit for the protection of the public health and the environment. The department and the water management districts shall develop and execute the memorandum of agreement by December 31, 2022.

(8) To encourage investment in the development of potable reuse projects by private entities, a potable reuse project developed as a qualifying project pursuant to s. 255.065 is:

(a) Beginning January 1, 2025, eligible for expedited permitting under s. 403.973.

(b) Granted an annual credit against the tax imposed by chapter 220 in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project for a period not to exceed 20 years after the date that project operations begin. The tax credit applies only to the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits provided pursuant to this section may not exceed 100 percent of the eligible capital costs as defined in s. 220.191(1)(c). Any credit granted pursuant to this paragraph may not be carried forward or backward.



672040

69 (c) Granted a 3-year extension of any deadlines imposed
70 under s. 403.064(17).

71 (d) Consistent with s. 373.707, eligible for priority
72 funding in the same manner as other alternative water supply
73 projects from the Drinking Water State Revolving Fund, under the
74 Water Protection and Sustainability Program, and for water
75 management district cooperative funding.

76 (9) This section is not intended and may not be construed
77 to supersede s. 373.250(3).

78 Section 3. Section 403.892, Florida Statutes, is created to
79 read:

80 403.892 Incentives for the use of graywater technologies.-

81 (1) As used in this section, the term:

82 (a) "Developer" has the same meaning as in s. 380.031.

83 (b) "Graywater" has the same meaning as in s.
84 381.0065(2)(e).

85 (2) To promote the beneficial reuse of water in this state,
86 a county, municipality, or special district shall:

87 (a) Authorize the use of residential graywater technologies
88 in its jurisdiction which meet the applicable requirements of
89 subsections (3) through (7), the Florida Building Code, and the
90 Department of Health and which have received all applicable
91 regulatory permits or authorizations; and

92 (b) Provide incentives to developers to fully offset the
93 capital costs of the technology, including the costs of
94 installation if the developer submits a proof of purchase within
95 6 months after incurring such costs, to fully realize the
96 beneficial reuse of water contribution where the developer or
97 homebuilder installs graywater technology and meets the



672040

requirements of subsections (3) through (7) in at least 25 residential units of a proposed development. Incentives may include, but need not be limited to, density or intensity bonus incentives or more air-conditioned and living space.

(3) The residential graywater technologies must be wholly located on an individual residential lot or structure and used solely to reuse graywater for use in toilets located within the residential lot or structure. The quality of the water discharged by the system for reuse must meet the NSF 350 standard for toilet flushing.

(4) The developer shall provide to the applicable governmental entity, as part of its application for development approval for the proposed residential properties, a manufacturer's warranty or data providing reasonable assurance that the proposed residential graywater system will function as designed, including an estimate of anticipated potable water savings for each system. A submittal of the manufacturer's warranty or data from a building code official or governmental entity that has monitored or measured the residential graywater system is acceptable as reasonable assurance.

(5) The developer shall provide to the applicable governmental entity, as part of the developer's application for development approval for the proposed residential units, documentation that the individual graywater system will be maintained for the life of the system in accordance with the manufacturer's or installer's recommendations.

(6) The residential property owner, homeowners' association, or manufacturer is responsible for the maintenance of the system.



672040

(7) The developer shall provide an operation and maintenance manual for the system to the initial residential property owner. The manual must provide a method of contacting the installer or manufacturer and must include directions to the owner or occupant that the manual must remain with the residence throughout the life cycle of the system.

(8) The installation of residential graywater systems in a county or municipality in accordance with this section shall qualify as a water conservation measure in a public water utility's water conservation plan pursuant to s. 373.227. The efficiency of the conservation measure must be commensurate with the amount of potable water savings estimated for each system provided by the developer pursuant to subsection (4).

Section 4. (1) In implementing s. 403.8531, Florida Statutes, as created by this act, the Department of Environmental Protection, in coordination with one or more technical working groups pursuant to subsection (2), shall adopt rules for the implementation of potable reuse projects. The department shall:

(a) Revise the appropriate chapters in the Florida Administrative Code, including chapter 62-610, Florida Administrative Code, to ensure that all rules implementing potable reuse are in the Florida Administrative Code division 62 governing drinking water regulation.

(b) Revise existing drinking water rules to include reclaimed water as a source water for the public water supply and require such treatment of the water as is necessary to meet existing drinking water rules, including rules for pathogens. The potable reuse rules must include the implementation of a log



672040

reduction credit system using advanced treatment technology to meet pathogen treatment requirements, and must require a public water supplier to provide an approach to meet the pathogen treatment requirements in an engineering report as part of its public water supply permit application for authorization of potable reuse. To ensure protection of the public health, as part of the public water supply permit application to authorize potable reuse, a public water supplier shall provide a department-specified level of treatment or propose an approach to achieving the log reduction targets based on source water characterization that is sufficient for a pathogen risk of infection which meets the national drinking water criteria of less than 1×10^{-4} annually.

(c) Prescribe the means for using appropriate treatment technology to address emerging constituents in potable reuse projects. The advanced treatment technology must be technically and economically feasible and must provide for flexibility in the specific treatment processes employed to recognize different project scenarios, emerging constituent concentrations, desired finished water quality, and the treatment capability of the facility. The advanced treatment technology may also be used for pathogen removal or reduction.

1. The rules must require appropriate monitoring to evaluate the performance of the advanced treatment technology, including the monitoring of surrogate parameters and controls, which monitoring must occur either before or after the advanced treatment technology process, or both, as appropriate.

2. For direct potable reuse projects, the rules must require reclaimed water to be included in the source water



672040

characterization for a drinking water treatment facility and, if that source water characterization indicates the presence of emerging constituents at levels of public health interest, must specify how appropriate treatment technology will be used to address those emerging constituents.

3. For indirect potable reuse projects, the department shall amend the existing monitoring requirements contained within part V of chapter 62-610, Florida Administrative Code, to require monitoring for one or more representative emerging constituents. The utility responsible for the indirect potable reuse project shall develop an emerging constituent monitoring protocol consisting of the selection of one or more representative emerging constituents for monitoring and the identification of action levels associated with such emerging constituents. The monitoring protocol must provide that, if elevated levels of the representative emerging constituent are detected, the utility must report the elevated detection to the department and investigate the source and cause of such elevated emerging constituent. The utility shall submit the monitoring protocol to the department for review and approval and shall implement the monitoring protocol as approved by the department. If the monitoring protocol detects an elevated emerging constituent, and if the utility's investigation indicates that the use of the reclaimed water is the cause of such elevated emerging constituent, the utility must develop a plan to address or remedy that cause. The utility's monitoring results, investigation of any detected elevated emerging constituent levels, determination of cause, and any plan developed to address or remedy the cause must be submitted to the department



672040

for review and approval.

(d) Specify industrial pretreatment requirements for potable reuse projects. These industrial pretreatment requirements must match the industrial pretreatment requirements contained in chapter 62-625, Florida Administrative Code, as of the effective date of this act. If necessary, the department also must require the utility operating a potable reuse project to implement a source control program, and the utility shall identify the sources that need to be addressed.

(e) Provide off-spec reclaimed water requirements for potable reuse projects which include the immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water based on operating protocols established by the public water supplier and approved by the department.

(f) Revise existing rules to specify the point of compliance with drinking water standards for potable reuse projects as the point where the finished water is finally discharged from the drinking water treatment facility to the water distribution system.

(g) Ensure that, as rules for potable reuse projects are implemented, chapter 62-610.850, Florida Administrative Code, is applicable.

(h) Revise the definition of the term "indirect potable reuse" provided in chapter 62-610, Florida Administrative Code, to match the definition provided in s. 403.8531, Florida Statutes.

(2) The department shall convene and lead one or more technical advisory groups to coordinate the rulemaking and



672040

review of rules required by s. 403.8531, Florida Statutes. The
technical advisory committees, which shall assist in the
development of such rules, must be composed of knowledgeable
representatives of a broad group of interested stakeholders,
including, but not limited to, representatives from the water
management districts, the wastewater utility industry, the water
utility industry, the environmental community, the business
community, the public health community, and the agricultural
community, and consumers.

Section 5. To further promote the reuse of reclaimed water
for irrigation purposes, the rules that apply when reclaimed
water is injected into a receiving groundwater that has 1,000 to
3,000 mg/L total dissolved solids are applicable to reclaimed
water aquifer storage and recovery wells injecting into a
receiving groundwater of less than 1,000 mg/L total dissolved
solids if the applicant demonstrates that it is injecting into a
confined aquifer, that there are no public supply wells within
3,500 feet of the aquifer storage and recovery wells, and that
it has implemented institutional controls to prevent the future
construction of public supply wells within 3,500 feet of the
aquifer storage and recovery wells. This section may not be
construed to exempt the reclaimed water aquifer storage and
recovery wells from requirements that prohibit the causing or
contribution to violations of water quality standards in surface
water, including groundwater discharges that flow by interflow
and affect water quality in surface water.

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



672040

272 Delete lines 22 - 35
273 and insert:
274 Legislature for approval by specified dates; providing
275 that such rules are only effective upon approval and
276 incorporation into the Florida Statutes by the
277 Legislature; requiring the department and the water
278 management districts to develop and execute, by a
279 specified date, a memorandum of agreement for the
280 coordinated review of specified permits; providing
281 that potable reuse projects are eligible for certain
282 expedited permitting and tax credits; providing
283 construction; creating s. 403.892, F.S.; defining
284 terms; requiring counties, municipalities, and special
285 districts to authorize graywater technologies under
286 certain circumstances and to provide incentives for
287 the implementation of such technologies; providing
288 requirements for the use of graywater technologies;
289 requiring the department to

By the Committee on Innovation, Industry, and Technology; and
Senator Albritton

580-03001-20

20201656c1

1 A bill to be entitled
2 An act relating to reclaimed water; amending s.
3 403.064, F.S.; prohibiting domestic wastewater
4 treatment facilities from disposing of effluent,
5 reclaimed water, or reuse water by surface water
6 discharge beginning on a specified date; providing
7 exceptions; creating s. 403.8531, F.S.; providing
8 legislative intent; defining terms; providing that
9 reclaimed water is a water source for public water
10 supply systems; providing specified groundwater and
11 surface water quality protections for potable reuse
12 projects; providing that potable reuse is an
13 alternative water supply and that projects relating to
14 such reuse are eligible for alternative water supply
15 funding; requiring the Department of Environmental
16 Protection to adopt specified rules; requiring the
17 department to review reclaimed water and potable reuse
18 rules and revise them as necessary; requiring the
19 department to review aquifer recharge rules and revise
20 them as necessary; requiring the department to
21 initiate rulemaking and to submit such rules to the
22 Legislature for approval by specified dates; requiring
23 the department and the water management districts to
24 develop and execute, by a specified date, a memorandum
25 of agreement for the coordinated review of specified
26 permits; providing that potable reuse projects are
27 eligible for certain expedited permitting and tax
28 credits; providing construction; creating s. 403.892,
29 F.S.; defining terms; requiring counties,

Page 1 of 14

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

580-03001-20

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30 municipalities, and special districts to authorize
31 graywater technologies under certain circumstances and
32 to provide incentives for the implementation of such
33 technologies; requiring the department to adopt rules
34 for the implementation of potable reuse projects which
35 meet certain requirements; requiring the department to
36 convene at least one technical advisory committee for
37 specified purposes; providing for the composition of
38 the technical advisory committee; providing for the
39 applicability of specified reclaimed water aquifer
40 storage and recovery well requirements; providing a
41 directive to the Division of Law Revision; providing a
42 declaration of important state interest; providing an
43 effective date.
44
45 WHEREAS, sustainable water supplies are important to this
46 state's economy, environment, and quality of life, and
47 WHEREAS, in 2019, Floridians used nearly 6.5 billion
48 gallons of water per day and are projected to need an additional
49 1.1 billion gallons of water per day by 2035, and
50 WHEREAS, more than 75 percent of this state's water supply
51 comes from groundwater, and the availability of additional fresh
52 groundwater has become limited in many areas of this state, and
53 WHEREAS, this state's continued growth and economic success
54 depend on the implementation of safe and sustainable alternative
55 water supplies, and
56 WHEREAS, the use of reclaimed water is an important
57 component of both wastewater management and water resource
58 management in this state, and

Page 2 of 14

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

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WHEREAS, in 2018, approximately 48 percent of the total domestic wastewater flow in this state, 797 million gallons per day, was reused for beneficial purposes, and

WHEREAS, the reuse of water is a critical component of meeting this state's existing and future water supply needs, and

WHEREAS, potable reuse is the augmentation of a drinking water supply with reclaimed water from a municipal wastewater source and is an alternative water supply source that can be harnessed to help meet the additional water needs of this state while protecting both the public health and the environment, and

WHEREAS, the Legislature finds that through the use of advanced treatment technology, potable reuse is a safe and sustainable alternative water supply source that can be used to support a diverse, resilient, and sustainable water supply portfolio, and is considered to be in the public interest, and

WHEREAS, potable reuse projects, when implemented in a properly planned way using current environmental and engineered treatment processes, have reduced, and will continue to reduce, this state's dependence on increased withdrawals from groundwater and surface water sources, pollutant loadings to waters of the state, and the nonbeneficial use of reclaimed water, thus improving water quality and benefitting the environment and local economies that depend on this state's natural resources, NOW, THEREFORE,

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

Section 1. Subsection (17) is added to section 403.064, Florida Statutes, to read:

Page 3 of 14

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

580-03001-20

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403.064 Reuse of reclaimed water.—

(17) Notwithstanding any other provisions in this section to the contrary, beginning January 1, 2026, domestic wastewater treatment facilities may not dispose of effluent, reclaimed water, or reuse water by surface water discharge, except that this prohibition does not apply to indirect potable reuse projects; domestic wastewater treatment facility discharges during wet weather which occur in accordance with the applicable department permit; discharges into a stormwater management system which are subsequently withdrawn by a user for irrigation purposes; domestic wastewater treatment facilities located in fiscally constrained counties as defined in s. 218.67(1); projects where reclaimed water is recovered from an aquifer recharge system and subsequently discharged into a surface water for potable reuse; wetlands creation, restoration, and enhancement projects; minimum flows and levels recovery or prevention strategy plan projects; domestic wastewater treatment facilities with reuse systems that provide a minimum of 90 percent of a facility's annual average flow, as determined by the department using monitoring data for the prior 5 consecutive years, for reuse purposes authorized by the department; domestic wastewater treatment facilities located in municipalities that have less than \$10 million in total revenue, as determined by the most recent annual financial report submitted to the Department of Financial Services in accordance with s. 218.32; or domestic wastewater treatment facilities located in municipalities that are entirely within a rural area of opportunity designated under s. 288.0656.

