

Tab 1 SB 62 by Bean; Pediatric Cardiac Care in the Children's Medical Services Program							
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887070	SA	S	RCS	GO, Bean	Delete L.50 - 196:	02/07 01:15 PM	

Tab 2 SB 80 by Steube; (Compare to H 0163) Public Records							
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Tab 3 SB 362 by Brandes; Agency for State Technology							
894296	A	S	RCS	GO, Brandes	Delete L.34 - 46:	02/07 01:16 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Baxley, Chair
Senator Artiles, Vice Chair

MEETING DATE: Tuesday, February 7, 2017

TIME: 10:00 a.m.—12:00 noon

PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

MEMBERS: Senator Baxley, Chair; Senator Artiles, Vice Chair; Senators Galvano, Grimsley, Rader, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 62 Bean	Pediatric Cardiac Care in the Children's Medical Services Program; Creating the Pediatric Cardiac Care Advisory Council within the Department of Health; requiring the State Surgeon General to designate certain facilities as Pediatric and Congenital Cardiovascular Centers of Excellence; requiring that the council provide an annual report to the Governor, the Legislature, and the State Surgeon General, etc. HP 01/24/2017 Favorable GO 02/07/2017 Fav/CS AHS AP	Fav/CS Yeas 7 Nays 0
2	SB 80 Steube (Compare H 163, S 246)	Public Records; Requiring a complainant to timely provide certain written notice in order to be entitled to attorney fees in certain civil actions for enforcement of ch. 119, F.S., etc. GO 02/07/2017 Favorable CA JU	Favorable Yeas 4 Nays 3
3	SB 362 Brandes	Agency for State Technology; Establishing within the agency a chief data officer position and the Geographic Information Office, etc. GO 02/07/2017 Fav/CS AGG AP	Fav/CS Yeas 7 Nays 0
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 62

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bean

SUBJECT: Pediatric Cardiac Care in the Children's Medical Services Program

DATE: February 7, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Lloyd	Stovall	HP	Favorable
2.	Kim	Ferrin	GO	Fav/CS
3.			AHS	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 62 creates the Pediatric Cardiac Care Advisory Council (council) within the Department of Health (department) for the purpose of advising the department on the delivery of cardiac services to children and adults with congenital heart disease. The bill specifies the duties and composition of the council.

The bill creates the "Pediatric and Congenital Centers of Excellence" designation for facilities that meet standards established by the council and approved by the Director of Children's Medical Services and the State Surgeon General utilizing state and national professional standards.

Beginning January 1, 2019, the bill requires the council to submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Surgeon General. The report must summarize the council's activities for the preceding fiscal year, including specified data and performance measures of cardiac facilities participating in the Children's Medical Services Network, and recommend policy and procedural changes.

The bill requires the department to adopt rules that meet or exceed current standards for pediatric cardiac facilities. The bill also grants the department discretion to make rules governing the council and Pediatric and Congenital Centers of Excellence.

The bill takes effect upon becoming law.

II. Present Situation:

Children's Medical Services

Children's Medical Services (CMS) is a group of programs that serve children with special health care needs under the supervision of the department. Within CMS, individual services or programs are designed to address specific conditions or family needs such as the newborn screening program, early intervention screenings, or its managed medical assistance plan. CMS is created under Chapter 391 of the Florida Statutes and divided into three parts: Part I (General Provisions), Part II (Children's Medical Services Councils and Panels), and Part III (Developmental Evaluation and Intervention Programs).

Statewide Children's Medical Services Network Advisory Council

The State Surgeon General has the discretion under s. 391.221, F.S., to appoint a 12-member Statewide Children's Medical Services Network Advisory Council to serve as an advisory body to the department. The council's duties shall include, but are not limited to:

- Recommending standards and credentialing requirements for health care providers in the CMS Network;
- Making recommendations to the director of CMS concerning the selection of CMS providers;
- Providing input to the CMS program on the policies governing the CMS Network;
- Reviewing the financial reports and financial status of the network and making recommendations concerning the methods of payment and costs controls for the network;
- Reviewing and recommending the scope of benefits for the network; and
- Reviewing network performance measures and outcomes and making recommendations for improvements to the network and its maintenance and collection of data and information.

Council members represent the private health care provider sector, families of children with special health care needs, Agency for Health Care Administration (AHCA), the Chief Financial Officer, the Florida Chapter of the American Academy of Pediatrics, an academic pediatric program, and the health insurance industry.¹ The four-year terms were initially staggered and no member can be appointed for more than two consecutive terms. Members do not receive any compensation for their appointment except they are reimbursed for per diem and travel in accordance with s. 112.061, F.S.² No meetings of the council are currently scheduled.

Cardiac Technical Advisory Panel

The State Surgeon General also has general authority under s. 391.223, F.S., to establish technical advisory panels to assist with the development of specific policies and procedures for the Children's Medical Services program. On October 21, 2013, then-State Surgeon General John Armstrong created the Children's Medical Services Cardiac Technical Advisory Panel

¹ Section 391.221(2), F.S.

² Section 391.221 (3), F.S.

(CTAP) to provide both programmatic and technical advice to the department and its CMS program.³ The enabling document provides several charges to the panel:

- Developing recommended standards for personnel and facilities rendering pediatric congenital cardiac services as well as heart disease;
- Developing recommendations for legislative initiatives, including appropriation items, related to the cardiac program and developing rules;
- Developing recommendations for statewide cardiac initiatives, including identifying panel members who will collaborate with other department councils or committees or state agencies;
- Assisting AHCA, or as requested by individual hospitals, or as outlined in their individual contract with CMS, with the ongoing evaluation and development of congenital cardiovascular programs;
- Making a priority weight control programs and their implementation in all pediatric cardiovascular centers and clinics; and
- Developing recommendations to the department and AHCA for congenital heart disease quality improvement to improve patient care and health and decrease the cost of care.⁴

The CTAP membership is appointed by the State Surgeon General, in consultation with the Deputy Secretary of Children's Medical Services and the Director of the Division of Children's Medical Services. Eleven members are designated in the creation document. They represent pediatric cardiologists or cardiovascular surgeons from specific pediatric cardiovascular children's hospitals across the state and include two at-large physicians and a community physician who are not affiliated with one of the named facilities. Non-voting advisory members may also be named by the State Surgeon General who may deliberate, but not vote, with the panel. Alternate members for each representative of the cardiovascular children's hospitals must also be named.

Under the creation document, CTAP members select their Chairperson and Vice Chairperson through majority vote every two years. Meetings of the CMS CTAP are upon the call of the Chairperson, at the request of the State Surgeon General, the Deputy Secretary of CMS, the Director of the Division of CMS, or the majority of the voting members.⁵

Members are reimbursed for per diem and travel expenses for required attendance at in-person or video conference committee meetings or CMS site visits in accordance with s. 112.061, F.S.⁶ The panel last met on May 4, 2015, and no additional meetings are currently scheduled.⁷

Children's Medical Services Managed Care Plan Technical Advisory Panel

State Surgeon General Celeste Philip created the Children's Medical Services Managed Care Plan Technical Advisory Council under this same general authority to assist with the transition of the CMS membership from a direct services network to a managed care plan. The panel was

³ Florida Dep't of Health, *Creation of the Children's Medical Services Cardiac Technical Advisory Panel* (October 2013) available at http://www.cmsctap.com/_files/documents/CTAP-Creation.pdf (last visited Jan. 19, 2017).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ E-Mail from Brian Wendel, Florida Dep't of Health (Jan. 20, 2017) (on file with the Senate Committee on Health Policy).

created in September 2015, and includes representation by pediatricians, health care providers, parents of enrollees, CMS staff, and Medicaid managed care plan staff.⁸

Panel members are charged with the development of long range planning, quality improvement initiatives, health education and wellness and other recommendations for the CMS Managed Care Plan. The panel's purpose is to recommend activities and strategies that will maintain the plan's accreditation status and improve care coordination and service delivery in all CMS Plan provider sites.⁹

Meetings of this panel are upon the call of the Surgeon General, CMS Plan President, or CMS Plan Chief Executive Officer. Any recommendations made by the panel are forwarded to the State Surgeon General. The panel's last meeting was October 30, 2015.

Department of Health's Proposed Repeal of Rule 64C-4.003, F.A.C.

Rule 64C-4.003, F.A.C., establishes and incorporates by reference quality assurance standards and criteria for the approval and operation of CMS pediatric cardiac facilities.

On October 12, 2015, the department held a rule hearing regarding the proposed repeal of the standards for pediatric cardiac facilities, Rule 64C-4.003, F.A.C. Following that hearing, the department determined it had no statutory authority to establish the standards, inspect facilities, or prepare inspection reports for the technical advisory panel to review. A group of CMS beneficiaries who require cardiac care services were concerned that repeal of Rule 64C-4.003, F.A.C., would reduce the quality of care that would be available to them within the CMS program and challenged the department's actions through the Division of Administrative Hearings (DOAH).¹⁰

A final hearing was held on November 20 and 23, 2015, before an administrative law judge and a Final Order was issued on December 16, 2015.¹¹ On January 9, 2017, the department published *A Notice of Disposition* in the *Florida Administrative Register* adopting the ruling in the DOAH Final Order. The notice stated that in the case of *W.D., C.V., K.E., and K.M., vs. Department of Health, Case No. 15-6009RP; Rule 64C-4.003*,

Petitioners lacked standing to challenge the proposed repeal of a rule that would deregulate certain cardiac facilities, because no real or immediate injury was shown, and because common good such as quality health care is not within the zone of interest.¹²

⁸ Florida Dep't of Health, *Creation of the Children's Medical Services Managed Care Plan Technical Advisory Panel* (September 2015) available at <http://www.floridahealth.gov/documents/cms-plan-tap.pdf> (last visited Jan. 19, 2017).

⁹ *Id.*

¹⁰ *W.D., C.V., K.E., and K.M., v. Dep't of Health*, Case No. 15-6009RP (Fla. DOAH 2015).

¹¹ *Id.*

¹² Vol. 43 Fla. Admin. Register 145 (Jan. 9, 2017).