Section 2. Section 403.8531, Florida Statutes, is created

Page 4 of 14

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

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117 to read:

118 403.8531 Potable reuse.—

119 (1) Recognizing that sufficient water supply is imperative
 120 to the future of this state and that potable reuse is one source
 121 of water which may assist in meeting future demands, the
 122 Legislature intends for the department to adopt rules for
 123 potable reuse which:

124 (a) Protect the public health and environment by ensuring
 125 that the potable reuse rules meet federal and state drinking
 126 water and water quality standards, including, but not limited
 127 to, the Clean Water Act, the Safe Drinking Water Act, and water
 128 quality standards pursuant to chapter 403, and, when possible,
 129 implement such rules through existing regulatory programs.

130 (b) Support reclaimed water being used for potable reuse
 131 purposes.

132 (c) Implement the recommendations set forth in the Potable
 133 Reuse Commission's 2020 report "Advancing Potable Reuse in
 134 Florida: Framework for the Implementation of Potable Reuse in
 135 Florida."

136 (d) Require that the point of compliance with drinking
 137 water standards for potable reuse projects is the final
 138 discharge point for finished water from the water treatment
 139 facility.

140 (e) Protect the aquifer and Florida's springs and surface
 141 waters by ensuring that potable reuse projects do not cause or
 142 contribute to violations of water quality standards in surface
 143 waters, including groundwater discharges that flow by interflow
 144 and affect water quality in surface waters, and that potable
 145 reuse projects shall be designed and operated to ensure

580-03001-20

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146 compliance with groundwater quality standards.

147 (2) As used in this section, the term:

148 (a) "Advanced treated reclaimed water" means the water
 149 produced from an advanced water treatment process for potable
 150 reuse applications.

151 (b) "Advanced treatment technology" means the treatment
 152 technology selected by a utility to address emerging
 153 constituents and pathogens in reclaimed water as part of a
 154 potable reuse project.

155 (c) "Direct potable reuse" means the introduction of
 156 advanced treated reclaimed water into a raw water supply
 157 immediately upstream from a drinking water treatment facility or
 158 directly into a potable water supply distribution system.

159 (d) "Emerging constituents" means pharmaceuticals, personal
 160 care products, and other chemicals not regulated as part of
 161 drinking water quality standards.

162 (e) "Indirect potable reuse" means the planned delivery or
 163 discharge of reclaimed water to groundwater or surface waters
 164 for the development of, or to supplement, the potable water
 165 supply.

166 (f) "Off-spec reclaimed water" means reclaimed water that
 167 does not meet the standards for potable reuse.

168 (g) "Potable reuse" means the augmentation of a drinking
 169 water supply with advanced treated reclaimed water from a
 170 domestic wastewater treatment facility, and consists of direct
 171 potable reuse and indirect potable reuse.

172 (h) "Reclaimed water" means water that has received at
 173 least secondary treatment and basic disinfection and is reused
 174 after flowing out of a domestic wastewater treatment facility.

580-03001-20

20201656c1

(3) To comply with drinking water quality standards, reclaimed water is deemed a water source for public water supply systems.

(4) Existing water quality protections that prohibit discharges from causing or contributing to violations of water quality standards in groundwater and surface waters apply to potable reuse projects. In addition, when reclaimed water is released or discharged into groundwater or surface water for potable reuse purposes, there shall be a consideration of emerging constituents and impacts to other users of such groundwater or surface water.

(5) Potable reuse is an alternative water supply as defined in s. 373.019, and potable reuse projects are eligible for alternative water supply funding. The use of potable reuse water may not be excluded from regional water supply planning under s. 373.709.

(6) The department shall:

(a) Adopt rules that authorize potable reuse projects that are consistent with this section.

(b) Review existing rules governing reclaimed water and potable reuse to identify obsolete and inconsistent requirements and adopt rules that revise existing potable reuse rules to eliminate such inconsistencies, while maintaining existing public health and environmental protections.

(c) Review aquifer recharge rules and, if revisions are necessary to ensure continued compliance with existing public health and environmental protection rules when reclaimed water is used for aquifer recharge, adopt such rules.

(d) Initiate rulemaking by December 31, 2020, and submit

580-03001-20

20201656c1

the adopted rules to the President of the Senate and the Speaker of the House of Representatives by December 12, 2021, for approval and incorporation into chapter 403 by the Legislature. Such rules may not be published as administrative rules by the department.

(7) The department and the water management districts shall develop and execute a memorandum of agreement providing for the procedural requirements of a coordinated review of all permits associated with the construction and operation of an indirect potable reuse project. The memorandum of agreement must provide that the coordinated review will occur only if requested by a permittee. The purpose of the coordinated review is to share information, to avoid the redundancy of information requested from the permittee, and to ensure consistency in the permit for the protection of the public health and the environment. The department and the water management districts shall develop and execute the memorandum of agreement by December 31, 2022.

(8) To encourage investment in the development of potable reuse projects by private entities, a potable reuse project developed as a qualifying project pursuant to s. 255.065 is:

(a) Beginning January 1, 2025, eligible for expedited permitting under s. 403.973.

(b) Granted an annual credit against the tax imposed by chapter 220 in an amount equal to 5 percent of the eligible capital costs generated by a qualifying project for a period not to exceed 20 years after the date that project operations begin. The tax credit applies only to the corporate income tax liability or the premium tax liability generated by or arising out of the qualifying project, and the sum of all tax credits

580-03001-20 20201656c1

provided pursuant to this section may not exceed 100 percent of the eligible capital costs as defined in s. 220.191(1)(c). Any credit granted pursuant to this paragraph may not be carried forward or backward.

(c) Granted a 3-year extension of any deadlines imposed under s. 403.064(17).

(d) Consistent with s. 373.707, eligible for priority funding in the same manner as other alternative water supply projects from the Drinking Water State Revolving Fund, under the Water Protection and Sustainability Program, and for water management district cooperative funding.

(9) This section is not intended and may not be construed to supersede s. 373.250(3).

Section 3. Section 403.892, Florida Statutes, is created to read:

403.892 Incentives for the use of graywater technologies.—

(1) As used in this section, the term:

(a) "Developer" has the same meaning as in s. 380.031.

(b) "Graywater" has the same meaning as in s. 381.0065(2)(e).

(2) To promote the beneficial reuse of water in this state, a county, municipality, or special district shall do all of the following:

(a) Authorize the use of residential graywater technologies in their respective jurisdictions which comply with the Florida Building Code; and

(b) Provide incentives to developers to fully offset the costs of their beneficial reuse of water contribution through graywater technology. Such incentives may include, but are not

580-03001-20 20201656c1

limited to:

1. Allowing the developer density or intensity bonus incentives or more floor space than allowed under the current or proposed future land use designation or zoning;

2. Reducing or waiving fees, such as impact fees or water and sewer charges; or

3. Granting other incentives.

(3) If the local government has already applied one of the incentives identified in paragraph (2)(b) to the development, the local government must provide the developer with an additional incentive identified in paragraph (2)(b) to meet the requirements of this section.

Section 4. (1) In implementing s. 403.8531, Florida Statutes, as created by this act, the Department of Environmental Protection, in coordination with one or more technical working groups pursuant to subsection (2), shall adopt rules for the implementation of potable reuse projects. The department shall:

(a) Revise the appropriate chapters in the Florida Administrative Code, including chapter 62-610, Florida Administrative Code, to ensure that all rules implementing potable reuse are in the Florida Administrative Code division 62 governing drinking water regulation.

(b) Revise existing drinking water rules to include reclaimed water as a source water for the public water supply and require such treatment of the water as is necessary to meet existing drinking water rules, including rules for pathogens. The potable reuse rules must include the implementation of a log reduction credit system using advanced treatment technology to

580-03001-20

20201656c1

291 meet pathogen treatment requirements, and must require a public
 292 water supplier to provide an approach to meet the required
 293 pathogen treatment requirements in an engineering report as part
 294 of its public water supply permit application for authorization
 295 of potable reuse. To ensure protection of the public health, as
 296 part of the public water supply permit application to authorize
 297 potable reuse, a public water supplier shall provide a
 298 department-specified level of treatment or propose an approach
 299 to achieving the log reduction targets based on source water
 300 characterization that is sufficient for a pathogen risk of
 301 infection which meets the national drinking water criteria of
 302 less than 1 x 10⁻⁴ annually.

303 (c) Prescribe the means for using appropriate treatment
 304 technology to address emerging constituents in potable reuse
 305 projects. The advanced treatment technology must be technically
 306 and economically feasible and must provide for flexibility in
 307 the specific treatment processes employed to recognize different
 308 project scenarios, emerging constituent concentrations, desired
 309 finished water quality, and the treatment capability of the
 310 facility. The advanced treatment technology may also be used for
 311 pathogen removal or reduction.

312 1. The rules must require appropriate monitoring to
 313 evaluate advanced treatment technology treatment performance,
 314 including the monitoring of surrogate parameters and controls,
 315 which monitoring must occur either before or after the advanced
 316 treatment technologies treatment process, or both, as
 317 appropriate.

318 2. For direct potable reuse projects, the rules must
 319 require reclaimed water to be included in the source water

580-03001-20

20201656c1

320 characterization for a drinking water treatment facility and, if
 321 that source water characterization indicates the presence of
 322 emerging constituents at levels of public health interest, must
 323 specify how appropriate treatment technology will be used to
 324 address those emerging constituents.

325 3. For indirect potable reuse projects, the department
 326 shall amend the existing monitoring requirements contained
 327 within part V of chapter 62-610, Florida Administrative Code, to
 328 require monitoring for one or more representative emerging
 329 constituents. The utility responsible for the indirect potable
 330 reuse project shall develop an emerging constituent monitoring
 331 protocol consisting of the selection of one or more
 332 representative emerging constituents for monitoring and the
 333 identification of action levels associated with such emerging
 334 constituents. The monitoring protocol must provide that, if
 335 elevated levels of the representative emerging constituent are
 336 detected, the utility must report the elevated detection to the
 337 department and investigate the source and cause of such elevated
 338 emerging constituent. The utility shall submit the monitoring
 339 protocol to the department for review and approval and shall
 340 implement the monitoring protocol as approved by the department.
 341 If the monitoring protocol detects an elevated emerging
 342 constituent, and if the utility's investigation indicates that
 343 the use of the reclaimed water is the cause of such elevated
 344 emerging constituent, the utility must develop a plan to address
 345 or remedy that cause. The utility's monitoring results,
 346 investigation of any detected elevated emerging constituent
 347 levels, determination of cause, and any plan developed to
 348 address or remedy the cause must be submitted to the department

580-03001-20

20201656c1

for review and approval.

(d) Specify industrial pretreatment requirements for potable reuse projects. These industrial pretreatment requirements must match the industrial pretreatment requirements contained in chapter 62-625, Florida Administrative Code, as of the effective date of this act. If necessary, the department also must require the utility operating a potable reuse project to implement a source control program, and the utility shall identify the sources that need to be addressed.

(e) Provide off-spec reclaimed water requirements for potable reuse projects which include the immediate disposal, temporary storage, alternative nonpotable reuse, or retreatment or disposal of off-spec reclaimed water based on operating protocols established by the public water supplier and approved by the department.

(f) Revise existing rules to specify the point of compliance with drinking water standards for potable reuse projects as the point where the finished water is finally discharged from the drinking water treatment facility to the water distribution system.

(g) Ensure that, as rules for potable reuse projects are implemented, chapter 62-610.850, Florida Administrative Code, is applicable.

(h) Revise the definition of the term "indirect potable reuse" provided in chapter 62-610, Florida Administrative Code, to match the definition provided in s. 403.8531, Florida Statutes.

(2) The department shall convene and lead one or more technical advisory committees to coordinate the rulemaking and

580-03001-20

20201656c1

review of rules required by s. 403.8531, Florida Statutes. The technical advisory committees, which shall assist in the development of such rules, must be composed of knowledgeable representatives of a broad group of interested stakeholders, including, but not limited to, representatives from the water management districts, the wastewater utility industry, the water utility industry, the environmental community, the business community, the public health community, and the agricultural community, and consumers.

Section 5. To further promote the reuse of reclaimed water for irrigation purposes, the rules that apply when reclaimed water is injected into a receiving groundwater having 1,000 to 3,000 mg/L total dissolved solids are applicable to reclaimed water aquifer storage and recovery wells injecting into a receiving groundwater of less than 1,000 mg/L total dissolved solids if the applicant demonstrates that there are no public supply wells within 3,500 feet of the aquifer storage and recovery wells and that it has implemented institutional controls to prevent the future construction of public supply wells within 3,500 feet of the aquifer storage and recovery wells.

Section 6. The Division of Law Revision is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 7. The Legislature determines and declares that this act fulfills an important state interest.

Section 8. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 10, 2020

I respectfully request that **Senate Bill #1656**, relating to Reclaimed Water, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Ben Albritton", is written over a horizontal line.

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)

2/17/20
Meeting Date

1656
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title _____

Address 1042 CREST ST

Phone 941-323-2404

Street

14H

City

FL

State

32301

Zip

Email cullenasea@aol.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing SIERRA CLUB FLORIDA

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/2020
Meeting Date

1656
Bill Number (if applicable)

Topic RECLAIMED WATER

Amendment Barcode (if applicable)

Name LANCE PIERCE

Job Title EXECUTIVE DIRECTOR

Address 310 W. COLLEGE AVE
Street

Phone (850) 228-4088

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 ASSOCIATION OF FLORIDA COMMUNITY DEVELOPERS

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)

2/17/2020

Meeting Date

1656

Bill Number (if applicable)

Topic Reclaimed Water

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address PO Box 10011

Street

Phone 850 228 1296

JLH
City

FL
State

32302
Zip

Email Jim@magnumstrategiesllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/20

Meeting Date

SB 1456

Bill Number (if applicable)

Topic Support

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Consultant

Address 124 W. Jefferson St.

Phone 222-9075

Street

Tallahassee

City

FL

State

32312

Zip

Email Andrew@cccfla.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Lennar Homes

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)

7/17/20
Meeting Date

1656
Bill Number (if applicable)

Topic Reclaimed Water

Amendment Barcode (if applicable)

Name Garrett Wallace

Job Title Government Relations

Address 820 Park Ave

Phone 561-5021-6877

Callahasssee FL 32301
City State Zip

Email garrett.wallace@tnc.org

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Nature Conservancy

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)

2/17/20

Meeting Date

1656

Bill Number (if applicable)

Topic Reclaimed Water

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 222 9484

Street

Tallahassee FL 32302

City

State

Zip

Email rohara@fluties.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
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 1836

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Health Insurance and Prescription Drug Coverage

DATE: February 18, 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 1836 requires the Florida Center for Health Information and Transparency to publish annually a report identifying health care services with the most significant price variation both statewide and regionally.

The Shared Savings Program that may be offered by health insurers and health maintenance organizations is modified to include additional “shoppable” options and to expand the incentives that may be offered to include cash and cash equivalents.

The bill is not expected to impact state revenues or expenditures.

The bill takes effect January 1, 2021.

II. Present Situation:

Price Transparency in Florida

Florida Center for Health Information and Transparency

The Florida Center for Health Information and Transparency (the Florida Center), housed within the Agency for Health Care Administration (AHCA), provides a comprehensive health

information system (information system) that includes the collection, compilation, coordination, analysis, indexing, dissemination, and utilization of health-related data.¹

The Florida Center identifies existing health-related data and collects data for use in the information system, including information on health care costs and financing, trends in health care prices and costs, the sources of payment for health care services, and federal, state, and local expenditures for health care.²

Florida Consumer Price Portal

The Florida Center maintains www.FloridaHealthFinder.gov, which was established by law in 2016³, to assist consumers in making informed health care decisions and lead to improvements in quality of care in Florida. The website provides a wide array of search and comparative tools to the public which allow easy access to information on hospitals, ambulatory surgery centers, emergency departments, hospice providers, physician volume, health plans, nursing homes, and prices for prescription drugs in Florida.

The cost information on the website is searchable, and based on descriptive bundles of commonly performed procedures and services. Consumers can view typical payments⁴ for common medical procedures and diagnostic tests, with information presented at both statewide and local levels. In other words, a patient in Tampa can see recent prices paid for a chest x-ray at local facilities and a statewide average price. The consumer search tool is accessible at <https://pricing.floridahealthfinder.gov/#!>.

The website also provides tools to researchers and professionals allowing for specialized data queries, but requires users to have some knowledge of medical coding and terminology.⁵ Some of the features and data available on the website include a multimedia encyclopedia and symptoms navigator, hospital and ambulatory surgery centers performance data, data on mortality, complication, and infection rates for hospitals, and a facility/provider locator.⁶

Patient Savings Act

In 2019, the Legislature enacted the Patient Savings Act⁷ (Act), which allows (but does not mandate) health insurers and health maintenance organizations (HMOs) to create a shared savings incentive program (Shared Savings Program) to encourage insured individuals to shop for high quality, lower cost health care services and share any savings realized as a result of the

¹ Section 408.05(1), F.S.

² Section 408.05(2), F.S.

³ Chapter 2016-234, L.O.F.; *see also* s. 408.05(3), F.S.

⁴ The website provides information on *payments* for services, and not facility *charges*. Very few patients or insurers actually pay the full charge for a service, so reporting of payments provides a more accurate estimate of costs that patients and/or their health plans can expect to incur.

⁵ Agency for Health Care Administration, Florida Center for Health Information and Policy Analysis, *2017 Annual Report*, pgs. 4-8, available at <https://fhfstore.blob.core.windows.net/documents/researchers/documents/2017%20FL%20Center%20Annual%20Report%20FINAL.PDF> (last accessed February 13, 2020).

⁶ *Id.*, pgs. 6-8.

⁷ Sections 627.6387, 627.6648, and 641.31076, F.S.

insured's choice. The Act authorizes implementation of these incentive programs for plan years beginning January 1, 2020.

Health insurers and HMOs that choose to offer a Shared Savings Program must develop a website outlining the range of shoppable health care services available to insureds. This website must provide patients with an inventory of participating health care providers and an accounting of the shared savings incentives available for each shoppable service. The Act provides a list of nonemergency services that qualify as "shoppable health care services". These include, but are not limited to:

- Clinical laboratory services.
- Infusion therapy.
- Inpatient and outpatient surgical procedures.
- Obstetrical and gynecological services.
- Outpatient nonsurgical diagnostic tests and procedures.
- Physical and occupational therapy services.
- Radiology and imaging services.
- Prescription drugs.
- Services provided through telehealth.

The Act defines a "shared savings incentive" as an optional financial incentive that may be paid to an insured for choosing certain shoppable health care services under a Shared Savings Program. When a patient obtains a shoppable health care service for less than the average price for the service, the bill requires the savings to be shared by the health insurer and the patient. A patient is entitled to a financial incentive that is no less than 25 percent of the savings that accrue to the insurer as a result of the patient's participation.

The law provides a range of methods by which a Shared Savings Program may financially reward patients who save money by shopping for health care services. Patients may receive financial incentives in the form of premium reductions, or deposits into a flexible spending account, health savings account, or health reimbursement account.⁸

III. Effect of Proposed Changes:

Section 1 amends s. 408.05, F.S., to require the Florida Center for Health Information and Transparency to publish annually a report identifying health care services with the most significant price variation both statewide and regionally.

Section 2 amends s. 627.6387, F.S., to expand the list of shoppable health care services to include any additional services identified by the Florida Center for Health Information and Transparency which commonly have a wide price variation. In addition, the incentives that may be offered to those insureds using shoppable health services is expanded to include cash or cash equivalents.

Section 3 amends s. 627.6648, F.S., to expand the list of shoppable health services to include any additional services identified by the Florida Center for Health Information and Transparency

⁸ Section 627.6387, F.S.

which commonly have a wide price variation. In addition, the incentives that may be offered to those insureds using shoppable health services is expanded to include cash or cash equivalents.

Section 4 amends s. 641.31076, F.S., to expand the list of shoppable health services to include any additional services identified by the Florida Center for Health Information and Transparency which commonly have a wide price variation. In addition, the incentives that may be offered to those insureds using shoppable health services is expanded to include cash or cash equivalents.

The bill takes effect July 1, 2021.

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:

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. None. Statutes Affected:

This bill substantially amends sections 408.05, 627.6387, 627.6648, and 641.31076 of the Florida Statutes.

This bill creates sections 465.203 and 627.4435 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 17, 2020:

- Removes all references and changes to the State Group Insurance Health Program.
- Retains the “shoppable health services” as a voluntary program that may be offered by health insurers and HMOs. The incentives available under this program are expanded to include cash and cash equivalents.
- Requires the Florida Center for Health Information and Transparency to publish annually a report identifying health care services with the most significant price variation both statewide and regionally.

- B. **Amendments:**

None.



539144

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2020	.	
	.	
	.	
	.	

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 (1) is added to subsection (3) of
section 408.05, Florida Statutes, to read:

408.05 Florida Center for Health Information and
Transparency.—

(3) HEALTH INFORMATION TRANSPARENCY.—In order to
disseminate and facilitate the availability of comparable and



539144

uniform health information, the agency shall perform the following functions:

(1) By July 1 of each year, publish a report identifying the health care services with the most significant price variation both statewide and regionally.

Section 2. Paragraph (e) of subsection (2) and paragraph (e) of subsection (3) of section 627.6387, Florida Statutes, are amended to read:

627.6387 Shared savings incentive program.—

(2) As used in this section, the term:

(e) "Shoppable health care service" means a lower-cost, high-quality nonemergency health care service for which a shared savings incentive is available for insureds under a health insurer's shared savings incentive program. Shoppable health care services may be provided within or outside this state and include, but are not limited to:

1. Clinical laboratory services.

2. Infusion therapy.

3. Inpatient and outpatient surgical procedures.

4. Obstetrical and gynecological services.

5. Inpatient and outpatient nonsurgical diagnostic tests and procedures.

6. Physical and occupational therapy services.

7. Radiology and imaging services.

8. Prescription drugs.

9. Services provided through telehealth.

10. Any additional services published by the Agency for Health Care Administration that have the most significant price variation pursuant to s. 408.05(3)(1).



539144

(3) A health insurer may offer a shared savings incentive program to provide incentives to an insured when the insured obtains a shoppable health care service from the health insurer's shared savings list. An insured may not be required to participate in a shared savings incentive program. A health insurer that offers a shared savings incentive program must:

(e) At least quarterly, credit or deposit the shared savings incentive amount to the insured's account as a return or reduction in premium, ~~or~~ credit the shared savings incentive amount to the insured's flexible spending account, health savings account, or health reimbursement account, or reward the insured directly with cash or a cash equivalent ~~such that the amount does not constitute income to the insured.~~

Section 3. Paragraph (e) of subsection (2) and paragraph (e) of subsection (3) of section 627.6648, Florida Statutes, are amended to read:

627.6648 Shared savings incentive program.—

(2) As used in this section, the term:

(e) "Shoppable health care service" means a lower-cost, high-quality nonemergency health care service for which a shared savings incentive is available for insureds under a health insurer's shared savings incentive program. Shoppable health care services may be provided within or outside this state and include, but are not limited to:

1. Clinical laboratory services.
2. Infusion therapy.
3. Inpatient and outpatient surgical procedures.
4. Obstetrical and gynecological services.
5. Inpatient and outpatient nonsurgical diagnostic tests



539144

and procedures.

6. Physical and occupational therapy services.

7. Radiology and imaging services.

8. Prescription drugs.

9. Services provided through telehealth.

10. Any additional services published by the Agency for Health Care Administration that have the most significant price variation pursuant to s. 408.05(3)(1).

(3) A health insurer may offer a shared savings incentive program to provide incentives to an insured when the insured obtains a shoppable health care service from the health insurer's shared savings list. An insured may not be required to participate in a shared savings incentive program. A health insurer that offers a shared savings incentive program must:

(e) At least quarterly, credit or deposit the shared savings incentive amount to the insured's account as a return or reduction in premium, ~~or credit the shared savings incentive amount to the insured's flexible spending account, health savings account, or health reimbursement account, or reward the insured directly with cash or a cash equivalent such that the amount does not constitute income to the insured.~~

Section 4. Paragraph (e) of subsection (2) and paragraph (e) of subsection (3) of section 641.31076, Florida Statutes, are amended to read:

641.31076 Shared savings incentive program.—

(2) As used in this section, the term:

(e) "Shoppable health care service" means a lower-cost, high-quality nonemergency health care service for which a shared savings incentive is available for subscribers under a health



539144

98 maintenance organization's shared savings incentive program.
99 Shoppable health care services may be provided within or outside
100 this state and include, but are not limited to:

- 101 1. Clinical laboratory services.
- 102 2. Infusion therapy.
- 103 3. Inpatient and outpatient surgical procedures.
- 104 4. Obstetrical and gynecological services.
- 105 5. Inpatient and outpatient nonsurgical diagnostic tests
106 and procedures.

107 6. Physical and occupational therapy services.

108 7. Radiology and imaging services.

109 8. Prescription drugs.

110 9. Services provided through telehealth.

111 10. Any additional services published by the Agency for
112 Health Care Administration that have the most significant price
113 variation pursuant to s. 408.05(3)(1).

114 (3) A health maintenance organization may offer a shared
115 savings incentive program to provide incentives to a subscriber
116 when the subscriber obtains a shoppable health care service from
117 the health maintenance organization's shared savings list. A
118 subscriber may not be required to participate in a shared
119 savings incentive program. A health maintenance organization
120 that offers a shared savings incentive program must:

121 (e) At least quarterly, credit or deposit the shared
122 savings incentive amount to the subscriber's account as a return
123 or reduction in premium, ~~or~~ credit the shared savings incentive
124 amount to the subscriber's flexible spending account, health
125 savings account, or health reimbursement account, or reward the
126 subscriber directly with cash or a cash equivalent ~~such that the~~



539144

~~amount does not constitute income to the subscriber.~~

Section 5. This act shall take effect January 1, 2021.