The Petitioners appealed DOAH's Final Order in both the First and Third District Courts of Appeal. The case was voluntarily dismissed at the First District Court of Appeal on February 15, 2016, but is currently still on appeal at the Third District Court of Appeal.¹³

Rule 64C-4.003, F.A.C., remains in effect. The department has taken no further action to repeal the rule.¹⁴

Cardiac Advisory Council

Prior to the 2001 Regular Session, a Cardiac Advisory Council in the Division of Children's Medical Services existed.¹⁵ The Cardiac Advisory Council was appointed by the secretary of the department and included eight members with technical expertise in cardiac medicine who were charged with:

- Recommending standards for personnel and facilities rendering cardiac services;
- Receiving reports of the periodic review of cardiac personnel and facilities to determine if established standards for cardiac care are met;
- Making recommendations to the director as to the approval or disapproval of reviewed personnel and facilities; and
- Providing input on all aspects of the Children's Medical Services cardiac program, including the rulemaking process.¹⁶

The statute was repealed effective June 30, 2001, as part of an exhaustive review of more than three dozen boards, committees, commissions, and councils to determine whether to continue or abolish each entity.¹⁷ The department recommended the repeal of the Cardiac Advisory Council and indicated it would absorb the functions of the Cardiac Advisory Council in 2001.¹⁸

Statutory Organization: Advisory Councils

Chapter 20, F.S., authorizes the creation of a number of different types of entities to assist state government in the efficient performance of its duties and functions. Under s. 20.03(7), F.S., a "council" or "advisory council" is defined as:

an advisory body created by specific statutory enactment and appointed to function on a continuing basis for the study of the problems arising in a specified functional or program area of state government and to provide recommendations and policy alternatives.

¹³ *W.D., C.V., and K.E., v. Dep't of Health*, First District Court of Appeal Case number 1D-15-5948 found on DOAH Online Docket for DOAH case number 15-6009RP, <https://www.doah.state.fl.us/DocDoc/2015/006009/15006009OOC-021516-09062506.PDF> (last viewed Jan. 30, 2017). *K.M. v. Dep't of Health*, Florida Third District Court of Appeal Case number 3D16-23, Online Docket http://jweb.flcourts.org/pls/ds/ds_docket (last viewed Jan. 30, 2017.)

¹⁴ *Florida Administrative Code and Florida Administrative Register*, <https://www.flrules.org/gateway/ruleno.asp?id=64C-4.003> (last viewed Feb. 2, 2017).

¹⁵ See s. 391.222, F.S. (2000).

¹⁶ *Id.*

¹⁷ Chapter 2001-89, s. 27, Laws of Fla.

¹⁸ Senate Committee on Governmental Oversight and Productivity, *CS/SB 1410 Staff Analysis and Economic Impact*, p. 9 (Mar. 28, 2001) available at <http://archive.flsenate.gov/data/session/2001/Senate/bills/analysis/pdf/2001s1410.go.pdf> (last visited Jan. 19, 2017).

Advisory bodies, commissions and boards may only be created by statute in furtherance of a public purpose¹⁹ and meet a statutorily defined purpose.²⁰ Such advisory bodies, commissions and boards must be terminated by the Legislature once the body, commission or board notifies the Legislature when it is no longer necessary and beneficial to the furtherance of a public purpose.²¹ The Legislature and the public must be kept informed of the numbers, purposes, memberships, activities, and expenses of advisory bodies, commissions and boards.²² Members of such bodies are appointed for staggered, four-year terms and unless otherwise provided in the State Constitution,²³ serve without compensation, but are authorized to receive reimbursement for per diem and travel as provided in s. 112.061, F.S.²⁴

Private citizen appointees to an advisory body that is adjunct to an executive agency must be appointed by the Governor, the head of the department, the executive director of the department, or a Cabinet officer.²⁵ Private citizen appointees to a board or commission that is adjunct to an executive agency must be appointed by the Governor, unless otherwise provided by law, confirmed by the Senate, and are subject to dual office holding provisions of s. 5(a), Art. II of the State Constitution.²⁶

Unless exempted, all meetings of advisory bodies, boards and commissions are subject to public meetings requirements under s. 286.011, F.S., and minutes must be maintained for all meetings.²⁷

Technical advisory panels are not separately defined in statute.

Agency for Health Care Administration

AHCA is responsible for the licensure, certification, and regulation of 40 different types of health care providers, including hospitals, nursing homes, assisted living facilities, and home health agencies through its Division of Health Quality Assurance.²⁸ Under its Bureau of Health Facility Regulation, AHCA reviews applications for new facilities and specialty services at hospitals through the certificate of need (CON) process.²⁹ Currently, pediatric cardiac standards only exist in the CON process and there is no authority to maintain compliance with pediatric cardiology standards as a condition of licensure.³⁰ Also, the Bureau of Health Facility Regulation conducts periodic and complaint-based inspections of hospitals.

¹⁹ Section 20.052(1), F.S.

²⁰ Section 20.052(4)(a), F.S.

²¹ Section 20.052(2), F.S.

²² Section 20.052(3), F.S.

²³ Section 20.052(4)(c), F.S.

²⁴ Section 20.052(4)(d), F.S.

²⁵ Section 20.052(5)(a), F.S.

²⁶ Section 20.052(5)(b), F.S.

²⁷ Section 20.052(5)(c), F.S.

²⁸ See <http://ahca.myflorida.com/MCHQ/index.shtml> (last visited on Jan. 19, 2017).

²⁹ See http://ahca.myflorida.com/MCHQ/CON_FA/index.shtml (last visited on Jan. 19, 2017). Also, see Agency for Health Care Administration, *Certificate of Need Publications* http://ahca.myflorida.com/MCHQ/CON_FA/Publications/index.shtml

³⁰ Agency for Health Care Administration, *Senate Bill 62 Agency Analysis* (Nov. 30, 2016) (on file with the Senate Committee on Health Policy)

Rulemaking

Rulemaking is required by Florida's Administrative Procedure Act (APA) whenever a government agency has express authority to make rules.³¹ Rulemaking authority is construed to extend no further than the implementing or interpreting the specific powers and duties conferred by the enabling statute.³² Rulemaking is not discretionary under the APA.³³

III. Effect of Proposed Changes:

Section 1 creates s. 391.224, F.S., and council under the department for the purpose of continued coordination of pediatric cardiac care in this state. The department, its cardiac consultants and AHCA are directed to maintain their existing, long-standing inter-agency terms and agreements for the delivery of pediatric cardiac services.

The council shall be composed of no more than 15 voting members with expertise in cardiac medicine. Members will serve staggered four-year terms. Membership is comprised of the following:

- Ten members who are either pediatric cardiologists or pediatric cardiovascular surgeons who must be nominated by the chief executive officers of 10 designated health care systems with pediatric cardiac certificates of need and have met state and national standards as recommended by the council following an onsite visit and then appointed by the Surgeon General;
- One or two members who are pediatric cardiologists or pediatric cardiovascular surgeons nominated by the chief executive officers of hospitals with pediatric cardiac certificates of need and have met state and national standards as recommended by the council following an onsite visit and then appointed by the Surgeon General;
- Two members who are pediatric cardiologists or pediatric cardiovascular surgeons with expertise in congenital heart disease; who are not associated with a facility that is otherwise represented by a voting member of the council; and who are appointed by the Surgeon General in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services; and
- One member who is a community physician with a special interest in treating children with heart disease and who is not associated with one of the facilities already represented; or who is a community-based internist who experience treating adults with congenital heart disease; and who will be appointed by the Surgeon General in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services.

The State Surgeon General is also authorized to select additional non-voting, advisory members, with expertise in pediatric cardiology or adults with congenital heart disease who are not associated with one of the designated facilities in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services. Advisory members may participate in discussions and subcommittees of the council, but do not vote.

³¹ Section 120.536(1), F.S.

³² *Id.*

³³ Section 120.54(1)(a), F.S.

The voting privilege of a voting member of the council must be suspended if the facility he or she represents no longer meets state and national standards as adopted by the council. Such individual may remain a member of the council in an advisory capacity but shall relinquish voting privileges until his or her facility meets required standards.

The bill requires the council to meet at least quarterly. Meetings may also be called by the chair, two or more voting members, or the State Surgeon General. An employee of the department or a contracted consultant paid by the department is not eligible to serve as a member or ex-officio member and no member may serve more than two consecutive terms.

Council members do not receive compensation; however, they are entitled to reimbursement in accordance with s. 112.061, F.S., for per diem and travel. Council meetings must be conducted via teleconference where that capability is available.

The council's duties include, but are not limited to:

- Recommending standards for personnel and facilities rendering cardiac services to clients, and facilities that provide services to clients of the department and the program and for the diagnosis of cardiac conditions;
- Analyzing reports on the periodic review of cardiac personnel, facilities, and diagnoses to determine if established standards for the cardiac services are met;
- Making recommendations to the Director of Children's Medical Services as to whether reviewed cardiac care personnel, clinics, facilities, and diagnoses meet established state and national standards;
- Making recommendations to the Director of Children's Medical Services as to the intervals for re-inspection of approved personnel, clinics, facilities; and diagnoses meeting established state and national standards;
- Reviewing and inspecting hospitals upon the request of the hospital, the department, or AHCA to determine compliance with established state and national standards for cardiac services;
- Advising the department and the AHCA on all aspects of the provision of cardiac care under the program, including rulemaking, and all components of providing care to adults and children with congenital heart disease and children with acquired heart disease;
- Reviewing and analyzing compliance by cardiac care personnel, clinics, and facilities with the recognized state and national professional standards of care for children with heart disease;
- Making recommendations to the State Surgeon General for legislation and appropriations for pediatric cardiac services; and
- Providing advisory opinions to AHCA before AHCA approves a certificate of need for pediatric cardiac services.

The bill also authorizes the creation of the "Pediatric and Congenital Centers of Excellence" designation. The designation shall be awarded to facilities by the Surgeon General at the recommendation of the council and the Director of Children's Medical Services utilizing state and national professional standards approved by the council. The designation shall be withdrawn automatically if a facility no longer meets those standards.

The council shall also develop and recommend to the State Surgeon General evaluation tools for measuring the goals and performance standards for the facilities seeking and receiving the designation.

Beginning in January 2019, the council must submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General. This report must summarize the council's activities for the preceding fiscal year and include data and performance measures on surgical morbidity and mortality for all pediatric cardiac facilities that participated in the program. The annual report must also recommend any policy or procedural changes that would increase the council's effectiveness in monitoring pediatric cardiovascular programs in the state.

The department, in coordination with AHCA, is required to develop rules related to pediatric cardiac facilities that participate in the program. These rules will establish standards relating to the training and credentialing of medical and surgical personnel, facility and physician minimum case volumes, and data reporting requirements for monitoring and enhancing quality assurance. The bill provides that the department must adopt rules that are the same or better than the standards for pediatric cardiac facilities which were adopted in October of 2012. The standards adopted in October of 2012, are currently codified in Rule 64C-4.003, F.A.C.

The bill gives the department discretion to adopt rules related to the establishment, operations, and authority of the council. In addition, the department has the discretion to adopt rules related to performance standards and evaluation tools for designating facilities as "Pediatric and Congenital Cardiovascular Centers of Excellence."