===== 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 health insurance benefits; amending
s. 408.05, F.S.; requiring the Agency for Health Care
Administration to publish by a specified date an
annual report identifying certain health care
services; amending ss. 627.6387, 627.6648, and
641.31076, F.S.; revising the definition of the term
"shoppable health care service"; revising duties of
certain health insurers and health maintenance
organizations; providing an effective date.

By Senator Bean

4-01734-20

20201836__

1 A bill to be entitled
 2 An act relating to health insurance and prescription
 3 drug coverage; amending s. 110.123, F.S.; requiring
 4 the state group insurance program to allow enrollees
 5 to obtain health care services and prescription drugs
 6 from out-of-network providers and pharmacies if
 7 certain conditions are met; providing for the payment
 8 to be applied towards the enrollee's deductible and
 9 out-of-pocket maximum; providing notice requirements;
 10 amending s. 110.12303, F.S.; revising provider
 11 organizations included in benefit packages for the
 12 state group insurance program; revising requirements
 13 for the contracts between the Department of Management
 14 Services and health insurers; requiring the department
 15 to offer specified reimbursement as a voluntary
 16 supplemental benefit option in the state group
 17 insurance program; amending s. 110.12315, F.S.;
 18 requiring the state employees' prescription drug
 19 program to allow members and members' dependents to
 20 obtain prescription drugs from out-of-network
 21 pharmacies if certain conditions are met; providing
 22 for the payment to be applied towards the deductible
 23 and out-of-pocket maximum; providing notice
 24 requirements; amending s. 110.1238, F.S.; requiring
 25 state group health insurance plans to allow
 26 participants to obtain health care services and
 27 prescription drugs from out-of-network providers and
 28 pharmacies if certain conditions are met; providing
 29 for the payment to be applied towards the deductible

Page 1 of 21

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

4-01734-20

20201836__

30 and out-of-pocket maximum; providing notice
 31 requirements; creating s. 465.203, F.S.; defining the
 32 term "covered individual"; prohibiting pharmacy
 33 benefit managers from engaging in specified acts under
 34 certain circumstances; creating s. 627.4435, F.S.;
 35 defining the term "health insurer"; requiring health
 36 insurers to apply certain payments toward deductibles
 37 and out-of-pocket maximums within a specified
 38 timeframe under certain circumstances; prohibiting
 39 health insurers from engaging in specified acts under
 40 certain circumstances; providing construction;
 41 providing publication and notification requirements;
 42 amending ss. 627.6387, 627.6648, and 641.31076, F.S.;
 43 revising definitions; requiring, rather than
 44 authorizing, health insurers and health maintenance
 45 organizations to offer shared savings incentive
 46 programs; revising duties of health insurers and
 47 health maintenance organizations with respect to
 48 shared savings incentive programs; providing an
 49 effective date.
 50
 51 Be It Enacted by the Legislature of the State of Florida:
 52
 53 Section 1. Subsection (14) is added to section 110.123,
 54 Florida Statutes, to read:
 55 110.123 State group insurance program.—
 56 (14) OUT-OF-NETWORK PROVIDERS.—
 57 (a) The state group insurance program shall allow its
 58 enrollees to obtain a covered health care service from an out-

Page 2 of 21

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

4-01734-20

20201836__

of-network provider at a cost that is the same or less than the in-network average that an enrollee's insurance plan pays for that health care service. The state group insurance program shall apply, within a reasonable timeframe not to exceed 1 year, the payment made by, or required of, an enrollee for that health care service toward the enrollee's deductible and out-of-pocket maximum as specified in the enrollee's insurance plan as if the health care service had been provided by an in-network provider.

(b) If an enrollee uses a pharmacy discount program, drug manufacturer rebate, or other discount or rebate program, including purchasing a prescription drug from a licensed prescribing provider such as a direct primary care provider, and such use results in a lower cost than would have been paid for a covered prescription drug had the enrollee used the enrollee's insurance plan to purchase the prescription drug, the state group insurance program shall apply, within a reasonable timeframe not to exceed 1 year, the payment made by the enrollee for that covered prescription drug toward the enrollee's deductible and out-of-pocket maximum as specified in the enrollee's insurance plan as if the prescription drug had been purchased from an in-network pharmacy.

(c) At a minimum, the state group insurance program shall inform enrollees on its website and in its benefit plan materials of the options of obtaining covered health care services from out-of-network providers and prescription drugs from out-of-network pharmacies under paragraphs (a) and (b), respectively, with the enrollees' payments applied to deductibles and out-of-pocket maximums. On its website and in its benefit plan materials, the state group insurance program

4-01734-20

20201836__

shall also provide information on how to use the options under paragraphs (a) and (b) if an enrollee is interested in doing so.

Section 2. Present paragraph (e) of subsection (3) and present subsection (4) of section 110.12303, Florida Statutes, are redesignated as subsections (4) and (5), respectively, a new paragraph (e) is added to subsection (3) of that section, and paragraph (e) of subsection (1), paragraph (a) of subsection (2), paragraph (d) of subsection (3), and present subsection (4) of that section are amended, to read:

110.12303 State group insurance program; additional benefits; price transparency program; reporting.-

(1) In addition to the comprehensive package of health insurance and other benefits required or authorized to be included in the state group insurance program, the package of benefits may also include products and services offered by:

(e) Provider organizations, including service networks, group practices, professional associations, and other incorporated organizations of providers, who sell service contracts and arrangements for a specified amount and type of health services, including direct primary or other medical care provided on a subscription basis.

(2) (a) The department shall contract with at least one entity that provides comprehensive pricing and inclusive services for surgery and other medical procedures which may be accessed at the option of the enrollee. The contract shall require the entity to:

1. Have procedures and evidence-based standards to ensure the inclusion of only high-quality health care providers.

2. Provide assistance to the enrollee in accessing and

4-01734-20 20201836__

117 coordinating care.

118 3. Provide cost savings to the state group insurance

119 program to be shared with both the state and the enrollee. Cost

120 savings payable to an enrollee may be:

121 a. Credited to the enrollee's flexible spending account;

122 b. Credited to the enrollee's health savings account;

123 c. Credited to the enrollee's health reimbursement account;

124 ~~or~~

125 d. Credited to the enrollee as a premium or out-of-pocket

126 cost reduction; or

127 e. Paid directly to the enrollee as cash or a cash

128 equivalent additional health plan reimbursements not exceeding

129 the amount of the enrollee's out-of-pocket medical expenses.

130 4. Provide an educational campaign for enrollees to learn

131 about the services offered by the entity.

132 (3) The department shall contract with an entity that

133 provides enrollees with online information on the cost and

134 quality of health care services and providers, allows an

135 enrollee to shop for health care services and providers, and

136 rewards the enrollee by sharing savings generated by the

137 enrollee's choice of services or providers. The contract shall

138 require the entity to:

139 (d) Identify the savings realized to the enrollee and state

140 if the enrollee chooses high-quality, lower-cost health care

141 services or providers, and facilitate a shared savings payment

142 to the enrollee. The amount of shared savings shall be

143 determined by a methodology approved by the department and shall

144 maximize value-based purchasing by enrollees. The amount payable

145 to the enrollee may be:

4-01734-20 20201836__

146 1. Credited to the enrollee's flexible spending account;

147 2. Credited to the enrollee's health savings account;

148 3. Credited to the enrollee's health reimbursement account;

149 ~~or~~

150 4. Credited to the enrollee as a premium or out-of-pocket

151 cost reduction; or

152 5. Paid directly to the enrollee as cash or a cash

153 equivalent additional health plan reimbursements not exceeding

154 the amount of the enrollee's out-of-pocket medical expenses.

155 (e) Include infusion therapy in the shared savings

156 incentive program.

157 (5)(4) The department shall offer, as a voluntary

158 supplemental benefit option:—

159 (a) International prescription services that offer safe

160 maintenance medications at a reduced cost to enrollees and that

161 meet the standards of the United States Food and Drug

162 Administration personal importation policy.

163 (b) At a minimum, reimbursement of direct primary care

164 subscription fees.

165 Section 3. Subsection (11) is added to section 110.12315,

166 Florida Statutes, to read:

167 110.12315 Prescription drug program.—The state employees'

168 prescription drug program is established. This program shall be

169 administered by the Department of Management Services, according

170 to the terms and conditions of the plan as established by the

171 relevant provisions of the annual General Appropriations Act and

172 implementing legislation, subject to the following conditions:

173 (11)(a) If a member or a member's dependent uses a pharmacy

174 discount program, drug manufacturer rebate, or other discount or

4-01734-20 20201836__

175 rebate program, including purchasing a prescription drug from a
 176 licensed prescribing provider such as a direct primary care
 177 provider, and such use results in a lower cost than would have
 178 been paid for a covered prescription drug had the member or
 179 member's dependent used the state group health insurance plan or
 180 a pharmacy participating in the state employees' prescription
 181 drug program to purchase the prescription drug, the department
 182 must apply the payments made by the member or member's dependent
 183 for that covered prescription drug toward the member's
 184 deductible and out-of-pocket maximum as specified in the state
 185 group health insurance plan or state employees' prescription
 186 drug program as if the prescription drug had been purchased from
 187 a pharmacy participating in the state employees' prescription
 188 drug program.

189 (b) At a minimum, the department, on its website and in its
 190 materials, shall inform the program's members on the program
 191 benefits of the option of obtaining prescription drugs from
 192 nonparticipating pharmacies under paragraph (a) and shall
 193 provide information on how to use such option to a member or a
 194 member's dependent.

195 Section 4. Section 110.1238, Florida Statutes, is amended
 196 to read:

197 110.1238 State group health insurance plans; refunds with
 198 respect to overcharges by providers; out-of-network providers.—

199 (1) A participant in a state group health insurance plan
 200 who discovers that he or she was overcharged by a health care
 201 provider shall receive a refund of 50 percent of any amount
 202 recovered as a result of such overcharge, up to a maximum of
 203 \$1,000.

4-01734-20 20201836__

204 (2) A state group health insurance plan shall allow its
 205 participants to obtain a covered health care service from an
 206 out-of-network provider at a cost that is the same or less than
 207 the in-network average that the state group health insurance
 208 plan pays for that health care service. The state group health
 209 insurance plan shall apply, within a reasonable timeframe not to
 210 exceed 1 year, the payment made by, or required of, a
 211 participant for that health care service toward the
 212 participant's deductible and out-of-pocket maximum as specified
 213 in the state group health insurance plan as if the health care
 214 service had been provided by an in-network provider.

215 (3) If a participant uses a pharmacy discount program, drug
 216 manufacturer rebate, or other discount or rebate program,
 217 including purchasing a prescription drug from a licensed
 218 prescribing provider such as a direct primary care provider, and
 219 such use results in a lower cost than would have been paid for a
 220 covered prescription drug had the participant used the state
 221 group health insurance plan to purchase the prescription drug,
 222 the state group health insurance plan must apply the payment
 223 made by the participant for that covered prescription drug
 224 toward the participant's deductible and out-of-pocket maximum as
 225 specified in the state group health insurance plan as if the
 226 prescription drug had been purchased from an in-network
 227 pharmacy.

228 (4) At a minimum, a state group health insurance plan shall
 229 inform participants on its website and in its benefit plan
 230 materials of the options of obtaining covered health care
 231 services from out-of-network providers and prescription drugs
 232 from out-of-network pharmacies under subsections (2) and (3),

4-01734-20

20201836

respectively, with the participants' payments applied to deductibles and out-of-pocket maximums. On its website and in its benefit plan materials, a state group health insurance plan shall also provide information on how to use the options under subsections (2) and (3) if a participant is interested in doing so.

Section 5. Section 465.203, Florida Statutes, is created to read:

465.203 Pharmacy benefit managers; prohibited acts.—

(1) As used in this section, the term "covered individual" means a member, a participant, an enrollee, a contract holder, a policyholder, or a beneficiary of a health plan, health plan sponsor, health plan provider, health insurer, health maintenance organization, or any other payor that uses pharmacy benefit management services in this state.

(2) A pharmacy benefit manager may not impose on a covered individual a copayment or any other charge that exceeds the claim cost of a prescription drug. If information related to a covered individual's out-of-pocket cost, the clinical efficacy of a prescription drug, or alternative medication is available to a pharmacy provider, a pharmacy benefit manager may not penalize the pharmacy provider for providing that information to the covered individual.

Section 6. Section 627.4435, Florida Statutes, is created to read:

627.4435 Coverage for out-of-network providers and prescription drugs.—

(1) DEFINITION.—As used in this section, the term "health insurer" has the same meaning as provided in s. 408.07.

4-01734-20

20201836

(2) HEALTH CARE SERVICES FROM OUT-OF-NETWORK PROVIDERS.—
Beginning on January 1, 2021, upon approval of a health insurer's rate filings:

(a) If an insured obtains a covered health care service from an out-of-network provider at a cost that is the same or less than the in-network average that the health insurer pays for that health care service, the health insurer must apply, within a reasonable timeframe not to exceed 1 year, the payment made by, or required of, an insured for that health care service toward the insured's deductible and out-of-pocket maximum as specified in the insured's health insurance policy, plan, or contract as if the health care service had been provided by an in-network provider.

(b) A health insurer may not deny payment for any in-network health care service covered under an insured's health insurance policy, plan, or contract based solely on the basis that the insured's referral was made by an out-of-network provider. The health insurer may not apply a deductible, coinsurance, or copayment greater than the applicable deductible, coinsurance, or copayment that would apply to the same health care service if the health care service was referred by an in-network provider.

(3) PRESCRIPTION DRUGS.—

(a) A health insurer or a pharmacy benefit manager on behalf of a health insurer may not impose on an insured a copayment or other charge that exceeds the claim cost of a prescription drug. If information related to an insured's out-of-pocket cost, the clinical efficacy of a prescription drug, or alternative medication is available to a pharmacy provider, a

4-01734-20

20201836__

291 health insurer or a pharmacy benefit manager on behalf of a
 292 health insurer may not penalize the pharmacy provider for
 293 providing that information to the insured.

294 (b) If an insured uses a pharmacy discount program, drug
 295 manufacturer rebate, or other discount or rebate program,
 296 including purchasing a prescription drug from a licensed
 297 prescribing provider such as a direct primary care provider, and
 298 such use results in a lower cost than would have been paid for a
 299 covered prescription drug had the insured used the health
 300 insurance policy, plan, or contract to purchase the prescription
 301 drug, the health insurer or the pharmacy benefit manager on
 302 behalf of a health insurer shall apply the payment made by the
 303 insured for that covered prescription drug toward the insured's
 304 deductible and out-of-pocket maximum as specified in the
 305 insured's health insurance policy, plan, or contract as if the
 306 prescription drug had been purchased from an in-network
 307 pharmacy.

308 (c) This section does not restrict a health insurer from
 309 requiring standard preauthorization or other precertification
 310 requirements, such as the use of a formulary, that would
 311 otherwise be required under the insured's health insurance
 312 policy, plan, or contract.

313 (4) NOTIFICATION TO INSURED.-

314 (a) At a minimum, a health insurer shall inform insureds on
 315 its website and in its benefit policy, plan, or contract
 316 materials of the options of obtaining health care services from
 317 out-of-network providers and prescription drugs from out-of-
 318 network pharmacies under subsections (2) and (3), respectively,
 319 with the insureds' payments applied to deductibles and out-of-

4-01734-20

20201836__

320 pocket maximums. On its website and in its benefit policy, plan,
 321 or contract materials, the health insurer shall also inform
 322 insureds on the process to obtain information on the average
 323 amount paid to an in-network provider or in-network pharmacy for
 324 a procedure, service, or prescription drug. The health insurer
 325 shall provide on its website a downloadable or interactive form
 326 for insureds to submit proof of payment to an out-of-network
 327 provider or out-of-network pharmacy.

328 (b) If an insured who is in a group health insurance
 329 policy, plan, or contract has paid for a health care service and
 330 the paid contracted rate for the provider was in the highest
 331 third for in-network providers for that insured's group health
 332 insurance policy, plan, or contract, the health insurer must
 333 inform the insured, by mail, electronic transmission, or
 334 telephone, that the insured has overpaid for the health care
 335 service, and the health insurer must also inform the insured of
 336 tools or methods the insured could use next time to elect a
 337 lower-cost option if the insured is interested in doing so.

338 Section 7. Paragraphs (c), (d), and (e) of subsection (2)
 339 and subsection (3) of section 627.6387, Florida Statutes, are
 340 amended to read:

341 627.6387 Shared savings incentive program.—

342 (2) As used in this section, the term:

343 (c) "Shared savings incentive" means a ~~voluntary and~~
 344 ~~optional~~ financial incentive that a health insurer provides ~~may~~
 345 ~~provide~~ to an insured for choosing certain shoppable health care
 346 services under a shared savings incentive program and may
 347 include, but is not limited to, the incentives described in s.
 348 626.9541(4) (a).

4-01734-20

20201836__

(d) "Shared savings incentive program" means an a voluntary
~~and optional~~ incentive program established by a health insurer
 pursuant to this section.

(e) "Shoppable health care service" means a lower-cost,
 high-quality nonemergency health care service for which a shared
 savings incentive is available for insureds under a health
 insurer's shared savings incentive program. Shoppable health
 care services may be provided within or outside this state and
 include, but are not limited to:

1. Clinical laboratory services.
2. Infusion therapy.
3. Inpatient and outpatient surgical procedures.
4. Obstetrical and gynecological services.
5. Inpatient and outpatient nonsurgical diagnostic tests
 and procedures.
6. Physical and occupational therapy services.
7. Radiology and imaging services.
8. Prescription drugs.
9. Services provided through telehealth.
10. Any additional services identified by the Florida
Center for Health Information and Transparency which commonly
have a wide price variation.

(3) A health insurer ~~shall~~ may offer a shared savings
 incentive program to provide incentives to an insured when the
 insured obtains a shoppable health care service from the health
 insurer's shared savings list. An insured may not be required to
 participate in a shared savings incentive program. A health
 insurer ~~that offers a shared savings incentive program~~ must:

- ~~(a) Establish the program as a component part of the policy~~

4-01734-20

20201836__

~~or certificate of insurance provided by the health insurer and~~
~~notify the insureds and the office at least 30 days before~~
~~program termination.~~

~~(a) (b)~~ File a description of the program on a form
 prescribed by commission rule. The office must review the filing
 and determine whether the shared savings incentive program
 complies with this section.

~~(b) (c)~~ Notify an insured annually and at the time of
 renewal, and an applicant for insurance at the time of
 enrollment, of the availability of the shared savings incentive
 program and the procedure to participate in the program.

~~(c) (d)~~ Publish on a webpage easily accessible to insureds
 and to applicants for insurance a list of shoppable health care
 services and health care providers and the shared savings
 incentive amount applicable for each service. A shared savings
 incentive may not be less than 25 percent of the savings
 generated by the insured's participation in any shared savings
 incentive offered by the health insurer. The baseline for the
 savings calculation is the average in-network amount paid for
 that service in the most recent 12-month period or some other
 methodology established by the health insurer and approved by
 the office. The health insurer must also offer a toll-free
telephone number that an insured may call to compare services
that qualify for a shared savings incentive.

~~(d) (e)~~ At least quarterly, credit or deposit the shared
 savings incentive amount to the insured's account as a return or
 reduction in premium, or credit the shared savings incentive
 amount to the insured's flexible spending account, health
 savings account, or health reimbursement account, or reward the

4-01734-20 20201836__

407 ~~insured directly with cash or a cash equivalent such that the~~
408 ~~amount does not constitute income to the insured.~~

409 ~~(e)(f)~~ Submit an annual report to the office within 90
410 business days after the close of each plan year. At a minimum,
411 the report must include the following information:

412 1. The number of insureds who participated in the program
413 during the plan year and the number of instances of
414 participation.

415 2. The total cost of services provided as a part of the
416 program.

417 3. The total value of the shared savings incentive payments
418 made to insureds participating in the program and the values
419 distributed as premium reductions, credits to flexible spending
420 accounts, credits to health savings accounts, or credits to
421 health reimbursement accounts.

422 4. An inventory of the shoppable health care services
423 offered by the health insurer.

424 Section 8. Paragraphs (c), (d), and (e) of subsection (2)
425 and subsection (3) of section 627.6648, Florida Statutes, are
426 amended to read:

427 627.6648 Shared savings incentive program.—

428 (2) As used in this section, the term:

429 (c) "Shared savings incentive" means a ~~voluntary and~~
430 ~~optional~~ financial incentive that a health insurer provides ~~may~~
431 ~~provide~~ to an insured for choosing certain shoppable health care
432 services under a shared savings incentive program and may
433 include, but is not limited to, the incentives described in s.
434 626.9541(4) (a).

435 (d) "Shared savings incentive program" means an ~~a~~ voluntary

4-01734-20 20201836__

436 ~~and optional~~ incentive program established by a health insurer
437 pursuant to this section.

438 (e) "Shoppable health care service" means a lower-cost,
439 high-quality nonemergency health care service for which a shared
440 savings incentive is available for insureds under a health
441 insurer's shared savings incentive program. Shoppable health
442 care services may be provided within or outside this state and
443 include, but are not limited to:

444 1. Clinical laboratory services.

445 2. Infusion therapy.

446 3. Inpatient and outpatient surgical procedures.

447 4. Obstetrical and gynecological services.

448 5. Inpatient and outpatient nonsurgical diagnostic tests
449 and procedures.

450 6. Physical and occupational therapy services.

451 7. Radiology and imaging services.

452 8. Prescription drugs.

453 9. Services provided through telehealth.

454 10. Any additional services identified by the Florida
455 Center for Health Information and Transparency which commonly
456 have a wide price variation.

457 (3) A health insurer ~~shall~~ may offer a shared savings
458 incentive program to provide incentives to an insured when the
459 insured obtains a shoppable health care service from the health
460 insurer's shared savings list. An insured may not be required to
461 participate in a shared savings incentive program. A health
462 insurer ~~that offers a shared savings incentive program~~ must:

463 ~~(a) Establish the program as a component part of the policy~~
464 ~~or certificate of insurance provided by the health insurer and~~

4-01734-20

20201836__

465 ~~notify the insureds and the office at least 30 days before~~
 466 ~~program termination.~~

467 ~~(a)(b)~~ File a description of the program on a form
 468 prescribed by commission rule. The office must review the filing
 469 and determine whether the shared savings incentive program
 470 complies with this section.

471 ~~(b)(c)~~ Notify an insured annually and at the time of
 472 renewal, and an applicant for insurance at the time of
 473 enrollment, of the availability of the shared savings incentive
 474 program and the procedure to participate in the program.

475 ~~(c)(d)~~ Publish on a webpage easily accessible to insureds
 476 and to applicants for insurance a list of shoppable health care
 477 services and health care providers and the shared savings
 478 incentive amount applicable for each service. A shared savings
 479 incentive may not be less than 25 percent of the savings
 480 generated by the insured's participation in any shared savings
 481 incentive offered by the health insurer. The baseline for the
 482 savings calculation is the average in-network amount paid for
 483 that service in the most recent 12-month period or some other
 484 methodology established by the health insurer and approved by
 485 the office. The health insurer must also offer a toll-free
 486 telephone number that an insured may call to compare services
 487 that qualify for a shared savings incentive.

488 ~~(d)(e)~~ At least quarterly, credit or deposit the shared
 489 savings incentive amount to the insured's account as a return or
 490 reduction in premium, or credit the shared savings incentive
 491 amount to the insured's flexible spending account, health
 492 savings account, or health reimbursement account, or reward the
 493 insured directly with cash or a cash equivalent ~~such that the~~

4-01734-20

20201836__

494 ~~amount does not constitute income to the insured.~~

495 ~~(e)(f)~~ Submit an annual report to the office within 90
 496 business days after the close of each plan year. At a minimum,
 497 the report must include the following information:

498 1. The number of insureds who participated in the program
 499 during the plan year and the number of instances of
 500 participation.

501 2. The total cost of services provided as a part of the
 502 program.

503 3. The total value of the shared savings incentive payments
 504 made to insureds participating in the program and the values
 505 distributed as premium reductions, credits to flexible spending
 506 accounts, credits to health savings accounts, or credits to
 507 health reimbursement accounts.

508 4. An inventory of the shoppable health care services
 509 offered by the health insurer.

510 Section 9. Paragraphs (c), (d), and (e) of subsection (2)
 511 and subsection (3) of section 641.31076, Florida Statutes, are
 512 amended to read:

513 641.31076 Shared savings incentive program.—

514 (2) As used in this section, the term:

515 (c) "Shared savings incentive" means a ~~voluntary and~~
 516 ~~optional~~ financial incentive that a health maintenance
 517 organization provides ~~may provide~~ to a subscriber for choosing
 518 certain shoppable health care services under a shared savings
 519 incentive program and may include, but is not limited to, the
 520 incentives described in s. 641.3903(15).

521 (d) "Shared savings incentive program" means an a-voluntary
 522 ~~and optional~~ incentive program established by a health

4-01734-20

20201836__

523 maintenance organization pursuant to this section.

524 (e) "Shoppable health care service" means a lower-cost,
 525 high-quality nonemergency health care service for which a shared
 526 savings incentive is available for subscribers under a health
 527 maintenance organization's shared savings incentive program.
 528 Shoppable health care services may be provided within or outside
 529 this state and include, but are not limited to:

- 530 1. Clinical laboratory services.
- 531 2. Infusion therapy.
- 532 3. Inpatient and outpatient surgical procedures.
- 533 4. Obstetrical and gynecological services.
- 534 5. Inpatient and outpatient nonsurgical diagnostic tests
 535 and procedures.
- 536 6. Physical and occupational therapy services.
- 537 7. Radiology and imaging services.
- 538 8. Prescription drugs.
- 539 9. Services provided through telehealth.
- 540 10. Any additional services identified by the Florida
 541 Center for Health Information and Transparency which commonly
 542 have a wide price variation.

543 (3) A health maintenance organization shall ~~may~~ offer a
 544 shared savings incentive program to provide incentives to a
 545 subscriber when the subscriber obtains a shoppable health care
 546 service from the health maintenance organization's shared
 547 savings list. A subscriber may not be required to participate in
 548 a shared savings incentive program. A health maintenance
 549 organization ~~that offers a shared savings incentive program~~
 550 must:

- 551 ~~(a) Establish the program as a component part of the~~

4-01734-20

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552 ~~contract of coverage provided by the health maintenance~~
 553 ~~organization and notify the subscribers and the office at least~~
 554 ~~30 days before program termination.~~

555 ~~(a) (b)~~ File a description of the program on a form
 556 prescribed by commission rule. The office must review the filing
 557 and determine whether the shared savings incentive program
 558 complies with this section.