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Individuals from the private sector with expertise in cardiac medicine are eligible to serve as members of the council. Members are selected by the State Surgeon General to serve staggered terms of four years and will have an opportunity to provide input on all aspects of CMS' cardiac programs, including rulemaking, address components of cardiac care for both adults and children, make recommendations for legislation and appropriations and provide advisory opinions before AHCA approves a certificate of need for children's cardiac services.

Facilities will have the opportunity to earn a designation as a "Pediatric and Congenital Center of Excellence." This designation may distinguish one facility over another in the marketplace for the quality of care in the delivery of cardiac services to children and may impact the number of services delivered in a particular facility.

C. Government Sector Impact:

The council is housed in the department and makes recommendations to the State Surgeon General and the Children's Medical Services program. Since October 2013, the department has been supporting a similar technical advisory panel, the Children's Medical Services Cardiac Technical Advisory Panel, and this bill includes similar duties and responsibilities of that technical advisory panel. With passage of this bill, the technical advisory panel may no longer be necessary.

The department estimated minimal costs for the council for conference calls at \$336 annually. The estimate was based on four calls per year, 40 persons per call for one hour at 3.5 cents per minute. A registered nurse consultant will cost an estimated \$94,104.³⁴ In addition, if the council conducts in person meetings, the estimated to cost for rulemaking will be \$12,834.³⁵ The department also notes that additional costs will be incurred if the Counsel travels to inspect a hospital.³⁶

To the extent that the bill seeks to recommend any standards on cardiac facilities and to make designations of "Pediatric and Congenital Cardiovascular Excellence" on those that meet those standards, the department's authority is limited to its ability to credential facilities and providers that participate in the Children's Medical Services program.³⁷ Enforcement of facility standards related to licensure resides in AHCA which is directed to work in coordination with the council under the bill.

VI. Technical Deficiencies:

None.

³⁴ Florida Dep't of Health, *2017 Agency Legislative Bill Analysis*, dated Jan. 17, 2017.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Senate Bill 378 Legislative Analysis* (Sept. 29, 2015) at 5.

VII. Related Issues:

Because of ongoing litigation, it is unclear how long Rule 64C-4.003, F.A.C., will remain in place. This bill anticipates that the department successfully repealed Rule 64C-4.003, F.A.C., before the bill goes into effect.

The rulemaking provisions of this bill could be redundant if the department does not repeal the rule, however, this should not be problematic. In the event that the department does not repeal Rule 64C-4.003, F.A.C., the current rules should stay in place. The bill prevents the department from repealing the rule in the future and also prevents the department from making rules which lower the standard of care currently in place. To the extent that the department has argued that it lacks statutory authority to maintain Rule 64C-4.003, F.A.C.,³⁸ this bill provides express authorizing language for the department to keep Rule 64C-4.003, F.A.C., or make similar rules in the future.

VIII. Statutes Affected:

This bill creates section 391.224 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 7, 2017:

The CS adds two members to the council and provides that the department is required to make rules that meet or exceed the standard of care for pediatric cardiac facilities that are currently in effect.

The CS also makes some technical formatting and numbering changes.

- B. **Amendments:**

None.

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

³⁸ *W.D., C.V., K.E. and K.M., v. Dep't of Health*, Case No. 15-6009RP, Final Order, p. 5., (Fla. DOAH 2015).



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LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
02/07/2017	.	
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The Committee on Governmental Oversight and Accountability
(Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 73 - 196

and insert:

i. Florida Hospital for Children in Orlando.

j. Nemours Children's Hospital in Orlando.

2. Pediatric cardiologists or pediatric cardiovascular
surgeons nominated by the chief executive officer of a hospital
that holds a current certificate of need for a pediatric cardiac
program and that meets state and national standards as



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recommended by the council following an onsite visit by a panel from the council.

3. Two physicians who are pediatric cardiologists or subspecialists with expertise in congenital heart disease; who are not associated with a facility otherwise represented by a voting member of the council; and who are appointed in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services.

4. A community physician who has ongoing involvement with and special interest in the treatment of children with heart disease and who is not associated with a facility represented in the membership of the council pursuant to subparagraph 1. or subparagraph 2. or a community-based medical internist who has experience in treating adults with congenital heart disease. Appointment of a community physician shall be made in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services.

5. Appointments made under subparagraphs 1. and 2. are contingent on the nominating hospital's maintenance of pediatric certificates of need and the hospital's compliance with the state and national standards identified by the council in exercising its duties under subparagraph (f)5. A member whose hospital fails to maintain such certificates or comply with such standards during his or her term, as determined by the State Surgeon General, may serve only in an advisory capacity as a nonvoting member until such time as the maintenance of such certificates and compliance with such standards are restored.

(b) The State Surgeon General may appoint nonvoting, advisory members to the council in consultation with the Deputy



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Secretary for Children's Medical Services and the Director of
Children's Medical Services. Such members may participate in
council discussions and subcommittees created by the council.

(c) The chair and vice chair of the council shall be
elected by the council members to 2-year terms and may not serve
more than two consecutive terms.

(d) The council shall meet upon the call of the chair or
two or more voting members or upon the call of the State Surgeon
General, but must meet at least quarterly. Council meetings must
be conducted by teleconference or through other electronic means
when feasible.

(e) Council members shall serve without compensation, but
are entitled to reimbursement for per diem and travel expenses
in accordance with s. 112.061.

(f) The duties of the council include, but are not limited
to:

1. Recommending standards for personnel, clinics, and
facilities that provide cardiac services to clients of the
department and the program and for the diagnosis of cardiac
conditions.

2. Analyzing reports on the periodic review of cardiac care
personnel, clinics, facilities, and diagnoses to determine if
established state and national standards for cardiac services
are being met.

3. Making recommendations to the Director of Children's
Medical Services regarding determinations of whether reviewed
cardiac care personnel, clinics, facilities, and diagnoses meet
established state and national standards for cardiac services.

4. Making recommendations to the Director of Children's



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Medical Services regarding the intervals for reinspection of cardiac care personnel, clinics, facilities, and diagnoses meeting established state and national standards for cardiac services.

5. Reviewing and inspecting a hospital upon the request of the hospital, the department, or the Agency for Health Care Administration to analyze its compliance with established state and national standards for cardiac services.

6. Advising the department and the Agency for Health Care Administration on all aspects of the provision of cardiac care under the program, including rulemaking, and on all components of providing care to adults and children with congenital heart disease and children with acquired heart disease.

7. Reviewing and analyzing compliance by cardiac care personnel, clinics, and facilities with the recognized state and national professional standards of care for children with heart disease.

8. Making recommendations to the State Surgeon General for legislation regarding and appropriations for pediatric cardiac services.

9. Providing advisory opinions to the Agency for Health Care Administration before the agency approves a certificate of need for pediatric cardiac services.

(3) DESIGNATION OF PEDIATRIC AND CONGENITAL CARDIOVASCULAR CENTERS OF EXCELLENCE.—Upon the recommendation of the council and the Director of Children's Medical Services, the State Surgeon General shall designate facilities that the council recommends have met state and national professional standards of care for children with heart disease as Pediatric and Congenital



883976

Cardiovascular Centers of Excellence. The council shall recommend measurable performance standards and evaluation tools to be used in determining whether a facility qualifies for such designation. The designation of a facility as a center of excellence is automatically withdrawn if the facility no longer meets, as determined by the State Surgeon General, the performance standards that qualified it for such designation.

(4) ANNUAL REPORT.—Beginning in January 1, 2019, and by each January 1 thereafter, the council shall submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General. The report must summarize the council's activities during the preceding fiscal year and include data and performance measures on surgical morbidity and mortality for all the pediatric cardiac facilities that participated in the program. The report must also recommend any policy or procedural changes that would increase the council's effectiveness in monitoring the performance of such facilities.

(5) RULEMAKING.—

(a) The department, in coordination with the Agency for Health Care Administration, shall develop rules related to pediatric cardiac care and facilities that participate in the program. The rules shall establish standards relating to the training and credentialing of medical and surgical personnel, minimum case volumes for facilities and physicians, and data reporting requirements for monitoring and enhancing quality assurance. The rules shall meet or exceed the standard of care provided in Children's Medical Services Pediatric Cardiac Facilities Standards established in October 2012.



883976

(b) The department may also adopt rules relating to the establishment, operation, and authority of the council and the process, performance standards, and evaluation tools for designating facilities as Pediatric and Congenital Cardiovascular Centers of Excellence.

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

And the title is amended as follows:

Delete lines 22 - 23

and insert:

Excellence; providing



887070

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2017	.	
	.	
	.	
	.	

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

**Senate Substitute for Amendment (883976) (with title
amendment)**

Delete lines 50 - 196
and insert:

(a) The council shall be composed of no more than 15 voting
members with technical expertise in cardiac medicine, appointed
by the State Surgeon General for staggered terms of 4 years. The
State Surgeon General may appoint an alternate member for each
voting member. An alternate member may participate in council



887070

discussions and subcommittees but is eligible to vote only in those instances when the voting member for whom he or she is the alternate cannot cast a vote. An employee of the department or a contracted consultant paid by the department may not serve as an appointed or ex officio member of the council. Council membership must include the following voting members:

1. Pediatric cardiologists or pediatric cardiovascular surgeons nominated by the chief executive officers of the following hospitals:

- a. Johns Hopkins All Children's Hospital in St. Petersburg.
- b. Arnold Palmer Hospital for Children in Orlando.
- c. Joe DiMaggio Children's Hospital in Hollywood.
- d. Nicklaus Children's Hospital in Miami.
- e. St. Joseph's Children's Hospital in Tampa.
- f. University of Florida Health Shands Hospital in Gainesville.
- g. University of Miami Holtz Children's Hospital in Miami.
- h. Wolfson Children's Hospital in Jacksonville.
- i. Florida Hospital for Children in Orlando.
- j. Nemours Children's Hospital in Orlando.

2. Pediatric cardiologists or pediatric cardiovascular surgeons nominated by the chief executive officer of a hospital that holds a current certificate of need for a pediatric cardiac program and that meets state and national standards as recommended by the council following an onsite visit by a panel from the council.

3. Two physicians who are pediatric cardiologists or subspecialists with expertise in congenital heart disease; who are not associated with a facility otherwise represented by a



887070

voting member of the council; and who are appointed in
consultation with the Deputy Secretary for Children's Medical
Services and the Director of Children's Medical Services.

4. A community physician who has ongoing involvement with
and special interest in the treatment of children with heart
disease and who is not associated with a facility represented in
the membership of the council pursuant to subparagraph 1. or
subparagraph 2. or a community-based medical internist who has
experience in treating adults with congenital heart disease.
Appointment of a community physician shall be made in
consultation with the Deputy Secretary for Children's Medical
Services and the Director of Children's Medical Services.

5. Appointments made under subparagraphs 1. and 2. are
contingent on the nominating hospital's maintenance of pediatric
certificates of need and the hospital's compliance with the
state and national standards identified by the council in
exercising its duties under subparagraph (f)5. A member whose
hospital fails to maintain such certificates or comply with such
standards during his or her term, as determined by the State
Surgeon General, may serve only in an advisory capacity as a
nonvoting member until such time as the maintenance of such
certificates and compliance with such standards are restored.

(b) The State Surgeon General may appoint nonvoting,
advisory members to the council in consultation with the Deputy
Secretary for Children's Medical Services and the Director of
Children's Medical Services. Such members may participate in
council discussions and subcommittees created by the council.

(c) The chair and vice chair of the council shall be
elected by the council members to 2-year terms and may not serve



887070

69 more than 2 consecutive terms.

70 (d) The council shall meet upon the call of the chair or
71 two or more voting members or upon the call of the State Surgeon
72 General, but must meet at least quarterly. Council meetings must
73 be conducted by teleconference or through other electronic means
74 when feasible.

75 (e) Council members shall serve without compensation, but
76 are entitled to reimbursement for per diem and travel expenses
77 in accordance with s. 112.061.

78 (f) The duties of the council include, but are not limited
79 to:

80 1. Recommending standards for personnel, clinics, and
81 facilities that provide cardiac services to clients of the
82 department and the program and for the diagnosis of cardiac
83 conditions.

84 2. Analyzing reports on the periodic review of cardiac care
85 personnel, clinics, facilities, and diagnoses to determine if
86 established state and national standards for cardiac services
87 are being met.

88 3. Making recommendations to the Director of Children's
89 Medical Services regarding determinations of whether reviewed
90 cardiac care personnel, clinics, facilities, and diagnoses meet
91 established state and national standards for cardiac services.

92 4. Making recommendations to the Director of Children's
93 Medical Services regarding the intervals for reinspection of
94 cardiac care personnel, clinics, facilities, and diagnoses
95 meeting established state and national standards for cardiac
96 services.

97 5. Reviewing and inspecting a hospital upon the request of



887070

the hospital, the department, or the Agency for Health Care Administration to analyze its compliance with established state and national standards for cardiac services.

6. Advising the department and the Agency for Health Care Administration on all aspects of the provision of cardiac care under the program, including rulemaking, and on all components of providing care to adults and children with congenital heart disease and children with acquired heart disease.

7. Reviewing and analyzing compliance by cardiac care personnel, clinics, and facilities with the recognized state and national professional standards of care for children with heart disease.

8. Making recommendations to the State Surgeon General for legislation regarding and appropriations for pediatric cardiac services.

9. Providing advisory opinions to the Agency for Health Care Administration before the agency approves a certificate of need for pediatric cardiac services.

(3) DESIGNATION OF PEDIATRIC AND CONGENITAL CARDIOVASCULAR CENTERS OF EXCELLENCE.—Upon the recommendation of the council and the Director of Children’s Medical Services, the State Surgeon General shall designate facilities that the council recommends have met state and national professional standards of care for children with heart disease as Pediatric and Congenital Cardiovascular Centers of Excellence. The council shall recommend measurable performance standards and evaluation tools to be used in determining whether a facility qualifies for such designation. The designation of a facility as a center of excellence is automatically withdrawn if the facility no longer



887070

meets, as determined by the State Surgeon General, the performance standards that qualified it for such designation.

(4) ANNUAL REPORT.—Beginning in January 1, 2019, and by each January 1 thereafter, the council shall submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General. The report must summarize the council's activities during the preceding fiscal year and include data and performance measures on surgical morbidity and mortality for all the pediatric cardiac facilities that participated in the program. The report must also recommend any policy or procedural changes that would increase the council's effectiveness in monitoring the performance of such facilities.

(5) RULEMAKING.—

(a) The department, in coordination with the Agency for Health Care Administration, shall develop rules related to pediatric cardiac care and facilities that participate in the program. The rules shall establish standards relating to the training and credentialing of medical and surgical personnel, minimum case volumes for facilities and physicians, and data reporting requirements for monitoring and enhancing quality assurance. The rules shall meet or exceed the standard of care provided in Children's Medical Services Pediatric Cardiac Facilities Standards established in October 2012.

(b) The department may also adopt rules relating to the establishment, operation, and authority of the council and the process, performance standards, and evaluation tools for designating facilities as Pediatric and Congenital Cardiovascular Centers of Excellence.



887070

156

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

158 And the title is amended as follows:

159 Delete lines 22 - 23

160 and insert:

161 Excellence; providing

By Senator Bean

4-00013A-17

201762__

A bill to be entitled

An act relating to pediatric cardiac care in the Children's Medical Services program; creating s. 391.224, F.S.; providing legislative findings and intent; creating the Pediatric Cardiac Care Advisory Council within the Department of Health; specifying the council membership; providing for election of the council chair and vice chair; providing for per diem and travel expenses; specifying the duties of the council; requiring the State Surgeon General to designate certain facilities as Pediatric and Congenital Cardiovascular Centers of Excellence; establishing prerequisites for the designation of a facility as a center of excellence; requiring that the council provide an annual report to the Governor, the Legislature, and the State Surgeon General; requiring the department to develop rules relating to pediatric cardiac care and facilities in the program; authorizing the department to adopt rules relating to the council and the designation of facilities as Pediatric and Congenital Cardiovascular Centers of Excellence; reauthorizing specified rules relating to pediatric cardiac services and facilities; providing an effective date.

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

Section 1. Section 391.224, Florida Statutes, is created to read:

391.224 Pediatric Cardiac Care Advisory Council.-

(1) LEGISLATIVE FINDINGS AND INTENT.-The Legislature finds significant benefits in the continued coordination of the

Page 1 of 7

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

4-00013A-17

201762__

activities of state agencies regarding the delivery of pediatric cardiac care in this state. It is the intent of the Legislature that the Department of Health and its cardiac consultants and the Agency for Health Care Administration maintain their long-standing interagency teams and agreements to support the coordinated development and adoption of guidelines, standards, and rules under the agencies' existing statutory authority for the state pediatric cardiac care system to ensure the necessary continuum of care for pediatric cardiac patients. The Legislature also intends that the department take the lead in this process.

(2) ESTABLISHMENT OF PEDIATRIC CARDIAC CARE ADVISORY COUNCIL.-The Pediatric Cardiac Care Advisory Council, an advisory council as defined in s. 20.03, is created within the department to advise it on the delivery of all types of cardiac care to children and adults with congenital heart disease. The council is subject to s. 20.052.

(a) The council shall be composed of no more than 13 voting members with technical expertise in cardiac medicine, appointed by the State Surgeon General for staggered terms of 4 years. The State Surgeon General may appoint an alternate member for each voting member. An alternate member may participate in council discussions and subcommittees but is eligible to vote only in those instances when the voting member for whom he or she is the alternate cannot cast a vote. An employee of the department or a contracted consultant paid by the department may not serve as an appointed or ex officio member of the council. Council membership must include the following voting members:

1. Pediatric cardiologists or pediatric cardiovascular

Page 2 of 7

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

4-00013A-17

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surgeons nominated by the chief executive officers of the following hospitals:

- a. Johns Hopkins All Children's Hospital in St. Petersburg.
- b. Arnold Palmer Hospital for Children in Orlando.
- c. Joe DiMaggio Children's Hospital in Hollywood.
- d. Nicklaus Children's Hospital in Miami.
- e. St. Joseph's Children's Hospital in Tampa.
- f. University of Florida Health Shands Hospital in Gainesville.

g. University of Miami Holtz Children's Hospital in Miami.
 h. Wolfson Children's Hospital in Jacksonville.
 2. Pediatric cardiologists or pediatric cardiovascular surgeons nominated by the chief executive officer of a hospital that holds a current certificate of need for a pediatric cardiac program and that meets state and national standards as recommended by the council following an onsite visit by a panel from the council.

3. Two physicians who are pediatric cardiologists or subspecialists with expertise in congenital heart disease; who are not associated with a facility otherwise represented by a voting member of the council; and who are appointed in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services.

4. A community physician who has ongoing involvement with and special interest in the treatment of children with heart disease and who is not associated with a facility represented in the membership of the council pursuant to subparagraph 1. or subparagraph 2. or a community-based medical internist who has experience in treating adults with congenital heart disease.

4-00013A-17

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Appointment of a community physician shall be made in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services.

Appointments made under subparagraphs 1. and 2. are contingent on the nominating hospital's maintenance of pediatric certificates of need and the hospital's compliance with the state and national standards identified by the council in exercising its duties under subparagraph (f)5. A member whose hospital fails to maintain such certificates or comply with such standards during his or her term, as determined by the State Surgeon General, may serve only in an advisory capacity as a nonvoting member until such time as the maintenance of such certificates and compliance with such standards are restored.

(b) The State Surgeon General may appoint nonvoting, advisory members to the council in consultation with the Deputy Secretary for Children's Medical Services and the Director of Children's Medical Services. Such members may participate in council discussions and subcommittees created by the council.

(c) The chair and vice chair of the council shall be elected by the council members to 2-year terms and may not serve more than two consecutive terms.

(d) The council shall meet upon the call of the chair or two or more voting members or upon the call of the State Surgeon General, but must meet at least quarterly. Council meetings must be conducted by teleconference or through other electronic means when feasible.

(e) Council members shall serve without compensation, but are entitled to reimbursement for per diem and travel expenses

4-00013A-17

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in accordance with s. 112.061.

(f) The duties of the council include, but are not limited to:

1. Recommending standards for personnel, clinics, and facilities that provide cardiac services to clients of the department and the program and for the diagnosis of cardiac conditions.

2. Analyzing reports on the periodic review of cardiac care personnel, clinics, facilities, and diagnoses to determine if established state and national standards for cardiac services are being met.

3. Making recommendations to the Director of Children's Medical Services regarding determinations of whether reviewed cardiac care personnel, clinics, facilities, and diagnoses meet established state and national standards for cardiac services.

4. Making recommendations to the Director of Children's Medical Services regarding the intervals for reinspection of cardiac care personnel, clinics, facilities, and diagnoses meeting established state and national standards for cardiac services.

5. Reviewing and inspecting a hospital upon the request of the hospital, the department, or the Agency for Health Care Administration to analyze its compliance with established state and national standards for cardiac services.