559 ~~(b) (c)~~ Notify a subscriber annually and at the time of
 560 renewal, and an applicant for coverage at the time of
 561 enrollment, of the availability of the shared savings incentive
 562 program and the procedure to participate in the program.

563 ~~(c) (d)~~ Publish on a webpage easily accessible to
 564 subscribers and to applicants for coverage a list of shoppable
 565 health care services and health care providers and the shared
 566 savings incentive amount applicable for each service. A shared
 567 savings incentive may not be less than 25 percent of the savings
 568 generated by the subscriber's participation in any shared
 569 savings incentive offered by the health maintenance
 570 organization. The baseline for the savings calculation is the
 571 average in-network amount paid for that service in the most
 572 recent 12-month period or some other methodology established by
 573 the health maintenance organization and approved by the office.
 574 The health maintenance organization must also offer a toll-free
 575 telephone number that a subscriber may call to compare services
 576 that qualify for a shared savings incentive.

577 ~~(d) (e)~~ At least quarterly, credit or deposit the shared
 578 savings incentive amount to the subscriber's account as a return
 579 or reduction in premium, or credit the shared savings incentive
 580 amount to the subscriber's flexible spending account, health

4-01734-20 20201836__

savings account, or health reimbursement account, or reward the
subscriber directly with cash or a cash equivalent ~~such that the~~
~~amount does not constitute income to the subscriber.~~

~~(e)-(f)~~ Submit an annual report to the office within 90
business days after the close of each plan year. At a minimum,
the report must include the following information:

1. The number of subscribers who participated in the
program during the plan year and the number of instances of
participation.

2. The total cost of services provided as a part of the
program.

3. The total value of the shared savings incentive payments
made to subscribers participating in the program and the values
distributed as premium reductions, credits to flexible spending
accounts, credits to health savings accounts, or credits to
health reimbursement accounts.

4. An inventory of the shoppable health care services
offered by the health maintenance organization.

Section 10. This act shall take effect January 1, 2021.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 19, 2020

I respectfully request that **Senate Bill # 1836**, relating to Health Insurance and Prescription Drug Coverage, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean". The signature is written in a cursive, flowing style.

Senator Aaron Bean
Florida Senate, District 4

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/17/20
Meeting Date

1836
Bill Number (if applicable)

Topic Insurance

Amendment Barcode (if applicable)

Name Mike Cosick

Job Title _____

Address 200 W. College Ave
Street

Phone 850-222-5620

Tallahassee FL 32301
City State Zip

Email mike@MichaelCosick.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Opportunity Solutions

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 7048

INTRODUCER: Infrastructure and Security Committee

SUBJECT: Public Records/Public Shelter Space

DATE: February 14, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Proctor	Miller		IS Submitted as Committee Bill
1.	Hackett	McVane	GO	Favorable
2.			RC	

I. Summary:

SB 7048 exempts from public inspection and copying the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency.

The bill provides that the exemption created under the bill is 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 by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new 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 an agency in responding to public records requests regarding this exemption should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming 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

¹ FLA. CONST. art. I, s. 24(a).

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

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).

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).

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 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

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.

²¹ Section 119.15(6)(b)1., F.S.

- 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

Public Shelters

The Division of Emergency Management (DEM) is established in the Executive Office of the Governor to serve as the state's emergency management agency.²⁷ The State Emergency Management Act²⁸ directs DEM to oversee and manage emergency preparedness, response, recovery, and mitigation programs in Florida.

DEM currently manages a program for surveying existing public and private buildings, with the owner's written agreement, to identify which facilities are appropriately designed and located to serve as shelters in the event of an emergency.²⁹ Public facilities, including schools, post-secondary education facilities, and other facilities owned or leased by the state or local governments, but excluding hospitals or nursing homes, which are suitable for use as public hurricane evacuation shelters must be made available at the request of the local emergency management agencies.³⁰

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 14.2016, F.S.

²⁸ Section 252.31, F.S., through s. 252.60, F.S., are known as the State Emergency Management Act. Section 252.31, F.S.

²⁹ Section 252.385(2)(a), F.S.

³⁰ Section 252.385(4)(a), F.S.

DEM is required to prepare a state comprehensive emergency management plan (CEMP) that must be integrated into, and coordinated with, the emergency management plans of the Federal Government.³¹ The CEMP³² must include a shelter component, the Statewide Emergency Shelter Plan (plan),³³ with specific planning provisions and the CEMP must promote shelter activity coordination between the public, private, and nonprofit sectors.³⁴ The plan must include the following:

- Contain strategies to ensure the availability of adequate shelter space in each region of the state;
- Establish strategies for refuge-of-last-resort programs;
- Provide strategies to assist local emergency management efforts to ensure that adequate staffing plans exist for all shelters, including medical and security personnel;
- Provide for a post disaster communications system for public shelters;
- Establish model shelter guidelines for operations, registration, inventory, power generation capability, information management, and staffing; and
- Set forth policy guidance for sheltering people with special needs.³⁵

The plan must be prepared and submitted to the Governor and Cabinet each even-numbered year.³⁶ The plan, among other requirements, must identify the location and square footage of existing shelters as well as shelters needed in the next five years.³⁷ The plan must also identify the types of public facilities that should be constructed to comply with emergency-shelter criteria and must recommend an appropriate and available source of funding for the additional cost of constructing emergency shelters within these public facilities.³⁸

Public shelters are not required to gather personal information on shelter residents, however, nothing in law prevents the collection of such information. Shelters that collect personal information on their residents may do so to have an accurate accounting of all persons staying within or to locate family members for the purpose of family reunification. While no public record exemption for this information exists, the plan states that shelter staff members should “abide by principles of confidentiality.”³⁹

³¹ Section 252.35(2)(a), F.S. ; *see also* s. 1013.372, F.S.

³² FLA. ADMIN. CODE R. 27P-2.002, incorporates the CEMP by reference; *See* Comprehensive Emergency Management Plan, Division of Emergency Management, available at <https://www.floridadisaster.org/globalassets/importedpdfs/2014-state-cemp-basic-plan.pdf> (last visited January 29, 2020).

³³ 2018 Statewide Emergency Shelter Plan, DIVISION OF EMERGENCY MANAGEMENT, available at <https://www.floridadisaster.org/globalassets/dem/response/sesp/2018/2018-sesp-entire-document.pdf> (last visited January 29, 2020).

³⁴ Section 252.35(2)(a)2., F.S.

³⁵ *Id.*

³⁶ Section 1013.372(2), F.S.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Supra*, note 33 at Appendix F, pg. F-2.

III. Effect of Proposed Changes:

Section 1 creates 252.385(5), to exempt⁴⁰ from public inspection and copying the name, address, and telephone number of a person which are held by an agency, as defined in s. 119.011, F.S., providing shelter or assistance to such person during an emergency.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act and will repeal October 2, 2025, unless the Legislature reviews and reenacts the exemptions by that date.

Section 2 provides a public necessity statement as required by the Florida Constitution. The statement asserts that:

“Shelters are made available to the public to provide a safe place of accommodation before, during, and immediately following an emergency. During an emergency, the people affected are in a vulnerable state, as they have voluntarily displaced themselves from their residences and possessions to seek refuge. The information submitted to an agency by such a person seeking shelter or assistance could be used by persons seeking to take advantage of their vulnerability during or following the emergency. In addition, people seeking shelter or assistance for their safety and the safety of their families should not be forced to forfeit their privacy for the sake of such safety.”

Section 3 provides that the bill takes effect upon becoming a law.

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:

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 the name, address, and

⁴⁰ There is a difference between records the Legislature designates exempt from public records requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991) *review denied*, 589 So. 2d 289 (Fla. 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See *WFTV, Inc. v. Sch. Bd. of Seminole Cnty*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004), *review denied*, 892 So. 2d 1015 (Fla. 2004); Op. Att’y Gen. Fla. 85-692 (1985).

telephone number of a person using a public shelter or provided assistance by an agency during an emergency, 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 the name, address, and telephone number of a person using a public shelter or provided assistance by an agency during an emergency. This SB exempts only the name, address, and telephone number of a person using a public shelter or provided assistance by an agency during an emergency from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on agencies due to the fact agency staff responsible for complying with public records requests may require training related to the creation of the public records exemptions. Costs associated with redacting the exempt information prior to releasing a record may be incurred. The costs, however, would be absorbed by existing resources, as they are part of day-to-day responsibilities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 252.385, Florida Statutes.

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

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

None.

B. Amendments:

None.

By the Committee on Infrastructure and Security

596-03048-20

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A bill to be entitled

An act relating to public records; amending s. 252.385, F.S.; creating an exemption from public records requirements for the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency; 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. Subsection (5) is added to section 252.385, Florida Statutes, to read:

252.385 Public shelter space; public records exemption.—

(5) The name, address, and telephone number of a person which are held by an agency, as defined in s. 119.011, providing shelter or assistance to such person during an emergency are exempt from s. 119.07(1) and s. 24(a), 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 the name, address, and telephone number of a person which are held by an agency providing shelter or assistance to such person during an emergency be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of

596-03048-20

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the State Constitution. Shelters are made available to the public to provide a safe place of accommodation before, during, and immediately following an emergency. During an emergency, the people affected are in a vulnerable state, as they have voluntarily displaced themselves from their residences and possessions to seek refuge. The information submitted to an agency by such a person seeking shelter or assistance could be used by persons seeking to take advantage of their vulnerability during or following the emergency. In addition, people seeking shelter or assistance for their safety and the safety of their families should not be forced to forfeit their privacy for the sake of such safety. Therefore, the Legislature finds that it is a public necessity to protect such information from public disclosure.

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: February 7, 2020

I respectfully request that **Senate Bill #7048**, relating to Public Records/Public Shelter Space 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
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: SPB 7056

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Public Records/Active Threat Assessment and Management Records

DATE: February 14, 2020

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Hackett	McVane		GO Submitted as Comm. Bill/Fav

I. Summary:

SPB 7056 provides that exemptions from public inspection and copying active criminal intelligence information, active criminal investigative information, or other exempt information and records extend to exempt such information when shared with an agency or governmental entity in the furtherance of official duties and responsibilities under a multidisciplinary information-sharing agreement, or when shared with another criminal justice agency in furtherance of its official duties regardless of agreement.

The bill also exempts from public inspection and copying active threat assessment and active threat management records.

The bill provides that the exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., 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 final passage.

The bill does not appear to have a fiscal impact on state or local governments.

The bill takes effect upon becoming 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, 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.

Public Records Exemptions for Criminal Investigative and Intelligence Information

Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1), F.S., and Article I, s. 24(a), of the Florida Constitution.⁵ Section 119.011(3)(a), F.S., defines “criminal intelligence information” as information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity. Section 119.011(3)(b), F.S., defines “criminal investigative information” as information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.

The definitions of criminal intelligence and investigative information do not include some specific types of information, which is therefore public. This public information includes the time, date, location and nature of the crime, the charges, and the identities of the arrested person and the victims of the crime except as provided in s. 119.071(2)(h) or (o), F.S.⁶ Also excluded from the definition of criminal intelligence and investigative information are documents that must be given to the person who is arrested, because of a law or agency rule.⁷ An example of such a rule would be the discovery rules under the Florida Rules of Criminal Procedure.

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 119.071(2)(c)1., F.S. The definition of “active” is located in s. 119.011(3)(d), F.S.

⁶ Section 119.011(c), F.S.

⁷ Section 119.011(c)5., F.S.

Criminal intelligence and investigative information becomes public under two circumstances: 1) when information is given to the defendant through a pretrial discovery request; and 2) when the defendant's conviction and sentence are final.

After active criminal intelligence investigative information have been provided to a defendant through discovery, that information becomes public under certain circumstances.⁸ Those circumstances include considerations about whether making discovery documents public will impede the defendant's right to a fair trial or the right of privacy of third parties.⁹ A court may temporarily seal pretrial discovery, even if some of the pretrial discovery information is already public.¹⁰ In addition, in criminal cases, discovery may be kept confidential and exempt from public disclosure until trial if the following conditions are met: 1) the information would defamatory or would jeopardize the safety of the witness; and 2) releasing the information would hurt the state attorney's ability to locate or prosecute a codefendant.¹¹

Criminal intelligence and investigative information are considered "active" when they are "directly related to pending prosecutions or appeals."¹² Therefore, criminal intelligence investigative information becomes public "when the conviction and sentence becomes final... after direct appeal" (emphasis omitted).¹³

Limited Effect of a "Confidential" or "Exempt" Designation

The designation of a record as exempt, or as confidential and exempt, is effective only as to a public records request brought under Florida's public records laws. Therefore, these exemptions and confidentialities do not block access to government documents if there is an independent basis for that access.¹⁴

One such basis is a discovery request in a criminal case. The Florida Rules of Criminal Procedure require a prosecutor to disclose information about witnesses in discovery.¹⁵ This requirement, at least in principle if not in a strict legal sense, is rooted in the "confrontation clause" of the United States Constitution.¹⁶ The confrontation clause preserves a defendant's

⁸ *Post-Newsweek Stations, Fla. v. Doe*, 612 So. 2d 549, 551 (Fla. 1992). *Florida Freedom Newspapers, Inc., v. McCrary*, 520 So. 2d 32 (Fla. 1988). *Bludworth v. Palm Beach Newspapers, Inc.*, 176 So. 2d 775 (Fla. 5th DCA 1985).