6. Advising the department and the Agency for Health Care Administration on all aspects of the provision of cardiac care under the program, including rulemaking, and on all components of providing care to adults and children with congenital heart disease and children with acquired heart disease.

4-00013A-17

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7. Reviewing and analyzing compliance by cardiac care personnel, clinics, and facilities with the recognized state and national professional standards of care for children with heart disease.

8. Making recommendations to the State Surgeon General for legislation regarding and appropriations for pediatric cardiac services.

9. Providing advisory opinions to the Agency for Health Care Administration before the agency approves a certificate of need for pediatric cardiac services.

(3) DESIGNATION OF PEDIATRIC AND CONGENITAL CARDIOVASCULAR CENTERS OF EXCELLENCE.—Upon the recommendation of the council and the Director of Children's Medical Services, the State Surgeon General shall designate facilities that the council recommends have met state and national professional standards of care for children with heart disease as Pediatric and Congenital Cardiovascular Centers of Excellence. The council shall recommend measurable performance standards and evaluation tools to be used in determining whether a facility qualifies for such designation. The designation of a facility as a center of excellence is automatically withdrawn if the facility no longer meets, as determined by the State Surgeon General, the performance standards that qualified it for such designation.

(4) ANNUAL REPORT.—Beginning in January 1, 2019, and by each January 1 thereafter, the council shall submit an annual report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the State Surgeon General. The report must summarize the council's activities during the preceding fiscal year and include data and performance measures

4-00013A-17

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178 on surgical morbidity and mortality for all the pediatric
179 cardiac facilities that participated in the program. The report
180 must also recommend any policy or procedural changes that would
181 increase the council's effectiveness in monitoring the
182 performance of such facilities.

183 (5) RULEMAKING.—The department, in coordination with the
184 Agency for Health Care Administration, shall develop rules
185 related to pediatric cardiac care and facilities that
186 participate in the program. The rules may establish standards
187 relating to the training and credentialing of medical and
188 surgical personnel, minimum case volumes for facilities and
189 physicians, and data reporting requirements for monitoring and
190 enhancing quality assurance. The department may also adopt rules
191 relating to the establishment, operation, and authority of the
192 council and the process, performance standards, and evaluation
193 tools for designating facilities as Pediatric and Congenital
194 Cardiovascular Centers of Excellence. The rules relating to
195 pediatric cardiac services and facilities in effect on October
196 1, 2015, are hereby reauthorized pursuant to this subsection.

197 Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/17

Meeting Date

5B 6Z

Bill Number (if applicable)

883976

Amendment Barcode (if applicable)

Topic PEDIATRIC CARDIAC CENTERS

Name DR. WILLIAM B. BLANCHARD, MD.

Job Title PEDIATRIC CARDIOLOGIST - RETIRED

Address 3248 BAYOU LANE

Street

PENSACOLA

City

FL

State

32503

Zip

Phone 858-554-3818

Email wbblanchard@cox.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing PRIVATE CITIZEN

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)

2/7/17

Meeting Date

62

Bill Number (if applicable)

8870705A

Amendment Barcode (if applicable)

Topic Pediatric Cardiac Care

Name Jean Vansmith

Job Title Director of Govt. Relations

Address 2520 N. Orange Ave, St. 200

Street

Orlando FL 32804

City

State

Zip

Phone 407-303-2850

Email jean.vansmith@flhosp.org

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Hospital

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)

2/7/2017

HB 62

Meeting Date

Bill Number (if applicable)

Topic Pediatric Cardiac Care

Amendment Barcode (if applicable)

Name Doug Bell

Job Title lobbyist

Address 101 N. Monroe Street

Phone 850-681-4270

Street

Tallahassee

FL

32312

City

State

Zip

Email douglas.bell@bipc.com

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Chapter, American Academy of Pediatrics

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)

2-7-17

Meeting Date

62

Bill Number (if applicable)

Topic Pediatric Cardiac Care

Amendment Barcode (if applicable)

Name Rob Johnson

Job Title _____

Address 110 E. Jefferson

Phone 491-1430

Street

Tallahassee FL 32301

City

State

Zip

Email Rob@themayernickgroup.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing March of Dimes

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)

2/7/17

Meeting Date

SB62

Bill Number (if applicable)

Topic Pediatric Cardiac Care

Amendment Barcode (if applicable)

Name Jean Vansmith

Job Title Director of Govt. Relations

Address _____
Street

Phone 407-303-2850

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Hospital

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)

2/7/17

Meeting Date

62

Bill Number (if applicable)

Topic Pediatric Cardiac Care

Amendment Barcode (if applicable)

Name Ashley Boxer

Job Title Director of Government Relations

Address 3111 Stirling Rd.

Phone 954 265 9912

Street

Hollywood

FL

33312

City

State

Zip

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Joe DiMaggio Children's Hospital

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)

2/7/2017
Meeting Date

62
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St. Petersburg FL 33205
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

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)

2-7-17
Meeting Date

SB 62
Bill Number (if applicable)

Topic SB 62

Amendment Barcode (if applicable)

Name Marti Coley Eubanks

Job Title Director Gov't Relations

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 Nemours Children's Hospital

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

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 24, 2017

I respectfully request that **Senate Bill # 62**, relating to Pediatric Cardiac Care in the Children's Medical Services Program, 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 style.

Senator Aaron Bean
Florida Senate, District 4

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 80

INTRODUCER: Senator Steube

SUBJECT: Public Records

DATE: February 6, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	Ferrin	GO	Favorable
2.			CA	
3.			JU	

I. Summary:

SB 80 grants discretion to a court to award attorney fees and costs relating to public records enforcement actions when it has determined that a public records request was unlawfully refused and that the plaintiff provided written notice of the public records request to the agency's custodian of public records at least five business days before filing the lawsuit.

II. Present Situation:

Public Records Requirements

The Florida Constitution provides that every individual has a right of access to public records which are made or received in connection with official public business.¹ This right applies to records of the legislative, executive, and judicial branches.²

The Public Records Act, codified in ch. 119, F.S., expressly guarantees every person's right to inspect and copy any state or local government public record³ at any reasonable time, under reasonable conditions, and under the supervision of the public records custodian.⁴ The Public Records Act also applies to a private contractor if that private business acts on behalf of a governmental entity.⁵

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Section 119.011(12), F.S., defines "public record" as "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."

⁴ Section 119.07(1)(a), F.S.

⁵ 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

An agency, as defined by ch. 119, F.S., may not impose greater conditions on responding to a public records request than those required by law. For example, an agency may not require a person seeking a public record to disclose his or her background.⁶ Nor may an agency require an individual to put his or her request in writing as a condition of production.⁷ An agency must honor a request whether a person requests records by phone, in writing, or in person, if the request is sufficient to identify the records sought.⁸

Custodian of Public Records

Pursuant to s. 119.011(5), F.S., a custodian of public records is “the elected or appointed state, county, or municipal officer charged with the responsibility of maintaining the office having public records, or his or her designee.”

A custodian of public records is required to perform statutorily required duties such as maintaining records in fireproof vaults, repairing records and complying with retention schedules set by the Department of State.⁹ Section 119.07, F.S., also provides that a public records custodian has duties that include:

- Acknowledging public records requests and responding to those requests in good faith;¹⁰
- Producing records after redacting exempt information or providing the statutory citation for an exemption if the entire document is exempt;¹¹
- Maintaining records which are the subject of public records litigation;¹²
- Ensuring that public records are secure if they are provided electronically;¹³
- Providing supervision if someone wishes to photograph records;¹⁴ and
- Providing certified copies of public records upon payment of a fee.¹⁵

Public records custodians are also responsible for supervising the production of records by all agency personnel. Section 119.07(1)(a), F.S., provides that “[e]very person who has custody of a public record shall permit the record to be inspected and copied... at any reasonable time, under reasonable conditions, and under reasonable supervision by the custodian of the public records.”

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 *Bevan v. Wanichka*, 505 So. 2d 1116, 1118 (Fla. 2d DCA Fla. 1987).

⁷ *Dade Aviation Consultants v. Knight Ridder, Inc.*, 800 So. 2d 302, n.1 (Fla. 3d DCA 2001); Op. Att’y Gen. Informal Opinion (Dec. 16, 2003). *Chandler v. City of Greenacres*, 140 So. 3d 7 (Fla. 4th DCA 2014).

⁸ Op. Att’y Gen. Fla. 80-57, pg. 3 (1980).

⁹ Section 119.021, F.S.

¹⁰ Section 119.07(1)(c), F.S.

¹¹ Section 119.07(1)(d)-(f), F.S.

¹² Section 119.07(1)(g)-(i), F.S.

¹³ Section 119.07(2), F.S.

¹⁴ Section 119.07(3), F.S.

¹⁵ Section 119.07(4), F.S.

Enforcing Public Records Laws and Attorney Fees

Article I, Section 24(c), Florida Constitution, requires the Legislature to enact laws governing the enforcement of public records requirements, including the “maintenance, control, destruction, disposal, and disposition of records.”

Under s. 119.11, F.S., a person may enforce his or her right to inspect a public record by filing a lawsuit against an agency. In those lawsuits, the court must set an immediate hearing, giving the case priority over other cases.¹⁶ If a court orders an agency to open its records for inspection, the agency must comply within 48 hours.¹⁷

Section 119.12, F.S., provides that if a court finds that an agency unlawfully refused access to a public record, the court will order the public agency to pay costs and attorney fees related to the enforcement lawsuit.¹⁸ An unjustified delay in turning over public records is also considered an unlawful refusal, and a court will award attorney fees even if the delay was not willful or if the delay was due to incompetence.¹⁹ When a court awards attorney fees in a public records case, “there is no additional requirement...that the trial court find that the public agency did not act in good faith, acted in bad faith, or acted unreasonably.”²⁰

Enforcement lawsuits are composed of two parts: the request for production of a record and the assessment of fees. The assessment of attorney fees is a legal consequence independent of the public records request.²¹ Once the requestor files suit, the court will require a public agency to pay the requestor’s attorney fees even after the agency has produced the records.²² The Florida Supreme Court stated that the public policy behind awarding attorney fees is to encourage people to pursue their right to access government records after an initial denial, and that granting attorney fees makes it more likely that public agencies will comply with public records laws.²³

The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to

¹⁶ Section 119.11(1), F.S.

¹⁷ Section 119.11(2), F.S.