⁹ *Post-Newsweek Stations*, 612 So. 2d at 551. *Florida Freedom Newspapers*, 520 So. 2d.

¹⁰ *Florida Freedom Newspapers*, 520 So. 2d at 36.

¹¹ Section 119.011(c)5.a. and b., F.S.

¹² Section 119.011(3)(d)2., F.S. However, "active" does not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation. Section 119.011(3)(d)2., F.S. Section 775.15, F.S., is where the criminal statute of limitations is located.

¹³ *Allen v. Butterworth*, 756 So. 2d 52, 66 (FLA 2000).

¹⁴ Generally, any confidentiality or exemption from public disclosure is eliminated by a record's entering a court file. Certain records remain confidential or exempt, however, even if they enter a court file. See s. 119.0714(1), F.S.

¹⁵ Fla. R. Crim. P. 3.220(b) (Discovery: Prosecutor's Discovery Obligation). Section 119.07(8), F.S., addresses the relationship between discovery obligations and public records. However, the rules allow a court, on its own initiative or upon a motion of counsel, to restrict disclosure if the court finds that "there is a substantial risk to any person of physical harm, intimidation, bribery, economic reprisals, or unnecessary annoyance or embarrassment resulting from the disclosure that outweighs any usefulness of the disclosure to either party." Fla. R. Crim. P. 3.220(e) (Discovery: Restricting Disclosure).

¹⁶ The Sixth Amendment of the U.S. Constitution provides: In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be

right to confront a witness against him or her and to bring forward information that aids the jury in determining the truthfulness and reliability of the witness.¹⁷ For example, the defendant might expose a witness's prejudice, bias, or ulterior motivation to lie; expose lies; test a witness's ability to perceive and remember; or expose weaknesses in the witness's testimony. This right to confront a witness "minimizes the risk that a judgment will be predicated on incomplete, misleading, or even deliberately fabricated testimony."¹⁸

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.¹⁹

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.²⁰ 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."²¹

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.²² A violation of the Public Records Act may result in civil or criminal liability.²³

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.²⁴ 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.²⁵

confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

¹⁷ *Id.*

¹⁸ Judge Joan Comparet-Cassani, *Balancing the Anonymity of Threatened Witnesses Versus a Defendant's Right of Confrontation: The Waiver Doctrine After Alvarado*, 39 SAN DIEGO L. REV. 1165 (Fall, 2002).

¹⁹ 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."

²⁰ 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."

²¹ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

²² Section 119.07(1)(a), F.S.

²³ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ *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

General exemptions from the public records requirements are contained in the Public Records Act.²⁶ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.²⁷

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.²⁸ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.²⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act³⁰ (the Act) prescribes a legislative review process for newly created or substantially amended³¹ public records or open meetings exemptions, with specified exceptions.³² 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.³³

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.³⁴ 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;³⁵
- 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;³⁶ or

(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).

²⁶ 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).

²⁷ 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).

²⁸ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

²⁹ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

³⁰ Section 119.15, F.S.

³¹ 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.

³² 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.

³³ Section 119.15(3), F.S.

³⁴ Section 119.15(6)(b), F.S.

³⁵ Section 119.15(6)(b)1., F.S.

³⁶ Section 119.15(6)(b)2., F.S.

- It protects information of a confidential nature concerning entities, such as trade or business secrets.³⁷

The Act also requires specified questions to be considered during the review process.³⁸ 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.³⁹ 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.⁴⁰

Criminal Intelligence and Investigative Information

Active criminal intelligence information and active criminal investigative information are exempt from public inspection and copying requirements, s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.⁴¹ Exempt active criminal investigative information may be shared with another criminal justice agency and retain its protected status.⁴²

“Criminal intelligence information” means information concerning “an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.”⁴³ Criminal intelligence information is considered “active” as long “as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities” or “is directly related to pending prosecutions or appeals.”⁴⁴

“Criminal investigative information” is defined as information relating to “an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal

³⁷ Section 119.15(6)(b)3., F.S.

³⁸ 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?

³⁹ See generally s. 119.15, F.S.

⁴⁰ Section 119.15(7), F.S.

⁴¹ Section 119.071(2)(c)1., F.S.

⁴² *City of Riviera Beach v. Barfield*, 642 So. 2d 1135, 1137 (Fla. 4th DCA 1994), review denied, 651 So. 2d 1192 (Fla. 1995). The City of Riviera Beach court held that exempt records of the West Palm Beach police department’s active criminal investigation concerning a shooting incident involving a police officer from Riviera Beach could be furnished to the Riviera Beach police department for use in a simultaneous administrative internal affairs investigation of the officer without losing their exempt status. *Accord Ragsdale v. State*, 720 So. 2d 203, 206 (Fla. 1998) (applicability of a particular exemption is determined by the document being withheld, not by the identity of the agency possessing the record).

⁴³ Section 119.011(3)(a), F.S.

⁴⁴ Section 119.011(3)(d), F.S.

investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.”⁴⁵ Such information is considered “active” as long “as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future” or “is directly related to pending prosecutions or appeals.”⁴⁶

“Criminal justice agency” is defined to mean any law enforcement agency, court, prosecutor or any other agency charged by law with criminal law enforcement duties or any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties. The term also includes the Department of Corrections.⁴⁷

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(c)(2), F.S., to provide that exemptions from public inspection and copying for active criminal intelligence information, active criminal investigative information, or other exempt information and records extend to exempt such information when shared with an agency or governmental entity in the furtherance of official duties and responsibilities under a multidisciplinary information-sharing agreement, or when shared with another criminal justice agency in furtherance of its official duties regardless of agreement.

The bill further exempts from public inspection and copying active threat assessment and active threat management records. The threat assessment and threat management records shall be considered “active” as long as they relate to an ongoing good faith belief by the FDLE that a threat assessment or a threat management plan will lead to detection, reasonable anticipation, prevention, or monitoring of possible targeted violence when the assessment or records are in the possession of a criminal justice agency or its employees, a governmental agency, whether state or federal, or any other governmental entity pursuant to a multidisciplinary information-sharing agreement for a public safety purpose, including, but not limited to, a targeted violence threat assessment and management plan.

The bill defines the following terms:

- “Lead law enforcement agency” to mean the law enforcement agency designated as the lead agency in a multidisciplinary information-sharing agreement;
- “Multidisciplinary information-sharing agreement” to mean an agreement entered into between a law enforcement agency and another law enforcement agency, a criminal justice agency, or any other entity to share active criminal intelligence or active criminal investigative information for the purposes of furthering information sharing for law

⁴⁵ Section 119.011(3)(b), F.S. *See Rose v. D’Alessandro*, 380 So. 2d 419 (Fla. 1980) (complaints and affidavits received by a state attorney in the discharge of his investigatory duties constitute criminal intelligence or criminal investigative information).

⁴⁶ Section 119.011(3)(d), F.S.

⁴⁷ Section 119.011(4), F.S.

enforcement criminal intelligence purposes, criminal investigative purposes, threat assessments, or threat management plans;

- “Targeted violence” to mean a situation involving an identifiable person or group of persons who actively pursue physical injury or harm toward an identifiable target or prospective victim, including, but not limited to, a specific person, a group of persons, an entity, or a location;
- “Threat assessment” to mean the process of collecting and sharing active criminal intelligence information or active criminal investigative information in a multidisciplinary effort to contextualize and understand a targeted violence threat; and
- “Threat management” to mean the process of developing, implementing, and monitoring an individualized plan in a multidisciplinary effort to intervene, mitigate, or prevent a targeted violence threat.

The public records exemptions in the bill are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and will stand repealed on October 2, 2025, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 provides a statement of public necessity, which states:

The Legislature finds that it is a public necessity that records related to active threat assessments and active threat management plans be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that it is a public necessity for law enforcement agencies and criminal justice agencies to be able to share active threat assessment and threat management records securely with vital multidisciplinary partners who have important roles in threat assessments and threat management plans and that the information retain its exempt status. The Legislature finds that the release of these records could hinder active criminal investigations and could cause harm to the person under the threat assessment and threat management plan and could potentially cause certain individuals to proceed with their intentions to cause targeted violence. The Legislature finds that the release of these records and the potential impact that the release may have on an individual under an active threat assessment or active threat management plan could cause harm to the residents in this state if such information were made public. The Legislature is gravely concerned and saddened by the horrific mass shootings perpetrated in this state. The Legislature is concerned about the increase in these targeted violence incidents and finds that it is important for law enforcement agencies, criminal justice agencies, and their multidisciplinary partners to use the valuable tool of threat assessments and threat management plans to proactively mitigate and prevent these threats and protect the people of this state.

Section 3 provides that the bill takes effect upon becoming 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 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 active threat assessment and active threat management records, 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 active criminal intelligence information, active criminal investigative information, and other exempt information and records shared with an agency or governmental entity in the furtherance of official duties and responsibilities under a multidisciplinary information-sharing agreement, as well as active threat assessment records, and active threat management records. This bill exempts only active criminal intelligence information, active criminal investigative information, and other exempt information and records shared with an agency or governmental entity in the furtherance of official duties and responsibilities under a multidisciplinary information-sharing agreement from the public records requirements, as well as active threat assessment records and active threat management records. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees.⁴⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends the following section of the Florida Statutes: 119.071.

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.

⁴⁸ Section 119.07(2) and (4), F.S.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-03436A-20

20207056pb

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; exempting from public records requirements active threat assessment and active threat management records; providing circumstances under which such records are considered active; defining terms; 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 (c) of subsection (2) of section 119.071, Florida Statutes, is amended to read:

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

(2) AGENCY INVESTIGATIONS.—

(c)1. Active criminal intelligence information and active criminal investigative information are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2.a. A request made by a law enforcement agency to inspect or copy a public record that is in the custody of another agency and the custodian's response to the request, and any information that would identify whether a law enforcement agency has requested or received that public record are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, during the period in which the information constitutes active criminal intelligence information or active criminal investigative

Page 1 of 5

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585-03436A-20

20207056pb

information.

b. The law enforcement agency that made the request to inspect or copy a public record shall give notice to the custodial agency when the criminal intelligence information or criminal investigative information is no longer active so that the request made by the law enforcement agency, the custodian's response to the request, and information that would identify whether the law enforcement agency had requested or received that public record are available to the public.

c. This exemption is remedial in nature, and it is the intent of the Legislature that the exemption be applied to requests for information received before, on, or after the effective date of this paragraph.

3.a. Active criminal intelligence information and active criminal investigative information or other exempt information or records shared with another agency or governmental entity in the furtherance of its official duties and responsibilities under a multidisciplinary information-sharing agreement retain their exempt status. Active criminal intelligence information and active criminal investigative information and other exempt information or records shared with another criminal justice agency in the furtherance of its official duties retain their exempt status as otherwise provided by law.

b. Active threat assessment and active threat management records are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Threat assessment and threat management records shall be considered "active" as long as they relate to an ongoing good faith belief by the Department of Law Enforcement or the lead law enforcement agency that a threat

Page 2 of 5

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585-03436A-20

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assessment or a threat management plan will lead to detection, reasonable anticipation, prevention, or monitoring of possible targeted violence when the assessment or records are in the possession of a criminal justice agency or its employees, a governmental agency, whether state or federal, or any other governmental entity pursuant to a multidisciplinary information-sharing agreement.

c. As used in this subparagraph, the term:

(I) "Lead law enforcement agency" means the law enforcement agency designated as the lead agency in a multidisciplinary information-sharing agreement.

(II) "Multidisciplinary information-sharing agreement" means an agreement entered into between a lead law enforcement agency and another law enforcement agency, a criminal justice agency, or any other entity to share active criminal intelligence or active criminal investigative information for the purposes of furthering information sharing for law enforcement criminal intelligence purposes, criminal investigative purposes, threat assessments, or threat management plans.

(III) "Targeted violence" means a situation involving an identifiable person or group of persons who actively pursue physical injury or harm toward an identifiable target or prospective victim, including, but not limited to, a specific person, a group of persons, an entity, or a location.

(IV) "Threat assessment" means the process of collecting and sharing active criminal intelligence information or active criminal investigative information in a multidisciplinary effort to contextualize and understand a targeted violence threat.

585-03436A-20

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(V) "Threat management" means the process of developing, implementing, and monitoring an individualized plan in a multidisciplinary effort to intervene, mitigate, or prevent a targeted violence threat.

d. 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.

Section 2. The Legislature finds that it is a public necessity that records related to active threat assessments and active threat management plans be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The Legislature finds that it is a public necessity for law enforcement agencies and criminal justice agencies to be able to share active threat assessment and active threat management records securely with vital multidisciplinary partners who have important roles in threat assessments and threat management plans and that the information retain its exempt status. The Legislature finds that the release of these records could hinder active criminal investigations and could cause harm to the person under the threat assessment and threat management plan and could potentially cause certain individuals to proceed with their intentions to cause targeted violence. The Legislature finds that the release of these records and the potential impact that the release may have on an individual under an active threat assessment or active threat management plan could cause harm to the residents in this state if such information were made public. The Legislature is gravely concerned and saddened by the horrific mass shootings

585-03436A-20

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117 perpetrated in this state. The Legislature is concerned about
118 the increase in these targeted violence incidents and finds that
119 it is important for law enforcement agencies, criminal justice
120 agencies, and their multidisciplinary partners to use the
121 valuable tools of threat assessments and threat management plans
122 to proactively mitigate and prevent these threats and protect
123 the people of this state.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health
and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER

29th District

February 17, 2020

Chairman Ed Hooper
Committee on Governmental Oversight and Accountability
330 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Hooper:

I am writing to you to be excused from the Committee on Governmental Oversight and Accountability that will be held today, February 17, 2020, at 1:30 p.m., due to unforeseen illness. I sincerely apologize for any inconvenience this may cause.