¹⁸ Section 119.12, F.S. In 1984, the Legislature amended the public records attorney fee provision, deleting language which would permit attorney fees to be awarded only when records are “unreasonably” refused and replaced it with “unlawfully” refused. Ch. 84-298, s. 7, Laws of Fla. The Florida Supreme Court stated what once the Legislature amended s. 119.12, F.S., from “unreasonable” refusal to “unlawful” refusal, the Legislature “eliminated the potential that an award for attorney’s fees would be denied just because the public agency acted reasonably in violating the Public Records Act...The public agency’s failure to comply, rather than its good or bad faith in doing so, became the relevant inquiry.” *Bd. Of Trs. v. Lee*, LEXIS 783 at *12 (Fla. Apr. 14, 2016). Based on the Legislature’s removal of the word “unreasonably,” a court concluded that good faith or honest mistakes do not excuse a defendant from being assessed attorney fees.” *News and Sun-Sentinel Co. v. Palm Beach County*, 517 So. 2d 743, 744 (Fla. 4th DCA 1987), partially disapproved of in *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So.2d 27, 30 (Fla. 1993).

¹⁹ *Lilker v. Suwannee Valley Transit Authority*, 133 So. 3d 654, 655-656 (Fla. 1st DCA 2014); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 225 (Fla. 5th DCA 1996).

²⁰ *Bd. Of Trs. v. Lee*, LEXIS 783 at *2 (Fla. Apr. 14, 2016).

²¹ *Mazer v. Orange County*, 811 So. 2d 857, 859 (Fla. 5th DCA 2002).

²² *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Barfield v. Town of Eatonville*, 675 So. 2d 223, 224 (Fla. 5th DCA 1996); *Cookston v. Office of the Pub. Defender*, LEXIS 10858 at *6 (Fla. 5th DCA July 15, 2016).

²³ *New York Times Co. v. PHH Mental Health Services, Inc.*, 616 So. 2d 27, 29 (Fla. 1993).

the public.²⁴ Open meetings laws also include an attorney fee provision. Section 286.0114(7)(a), F.S., provides:

- (a) Whenever an action is filed against a board or commission to enforce this section, the court shall assess reasonable attorney fees against such board or commission if the court determines that the defendant to such action acted in violation of this section. The court may assess reasonable attorney fees against the individual filing such an action if the court finds that the action was filed in bad faith or was frivolous. This paragraph does not apply to a state attorney or his or her duly authorized assistants or an officer charged with enforcing this section.
- (b) Whenever a board or commission appeals a court order that has found the board or commission to have violated this section, and such order is affirmed, the court shall assess reasonable attorney fees for the appeal against such board or commission.

Public Records Requests, Settlements and Attorney Fees

Over the past few years, governmental entities have been sued based on their failure to provide public records in cases that appear to be less about private citizens getting access to public records than about generating settlements or attorney fees. Governmental entities often settle the public records complaints because settlements are less costly than litigation.

The Town of Gulf Stream filed a federal lawsuit against a resident, the Citizen's Awareness Foundation, Inc., Our Public Records LLC, and other defendants based on their use of public records laws.²⁵ The Town of Gulf Stream alleged that the defendants sent bogus public records requests that were intended to be overlooked, and then ask for settlements that were higher than actual attorney fees and costs, or they file frivolous lawsuits and then attempt to obtain settlements.²⁶ The case was dismissed by a federal judge, who stated:

To the extent Defendants are abusing the rights afforded them by the Florida public records laws, those abuses must be addressed in the individual lawsuits filed, or through a change in the laws by the Florida Legislature.²⁷

Counties and state agencies have also been sued because of their failure to provide public records. In another case, an entity called Consumer Rights, LLC., filed a public records lawsuit against Union County, which was ultimately appealed when the trial court refused to grant attorney fees to Consumer Rights, LLC. The First District Court found:

The plaintiff made the request in a suspicious email that could not be easily verified, directed it to a general email account that might not be checked by the person having anything to do with the records at issue, waited four months

²⁴ FLA. CONST., art. I, s. 24(b).

²⁵ *Town of Gulf Stream v. O'Boyle*, No. 15-80182-CIV-MARRA, U.S. Dist. LEXIS 84778 (S.D. Fla. June 30, 2015).

²⁶ *Id.* at *4.

²⁷ *Id.* at *11.

without saying anything and the sued the county, claiming a right to attorney fees.²⁸

In this case, the First District Court of Appeal affirmed the lower court's decision to deny attorney fees to the plaintiff. The First District Court found that the manner in which the public records request was made, as well as the fact that the County ultimately provided the requested record when it became apparent that the email was not spam, indicated that there was no refusal to provide the requested records.²⁹ Since there was no refusal, there was no basis for awarding attorney fees.

Consumer Rights also filed an enforcement lawsuit against the Department of Economic Opportunity, but was not awarded fees because of procedural issues. The First District Court found that there was some evidence to support the state agency's allegations that Consumer Rights was engaged in a "scheme [that] was designed to generate fees" but the Court declined to rule on the allegation.³⁰

Public Records and Private Contractors

Public agencies, including local and statewide governmental entities and municipal officers may hire contractors to provide services or act on behalf of the public agency.³¹ Contractors can be individuals or business entities.³² Private contractors who act on behalf of a public agency are required by law and the terms of their contracts to comply with public records laws.³³ These duties include keeping public records, providing the public an opportunity to inspect or copy a public record, and redacting exempt information.³⁴ A request for a contractor's records must be submitted to the agency. The agency will then request the records from the contractor or arrange for the public to inspect the requested records.³⁵

If a contractor fails to comply with a public records request, the requestor may sue the contractor.³⁶ Enforcement costs (including attorney fees) will be awarded only if the contractor unlawfully refused to comply with the request and the requestor provided written notice to the agency that the contractor had not complied with the public records request.³⁷ The requestor must mail or email the notice at least eight days before filing suit.³⁸

²⁸ *Consumer Rights, LLC., v. Union County, Fla.*, 159 So. 3d 882, 885 (Fla. 1st DCA 2015).

²⁹ *Consumer Rights, LLC.*, at 886-887. *Accord Citizens Awareness Found., Inc., v. Wantman Grp., Inc.*, LEXIS 7970 (Fla. 4th DCA May 25, 2016).

³⁰ *State v. Consumer Rights, LLC.*, 181 So. 3d 1239, 1241 (Fla. 1st DCA 2015)

³¹ Section 119.0701(1)(b), F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992). Op. Att'y Gen. Fla. Informal Opinion dated December 31, 2014.

³² Section 119.0701(1)(a), F.S.

³³ Section 119.011(2), s. 119.0701, F.S. *News and Sun-Sentinel Co. v. Schwab, Twitty and Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

³⁴ Section 119.0701(2)(b), F.S.

³⁵ Section 119.0701(2)(b)2. and (3), F.S.

³⁶ Section 119.0701(4), F.S.

³⁷ Section 119.0701(4)(a), F.S.

³⁸ Section 119.0701(4)(a)2., F.S.

If the contractor fulfills the public records request within eight days, then the contractor is no longer liable for the enforcement costs.³⁹ The law is silent on whether an agency would be liable for attorney fees after the contractor has fulfilled the public records request. If a contractor fails to fulfill the public records request within eight days, the contractor will be liable for enforcement costs.

When is a Private Contractor an Agency for Public Records Purposes?

Pursuant to s. 119.011(2), F.S., the definition of “agency” in the Public Records Act includes a “public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.” In addition, s. 119.0701(1)(a), F.S., defines a contractor as an “individual, partnership, corporation, or business entity that enters into a contract for services with a public agency and is acting on behalf of the public agency.”

To determine if a contractor is acting on behalf of a public agency, a totality of factors test may be applied.⁴⁰ Some of the factors a court may consider include, but are not limited to:

- Whether the public agency created the contractor;
- How much public funding was involved;
- How much the public agency regulated the contractor;
- The comingling of decision making processes;
- Whether the contractor was performing a government function; and
- The goals of the contractor.⁴¹

Private Contractors and Public Records Lawsuits

Private contractors have also been subject to lawsuits which appear to be more about generating settlements and attorney fees than about the individuals exercising their right to copy and inspect public records. In one such case, a circuit court judge in Duval County declined to award attorney fees in a public records enforcement case.⁴² According to the court order, the plaintiff made two separate requests for public records to a nonprofit organization under contract to provide social services for the Department of Children and Families. The contract manager refused to provide the documents because the contract manager believed the documents were not public records. The court found that the manner in which the plaintiff (and his companions) made the request ensured that “they obtained exactly what they wanted, namely an initial denial of an unreasonable and bogus request.”⁴³

The court found that the plaintiff’s method of requesting public records was an abuse of the public records laws noting that the actions of the requester amounted to “nothing more than a scam.”⁴⁴ The Final Order stated that the plaintiff and his attorney, who had an arrangement to

³⁹ Section 119.0701(4)(a), F.S.

⁴⁰ *News and Sun-Sentinel Co. v. Schawb, Twitty & Hanser Architectural Group, Inc.*, 596 So. 2d 1029 (Fla. 1992).

⁴¹ *Id.* at 1032.

⁴² *Gray v. Lutheran Social Services of Northeast Florida, Inc.*, Final Order Denying Relief Under Public Records Act, No. 2014-CA-4647 (Fla. 4th Cir. Ct. Dec. 2, 2014). *Gray v. Lutheran Soc. Servs. of Ne. Fla., Inc.*, 179 So. 3d 322 (Fla. 1st DCA 2015) AFFIRMED.

⁴³ *Id.*

⁴⁴ *Id.*

split his attorney fees with the plaintiff, had “a financial interest in assuring that his requests for public records [were] refused.”⁴⁵ The court noted that in 2014, the plaintiff filed 18 public records lawsuits in Duval County, and that the attorney represented the plaintiff on approximately 13 of those cases; the court noted that all of the cases followed a similar pattern.

The court opined that:

If a private entity must pay an attorney’s fee every time an agent denies a needless request, the cost to the state to provide important services by contracting with private entities will increase; or private entities might discontinue bidding on these contracts. The chilling effect could be disastrous to the State. Further the [Public Records] Act was not designed to create a cottage industry for so-called “civil rights activists” or others who seek to abuse the [Public Records] Act for financial gain.⁴⁶

The First District Court of Appeal affirmed the trial court’s decision on December 16, 2015.⁴⁷

Similarly, a suspicious email requesting public records was sent to a contractor and the sender subsequently sued the contractor in an enforcement action.⁴⁸ The court found that the contractor believed that the email was spam and did not comply with the request.⁴⁹ The court ruled that contractor had not refused to provide records, and therefore, no fees were due.⁵⁰ The court stated public records laws “should not be applied in a way that encourages the manufacture of public records requests designed to obtain no response, for the purpose of generating attorney’s fees.”⁵¹

III. Effect of Proposed Changes:

The bill makes granting enforcement costs (including attorney fees) discretionary when the court determines:

- The plaintiff has provided written notice of the public records request to the agency’s custodian of public records at least five business days before filing the enforcement action; and
- A public entity has unlawfully refused to grant access to public records.