Thank you for your consideration. Please feel free to contact me at (850) 487-5029 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Kevin Rader".

Kevin Rader
State Senator
District 29

cc: Joe McVaney, Staff Director
Tamra Redig, Committee Administrative Assistant

REPLY TO:

- ☐ 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- ☐ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 2/17/2020 1:32:32 PM

Ends: 2/17/2020 3:29:54 PM

Length: 01:57:23

1:32:30 PM Meeting called to order
1:32:36 PM Roll call - Quorum present
1:32:47 PM Senator Rader is excused
1:33:01 PM Comments from Chair Hooper
1:33:15 PM Tab 4 - CS/SB 814 - Disposition of Surplus Funds by Candidates by Senator Perry
1:33:43 PM Questions?
1:33:46 PM Senator Torres
1:34:03 PM Senator Perry
1:34:40 PM Appearance Forms? None
1:34:49 PM Debate? None
1:34:52 PM Senator Perry waives close
1:34:55 PM Roll call for CS/SB 814
1:35:09 PM Tab 5 - CS/SB 872 - Public Records/Florida Commission on Offender Review by Senator Perry
1:35:41 PM Questions on bill
1:35:48 PM Amendment 521370 by Senator Perry
1:35:58 PM Questions?
1:36:01 PM Debate?
1:36:04 PM No objections to adoption of amendment; amendment is adopted
1:36:15 PM Back on the bill as amended
1:36:21 PM Alec Yarger, Florida Commission on Offender Review, waives in support of bill
1:36:33 PM Senator Perry waives close
1:36:46 PM Roll Call on CS/CS/SB 872
1:36:55 PM Tab 10 - CS/SB 1624 - Economic Self-sufficiency by Senator Perry
1:37:47 PM Questions?
1:37:50 PM Senator Torres
1:38:14 PM Senator Perry
1:39:02 PM Appearance Cards?
1:39:12 PM Michael Williams, Florida Chamber Foundation Prosperity Initiative
1:40:14 PM Handouts given to members from Florida Chamber Foundation
1:40:22 PM Matthew Choy waives in support
1:40:34 PM Matt Guse, Florida Children's Council, waives in support
1:40:35 PM Debate?
1:40:38 PM Senator Perry to close
1:40:42 PM Roll Call on CS/CS/SB 1624
1:41:06 PM Tab 1 - CS/SB 760 - Fire Control Districts and Firefighter Pensions by Senator Brandes
1:41:30 PM Senator Brandes explains delete-all amendment 262866.
1:42:01 PM Questions?
1:42:05 PM Appearance Cards? None
1:42:11 PM Debate?
1:42:14 PM No objection to adoption of amendment; amendment adopted.
1:42:21 PM Back on the bill as amended
1:42:28 PM Wayne "Bernie" Bernoska, Florida Professional Firefighters, waives in support.
1:42:36 PM Chris Lyon, Florida Assoc of Special Districts, waives in support.
1:42:43 PM Laura Donaldson, North Collier Fire & Rescue District, speaking for the bill.
1:42:50 PM Debate on bill as amended
1:42:56 PM Senator Brandes waives close on bill
1:43:00 PM Roll Call on CS/CS/SB 760
1:43:16 PM Tab 3 - SB 800 - Division of State Technology by Senator Harrell
1:44:07 PM Amendment 463360 by Senator Harrell
1:45:11 PM Objection to introduction of the Late-filed amendment?
1:45:19 PM No objections, late-filed amendment is introduced.
1:45:21 PM Questions?

1:45:33 PM Appearance Cards?
1:45:37 PM Debate?
1:45:40 PM No objections to adoption of the amendment; amendment is adopted.
1:45:49 PM Questions on the bill as amended.
1:45:56 PM Natlie Kelley, Florida Assoc of Managing Entities, waives in support
1:46:17 PM Debate? None
1:46:21 PM Senator Harrell to close
1:46:29 PM Roll Call on CS/SB 800
1:47:07 PM Tab 12 -SB 1836 - Health Insurance and Prescription Drug Coverage by Senator Bean
1:47:18 PM Senator Bean explains amendment 539144
1:48:14 PM Questions?
1:48:57 PM Appearance Cards?
1:49:00 PM Debate?
1:49:04 PM No objections to the adoption of the amendment
1:49:09 PM Questions?
1:49:12 PM Senator Torres
1:49:24 PM Senator Bean
1:50:36 PM Senator Torres
1:50:43 PM Senator Bean
1:51:19 PM Senator Torres
1:51:50 PM Senator Bean
1:53:40 PM Appearance Cards?
1:54:40 PM Mike Cusick for Opportunity Solutions, waives in support
1:54:54 PM Debate?
1:55:00 PM Senator Torres
1:56:09 PM Senator Bean to close
1:57:19 PM Roll Call on CS/SB 1836
1:57:33 PM Tab 9 - SJR 1502 - Information about Counties and Municipalities by Senator Diaz
1:59:01 PM Questions?
1:59:04 PM Appearance Forms?
1:59:13 PM Senator Torres
1:59:22 PM Senator Diaz
1:59:35 PM Senator Torres
1:59:57 PM Senator Diaz
2:00:14 PM Debate? None
2:00:20 PM Senator Diaz waives close
2:00:29 PM Roll Call on SJR 1502
2:00:56 PM Tab 2 - SB 774 - Public Records and meetings/Applicant by Senator Diaz
2:02:33 PM Delete-all amendment 458574 by Senator Diaz
2:03:35 PM Questions?
2:04:21 PM Senator Torres
2:04:28 PM Appearance Cards?
2:04:31 PM Debate? None
2:04:35 PM No objections to the adoption of the delete-all amendment
2:04:40 PM Amendment is adopted
2:04:47 PM Back on bill as amended
2:04:55 PM Questions?
2:04:59 PM Senator Torres
2:05:13 PM Senator Diaz
2:06:30 PM Senator Torres
2:06:46 PM Senator Diaz
2:08:17 PM Senator Torres
2:08:50 PM Senator Diaz
2:09:33 PM Senator Albritton
2:10:45 PM Senator Diaz
2:11:26 PM James Young from Lantana, Florida, speaking in opposition
2:12:48 PM Marshall Ogletree, Exec. Director, United Faculty of Florida, speaking against
2:16:53 PM Carmen King, Gainesville, speaking against
2:19:25 PM Christopher King, Gainesville, speaking against
2:20:55 PM Bob Glatt from Lake Worth, Florida, waives against
2:21:57 PM Donald Persson, speaking against
2:23:21 PM Robert Moor, speaking against

2:24:50 PM Christine Derry, waives in opposition
 2:25:07 PM Jonathan Druskis, waives in opposition
 2:25:15 PM Dr. Rich Termplin, Florida AFL-CIO, speaking against
 2:26:27 PM Rich Termplin
 2:28:47 PM Jeremiah Tattersall, speaking against
 2:31:34 PM Ferraro Jacobs, waives in opposition
 2:31:51 PM Stephen Simon, waives in opposition
 2:31:56 PM Jackie McCalister, waives in opposition
 2:32:01 PM Stephanie Clark, waives in opposition
 2:32:11 PM Sherene Tolbert, waives in opposition
 2:32:19 PM James Jones, waives in opposition
 2:32:23 PM Marcus Dixson, waives in opposition
 2:32:30 PM David Gates, waives in opposition
 2:32:36 PM Russell Harper, waives in opposition
 2:32:42 PM Kari Ann Kinkey, waives in opposition
 2:32:50 PM Zac Cassidy, waives in opposition
 2:32:52 PM Amy Datz, waives in opposition
 2:33:03 PM Debate?
 2:33:10 PM Senator Torres
 2:33:24 PM Senator Rodriguez
 2:36:07 PM Senator Bean
 2:37:04 PM Senator Diaz to close
 2:38:15 PM Roll Call on CS/SB 774
 2:38:29 PM Tab 13 - SB 7048 - Public Records/Public Shelter Space by Senator Lee
 2:39:45 PM Questions?
 2:40:28 PM Appearance Cards?
 2:40:30 PM Jess McCarty, Miami-Dade County, waives in support
 2:40:40 PM Daphnee Sainvil, Broward County Board of County Commissioners, waives in support
 2:40:45 PM Tonnnette Graham, Florida Assoc of Counties, waives in support
 2:40:56 PM Senator Lee waives close
 2:41:08 PM Roll Call on SB 7048
 2:41:19 PM Tab 11- CS/SB 1656 - Reclaimed Water by Senator Albritton
 2:42:54 PM Amendment 672040 by Senator Albritton
 2:44:27 PM Questions? None
 2:44:48 PM No appearance cards
 2:44:49 PM Debate?
 2:44:54 PM No objections to adoption of the amendment
 2:44:55 PM Amendment is adopted
 2:45:03 PM David Cullen, Sierra Club Florida, speaking for information
 2:46:08 PM Lance Pierce, Association of Florida Community Developers, speaking in support
 2:47:07 PM Jim Spratt, Associated Industries of Florida, waives in support
 2:47:15 PM Andrew Ketchel, waives in support
 2:47:21 PM Garrett Wallace, The Nature Conservancy, waives in support
 2:47:27 PM Rebecca O'Hara, Florida League of Cities, for information
 2:49:10 PM Debate?
 2:49:18 PM Senator Torres
 2:50:06 PM Senator Albritton to close
 2:51:05 PM Roll Call on CS/CS/SB 1656
 2:51:25 PM Tab 8 - SB 1272 - Statewide Emergency Shelter Task Force by Senator Montford, presented by Senator Albritton
 2:52:25 PM Questions?
 2:52:40 PM Appearance Cards?
 2:52:41 PM Debate?
 2:52:44 PM Roll Call on SB 1272
 2:52:59 PM Gavel turned over to Senator Bean
 2:53:06 PM Tab 14 - SPB 7056 - Public Records/Active Threat Assessment and Management Records
 2:54:17 PM Senator Hooper to explain proposed bill.
 2:54:20 PM No questions, no appearance cards, no debate
 2:54:23 PM Senator Albritton moves that SPB 7056 be submitted as a Committee Bill
 2:54:28 PM Motion adopted
 2:54:40 PM Roll Call on SPB 7056
 2:55:02 PM Gavel turned back over to Chair Hooper

2:55:14 PM Tab 6 - SB 1124 - by Senator Diaz
 2:56:20 PM Amendment 232090 by Senator Diaz
 2:56:45 PM Questions? None
 2:56:58 PM Senator Bean
 2:57:01 PM Senator Diaz
 2:57:30 PM Appearance Cards?
 2:58:00 PM Debate?
 2:58:03 PM No objection to adoption of amendment
 2:58:08 PM Back on the bill as amended
 2:58:16 PM Questions?
 2:58:19 PM Senator Torres
 2:58:38 PM Senator Diaz
 2:58:49 PM Senator Torres
 2:59:35 PM Senator Diaz
 3:00:04 PM Senator Torres
 3:00:09 PM Senator Diaz
 3:01:01 PM Sal Nuzzo waives in support
 3:02:01 PM Cesar Grajales, The Libre Initiative, waives in support
 3:02:08 PM Phillip Suderman, Americans for Prosperity, waives in support
 3:02:15 PM Diego Echeverri, Concerned Veterans for America, waives in support
 3:02:26 PM David Cullen, Sierra Club Florida, speaking against
 3:03:50 PM JoeAnne Hart, speaking against
 3:06:17 PM John Girdler, speaking against
 3:07:47 PM David Sigerson, Jr., Esq. Florida Professional Opticians, speaking against
 3:09:54 PM Laurie Pierce, Professional Opticians of Florida & Hillsborough Community College, speaking against
 3:12:14 PM James Morris, speaking against the bill
 3:15:27 PM Mike Huey, Florida Assn of the American Institute of Architects, speaking for information
 3:17:17 PM Chair asks for motion to TP'd for a few minutes
 3:17:17 PM Motion by Senator Albritton to TP bill momentarily; motion adopted
 3:17:26 PM Tab 7 - SB 1186 - Drug-free Workplace by Senator Baxley, presented by Senator Albritton
 3:18:48 PM Questions?
 3:18:50 PM Appearance Cards?
 3:18:54 PM Melissa Villar, NORML Tallahassee, speaking for information
 3:19:04 PM R.J. Myers, Save Our Society, waives in support
 3:19:12 PM Mike Huey, representing Laboratory Corp of America, available for information
 3:19:29 PM Robbie Suggs waiving in support
 3:19:41 PM Debate?
 3:19:44 PM Senator Torres
 3:19:59 PM Senator Albritton waives close
 3:20:50 PM Roll call on SB 1186
 3:21:04 PM Back on SB 1124 by Senator Diaz
 3:21:49 PM Debate?
 3:22:22 PM Senator Torres
 3:23:51 PM Senator Bean
 3:25:06 PM Chair makes comments
 3:25:09 PM Senator Albritton
 3:27:32 PM Senator Albritton
 3:28:07 PM Senator Diaz closes on bill
 3:28:13 PM Roll Call on CS/SB 1124
 3:28:31 PM Senator Albritton moves to be shown as voting favorably for SB's 814, 872, 1624, 760, and 800.
 3:28:49 PM Meeting is adjourned