The bill will take effect July 1, 2017.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Gray v. Lutheran Soc. Servs. of Ne. Fla., Inc.*, 179 So. 3d 322 (Fla. 1st DCA 2015).

⁴⁸ *Citizens Awareness Found. Inc., v. Wantman Grp., Inc.*, LEXIS 7970 at *12 (Fla. 4th DCA March 25, 2016).

⁴⁹ *Id.*

⁵⁰ *Id.* at 14.

⁵¹ *Id.* at 11.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The bill does not appear to require counties or municipalities to take an action requiring the significant expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, or reduce the percentage of state tax shared with counties or municipalities.

B. Public Records/Open Meetings Issues:

The bill will grant greater discretion to judges on when they will award attorney fees in public records request lawsuits. This may have the effect of reducing the likelihood of an attorney accepting a public records lawsuit if he or she will not be guaranteed fees. This provision may also have the effect of essentially imposing a requirement for the public to make public records requests in writing every time if they wish to be able to receive attorney fees.

C. Trust Funds Restrictions:

None.

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

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 a state tax shares with counties and municipalities.

B. Private Sector Impact:

Private contractors which are agencies under the public records laws may spend less in settlements and attorney fees related to public records requests.

Individuals and groups who file public records lawsuits may spend more money to send letters to public records custodians. There would be little or no costs to these people or groups if they sent an email instead of a letter.

C. Government Sector Impact:

Governmental entities may spend less in settlements and enforcement costs related to public records requests because the courts are given more discretion. If the intent of the new notice requirement is to allow time for the public agency to "cure" the violation by producing the requested records prior to the initiation of the enforcement action and, thus, to minimize the award of attorney fees and costs, the provision may need to be clarified. Current case law states that the enforcement action (the part of the lawsuit that seeks access to the public records) is independent of the part of the lawsuit that seeks an award

for attorney fees and costs.⁵² A plaintiff may seek attorney fees and costs if the public agency has unlawfully refused access to the public records, even though the public agency ultimately provided the requested records.

In addition, the five-day notice period may be too short. Mailing a letter five days before filing suit may not give an agency sufficient time to cure any defects in responding to a public records request, since the lawsuit could be filed before the records custodian receives the letter.

VI. Technical Deficiencies:

Since private contractors who act on behalf of an agency are also subject to public records laws, they would also have records custodians. It is not clear if this bill requires a citizen to send a notice to the contracting agency's public records custodian or to the business's records custodian.

VII. Related Issues:

Custodian of public records

Private citizens who are unable to get a public agency to provide access to public records may find it more cumbersome to send a letter to the public records custodian if his or her identity is not readily apparent. It may be difficult for a citizen to identify the custodian of public records because he or she may be the agency head, another officer or a designee.

VIII. Statutes Affected:

This bill substantially amends section 119.12 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁵² *Mazer v. Orange County*, 811 So. 2d 857, 860 (Fla. 5th DCA 2002); *Cookston v. Office of the Pub. Defender*, LEXIS 10858 at *6 (Fla. 5th DCA July 15, 2016); *Schweickert v. Citrus Cnty. Fla. Bd.*, 193 So. 3d 1075 (Fla. 5th DCA 2016).

By Senator Steube

23-00206-17

201780__

A bill to be entitled

An act relating to public records; amending s. 119.12, F.S.; requiring a complainant to timely provide certain written notice in order to be entitled to attorney fees in certain civil actions for enforcement of ch. 119, F.S.; providing that the award of such attorney fees is within the discretion of the court; providing an effective date.

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

Section 1. Section 119.12, Florida Statutes, is amended to read:

119.12 ~~Attorney~~ Attorney's fees.—If a civil action is filed against an agency to enforce ~~the provisions of~~ this chapter and ~~if~~ the court determines that the complainant provided written notice of the public records request to the agency's custodian of public records at least 5 business days before filing the civil action and the ~~such~~ agency unlawfully refused to permit a public record listed in the notice to be inspected or copied, the court may ~~shall~~ assess and award, against the responsible agency ~~responsible~~, the reasonable costs of enforcement, including reasonable attorney ~~attorneys'~~ fees.

Section 2. This act shall take effect July 1, 2017.

THE FLORIDA SENATE
APPEARANCE RECORD

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

2/7/17
Meeting Date

SB 80
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Buddy JACOBS

Job Title General Counsel Florida Prosecuting Attorneys Assoc.

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Phone 904-261-3693

Fernandina Bch FL 32034
City State Zip

Email ajacobs@comcast.net

Speaking: ☒ For ☐ Against ☐ Information

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

Representing State Attorneys 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)

2/7/17

Meeting Date

80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title Attorney

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Killebrew

City

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State

32301

Zip

Email clyon@lw-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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

February 7 2017
Meeting Date

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

SB 80
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Amy Mercer

Job Title Executive Director

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Phone 850-219-3631

Street

Tallahassee FL 32308

City

State

Zip

Email amerar@fpca.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

2-7-12
Meeting Date

83
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Barbara Deane

Job Title MS

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Street

Phone 251-4288

Tallahassee FL 32308
City State Zip

Email barbaradeane@johnson

Speaking: ☐ For ☒ Against ☐ Information

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

Representing FLAOW

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)

2-7-17

Meeting Date

SB 80

Bill Number (if applicable)

Topic Public records

Amendment Barcode (if applicable)

Name JAN RUBINO

Job Title _____

Address 726 INGLESIDE AVE.

Street

Phone 850-224-9262

TALLAHASSEE

City

FL

State

32303

Zip

Email rubinojan@yahoo.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing LEAGUE OF WOMEN VOTERS 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)

2-7-17

Meeting Date

SB80

Bill Number (if applicable)

Topic Public RECORDS

Amendment Barcode (if applicable)

Name Jayne Walker

Job Title Transit

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Phone 407-404-0047

Orlando FL 32804
City State Zip

Email JayWanne@aol.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.

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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)

2-27-17

Meeting Date

SB80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Tamara Barnett

Job Title Concerned citizen

Address 7901 Court St.
Street

Phone _____

Orlando FL 32822
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)

2/7/17
Meeting Date

SB-80
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name DAVID VUCIC

Job Title Retired

Address 4256 Houston Lane

Phone 941-888-2555

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City

FL

State

34287

Zip

Email D. Vucic at nol.

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)

2/3/17
Meeting Date

SB 80
Bill Number (if applicable)

Topic LEGAL REP IN PUBLIC RECORDS

Amendment Barcode (if applicable)

Name JOE LIUZZO

Job Title TRANSIT OPERATOR

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City State Zip

Phone 941-266-8186

Email JR L PICS @ 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)

2/7/17
Meeting Date

SB 80
Bill Number (if applicable)

Topic SB 80 Public Records Request

Amendment Barcode (if applicable)

Name Steve Hall

Job Title Retiree - Piantan Union

Address 2619 Corning Dr
Street Orlando FL 32803
City State Zip

Phone 407-896-9241

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)

2/7/17
Meeting Date

SB 80
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Rich Templin

Job Title _____

Address 135 S. Monroe

Phone 850-224-6926

Street

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

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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)

2/7/17
Meeting Date

513 80
Bill Number (if applicable)

Topic public records

Amendment Barcode (if applicable)

Name Ben Wilcox

Job Title _____

Address 1719 Old Fort Drive
Street

Phone 850-544-4448

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 Common Cause 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)

02.07.17

Meeting Date

80

Bill Number (if applicable)

Topic public records

Amendment Barcode (if applicable)

Name Barbara Pitersen / FAF

Job Title president

Address 317 E Park Ave

Phone 224-4555

Street

Tallahassee FL 32301

City

State

Zip

Email Sunshine@floridafaf.org

Speaking: ☐ For ☒ Against ☐ Information

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

Representing First Amendment Fndn

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)

2/7/16

Meeting Date

89

Bill Number (if applicable)

Topic SB 80 PUBLIC RECORDS

Amendment Barcode (if applicable)

Name FRANK RODER

Job Title RETIRED

Address 908 E. LOUISIANA AV

Phone 813-690-6638

TAMPA FL 33603

City

State

Zip

Email FRANK.RODER@FLSENATE.COM

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA EDUCATION ASSOCIATION - RETIRED

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)

2/7/17
Meeting Date

80
Bill Number (if applicable)

Topic SB 80 Public Records

Amendment Barcode (if applicable)

Name Ken Carpenter

Job Title Retired

Address 2050 Linda Lane

Phone 813-948 4607

Lutz FL 33558
City State Zip

Email tkcare@aol.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FLORIDA Education Association - Retired

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)

Feb. 7, 2017

Meeting Date

SB 80

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Sam Morley

Job Title Gen. Counsel

Address 336 E. College Ave. Suite 201

Phone 8502124395

Street

Tallahassee

FL

32301

City

State

Zip

Email smorley@flpress.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Press Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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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)

2/7/17
Meeting Date

SB 80
Bill Number (if applicable)

Topic SB 80 Public Records

Amendment Barcode (if applicable)

Name Andres Treviño

Job Title State Director

Address 11774 SW 137th Ave

Phone 786-348-5771

Street

Miami
City

FL
State

33186
Zip

Email FLTreviñoUTV@aol.com

Speaking: ☐ For ☒ Against ☐ Information

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

Representing SMART-TD

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)

2/7/2017
Meeting Date

80
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg FL 33705
City State Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

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)

2/7/16
Meeting Date

SB 80
Bill Number (if applicable)

Topic SB 80

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 850 701 3701

Tallahassee FL 32302
City State Zip

Email ccook@flcities.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Florida League of Cities

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

S-001 (10/14/14)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Banking and Insurance, *Vice Chair*
Agriculture
Appropriations Subcommittee on Finance and Tax
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR GREG STEUBE

23rd District

December 19, 2016

The Honorable Dennis Baxley
Florida Senate
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Senator Baxley,

I am writing this letter because my bill, SB 80 – Public Records, has been referred to the Senate Governmental Oversight and Accountability Committee. I am respectfully requesting that you place the bill on your committee's calendar for the next committee week.

Thank you for your consideration. Please contact me if you have any questions.

Very respectfully yours,

A handwritten signature in dark ink, appearing to be "W. Gregory Steube". The signature is stylized with a large, looping "W" and a cursive "S" for "Steube".

W. Gregory Steube, District 23

REPLY TO:

- ☐ 722 Apex Road, Unit A, Sarasota, Florida 34240 (941)342-9162
- ☐ 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 362

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Agency for State Technology

DATE: February 7, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Ferrin	GO	Fav/CS
2.			AGG	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 362 establishes a chief data officer within the Agency for State Technology (AST) who shall be appointed by the executive director. The bill also establishes the Geographic Information Office within the AST.

The bill amends s. 282.0051, F.S., to expand the AST's duties to include establishing a governance structure for data managed and controlled by state agencies in a manner that promotes interoperability and openness and establishing the geographic information systems enterprise architecture and governance with which state agencies must comply.

The effective date of the bill is July 1, 2017.

II. Present Situation:

Agency for State Technology

The AST was created on July 1, 2014.¹ The executive director of the AST, who serves as the state's chief information officer, is appointed by the Governor and confirmed by the Senate.² The

¹ Chapter 2014-221, Laws of Florida.

² Section 20.61(1)(a), F.S.

following positions are established within the AST, all of whom are appointed by the executive director:³

- Deputy executive director;
- Chief planning officer and six strategic planning coordinators;
- Chief operations officer;
- Chief information security officer; and
- Chief technology officer.

The duties and responsibilities of the AST include:⁴

- Developing and publishing information technology (IT) policy for management of the state's IT resources.
- Establishing and publishing IT architecture standards.
- Establishing project management and oversight standards with which state agencies must comply when implementing IT projects.
- Performing project oversight on all state IT projects with total costs of \$10 million or more.
- Identifying opportunities for standardization and consolidation of IT services that support common business functions and operations.
- Establishing best practices for procurement of IT products in collaboration with the Department of Management Services (DMS).
- Participating with the DMS in evaluating, conducting and negotiating competitive solicitations for state term contracts for IT commodities, consultant services, or staff augmentation contractual services.
- Collaborating with the DMS in IT resource acquisition planning.
- Developing standards for IT reports and updates.
- Upon request, assisting state agencies in development of IT related legislative budget requests.
- Conducting annual assessments of state agencies to determine compliance with IT standards and guidelines developed by AST.
- Providing operational management and oversight of the state data center.
- Recommending other IT services that should be designed, delivered, and managed as enterprise IT services.
- Recommending additional consolidations of agency data centers or computing facilities into the state data center.
- In consultation with state agencies, proposing methodology for identifying and collecting current and planned IT expenditure data at the state agency level.
- Performing project oversight on any cabinet agency IT project that has a total project cost of \$25 million or more and impacts one or more other agencies.
- Consulting with departments regarding risks and other effects for IT projects implemented by an agency that must be connected to or accommodated by an IT system administered by a cabinet agency.
- Reporting annually to the Governor, the President of the Senate and the Speaker of the House regarding state IT standards or policies that conflict with federal regulations or requirements.

³ Section 20.61(2), F.S.

⁴ Section 282.0051, F.S.

- Establishing policy for all IT-related state contracts, including state term contracts for IT commodities, consultant services, and staff augmentation services in collaboration with the DMS.
- In collaboration with the DMS, evaluating vendor responses for state term contract solicitations and invitations to negotiate, answering vendor questions on state term contract solicitations, and ensuring that IT policy is included in all solicitations and contracts that are administratively executed by the DMS.

Enterprise Geographical Information Systems (GIS) in Florida

A geographic information system (GIS) is “a computer system for capturing, storing, checking, and displaying data related to positions on Earth’s surface. GIS can show many different kinds of data on one map.”⁵ Currently there is no enterprise view or governance of GIS or infrastructure in the State of Florida; rather, GIS activities are fragmented across the state with duplication of data collection and storage.⁶ Standards are followed inconsistently, and information is not immediately accessible when needed by law enforcement, emergency management, and the State Fire Marshal. As the use of GIS has proliferated, there has been no single entity to address its fragmented use, no national representative to pursue grant funding, nor any official state GIS leadership.⁷

In May 2015, the AST chartered the Florida Enterprise GIS Workgroup to assist in the identification, standardization, and coordination of GIS activities, assets, and needs across state agencies. This workgroup has been developing a business plan with recommendations for enterprise GIS leadership, identifying, inventorying, and cataloging GIS data across the state, outlining standards and best practices used by state and federal public entities, and determining feasibility of statewide enterprise licensing and training.⁸

Workgroup participation is currently voluntary; however, representation includes 17 state agencies, two universities, six water management districts, representatives from the US Geological Survey, and the US Army Corps of Engineers.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 20.61, F.S., to establish a chief data officer position appointed by the executive director within the AST. Also, the Geographic Information Office is established within the AST.

Section 2 amends s. 282.0051, F.S., to expand the powers, duties, and functions of the AST to include:

⁵ See <http://www.nationalgeographic.org/encyclopedia/geographic-information-system-gis/> (last visited on Jan. 30, 2017).

⁶ See AST Recommendations for Information Technology Services issued on April 1, 2016 located at <http://www.ast.myflorida.com/doc%20library/APRIL%201%20RECOMMENDATIONS%20REPORT.pdf> (last visited on Jan. 27, 2017).

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

- For data managed and controlled by state agencies, establish a governance structure that promotes interoperability and openness, to include:
 - Adopting rules governing data managed and controlled by state agencies; and
 - Establishing a catalog of data sources utilized by state agencies which documents the acceptable use of, security and compliance requirements for, sharing agreements for, and format and methods available to access the data.
- Establishing, pursuant to s. 20.61, F.S., the GIS enterprise architecture and governance with which state agencies must comply.

The AST would inventory state agencies for their sources of data for the catalog. The AST would not maintain custody or possession of the inventoried data.

Section 3 of the bill provides an effective date of July 1, 2017.

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 a state tax shares with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill will have a likely fiscal impact for additional salary and benefits for the newly created position of chief data officer.

Implementing an authorized council or enterprise GIS office would enable consistency in data and architecture standards. Additional benefits from consistently applied data quality and architecture standards include the ability to enable quick responses during emergency events, reduce the duplication of data across agencies, leverage more federal grants,

obtain enterprise licensing to reduce costs, and expand data clearinghouses in coordination with open data initiatives.¹⁰

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 20.61 and 282.0051.

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 7, 2017:

CS/SB 362 differs from SB 362 in the following ways:

- Revises the term “state government data” contained in (19)(a) to “data managed and controlled by state agencies”.
- Revises the term “catalog of state government data sources” contained in (19)(c) to “catalog of data sources utilized by state agencies”.
- Deletes (19)(d) that requires compliance with public records provisions of chapter 119. The AST, along with all state agencies, is already subject to the requirements of chapter 119.

- B. Amendments:

None.

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

¹⁰ *Id.*



894296

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2017	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 34 - 46
and insert:

(19) (a) For data managed and controlled by state agencies,
establish a governance structure that promotes interoperability
and openness;

(b) Adopt rules governing data managed and controlled by
state agencies; and

(c) Establish a catalog of data sources utilized by state



894296

11 agencies which documents the acceptable use of, security and
12 compliance requirements for, sharing agreements for, and format
13 and methods available to access the data.

By Senator Brandes

24-00312B-17

2017362__

1 A bill to be entitled
 2 An act relating to the Agency for State Technology;
 3 amending s. 20.61, F.S.; establishing within the
 4 agency a chief data officer position and the
 5 Geographic Information Office; amending s. 282.0051,
 6 F.S.; adding specified powers, duties, and functions
 7 of the agency; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Paragraph (f) is added to subsection (2) of
 12 section 20.61, Florida Statutes, and subsection (4) is added to
 13 that section, to read:
 14 20.61 Agency for State Technology.—The Agency for State
 15 Technology is created within the Department of Management
 16 Services. The agency is a separate budget program and is not
 17 subject to control, supervision, or direction by the Department
 18 of Management Services, including, but not limited to,
 19 purchasing, transactions involving real or personal property,
 20 personnel, or budgetary matters.
 21 (2) The following positions are established within the
 22 agency, all of whom shall be appointed by the executive
 23 director:
 24 (f) Chief data officer.
 25 (4) The Geographic Information Office is established within
 26 the agency.
 27 Section 2. Present subsection (19) of section 282.0051,
 28 Florida Statutes, is redesignated as subsection (21), and a new
 29 subsection (19) and subsection (20) are added to that section,
 30 to read:
 31 282.0051 Agency for State Technology; powers, duties, and
 32 functions.—The Agency for State Technology shall have the

24-00312B-17

2017362__

33 following powers, duties, and functions:
 34 (19) (a) Establish a governance structure for managing state
 35 government data in a manner that promotes interoperability and
 36 openness;
 37 (b) Adopt rules governing data managed and controlled by
 38 state agencies;
 39 (c) Establish a catalog of state government data sources
 40 which documents the acceptable use of, security and compliance
 41 requirements for, sharing agreements for, and format and methods
 42 available to access the data; and
 43 (d) Ensure, if legally permissible and not cost
 44 prohibitive, that such data is readily available to other state
 45 agencies and the public in compliance with the public records
 46 requirements of chapter 119.
 47
 48 The chief data officer of the agency shall implement this
 49 subsection.
 50 (20) Establish pursuant to s. 20.61 the geographic
 51 information systems enterprise architecture and governance with
 52 which state agencies must comply.
 53 Section 3. This act shall take effect July 1, 2017.

THE FLORIDA SENATE

APPEARANCE RECORD

2/8/17

Meeting Date

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

SB362

Bill Number (if applicable)

Topic AST

Amendment Barcode (if applicable)

Name JAMES TAYLOR

Job Title EXECUTIVE DIRECTOR

Address 114 E PARK AVE

Phone 850 566 5063

Street

City TALLY State FL Zip

Email JAMES.TAYLOR@FLTECHCOUNCIL.COM

Speaking: ☒ For ☐ Against ☐ Information

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

Representing FLORIDA TECHNOLOGY 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.

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

02/07/2016

Meeting Date

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

SB 362

Bill Number (if applicable)

Topic Agency for State Technology

Amendment Barcode (if applicable)

Name Spence Purnell

Job Title Policy Analyst

Address 7309 Birds Eye Terrace

Phone 941-286-5362

Street

Braclenton

City

FL

State

34203

Zip

Email reason.spence@gmail.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Reason Foundation

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)

2/7/2017
Meeting Date

362
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S
Street

Phone 727/897-9291

St Petersburg
City

FL
State

33705
Zip

Email justice2jesus@yahoo.com

Speaking: ☐ For ☐ Against ☒ Information

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

Representing Justice-2-Jesus

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

Committee Agenda Request

To: Senator Dennis Baxley,
Committee on Governmental
Oversight and Accountability

Subject: Committee Agenda Request

Date: January 26th, 2017

I respectfully request that **Senate Bill #362** relating to **Agency for State Technology**, be placed on the:

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

A handwritten signature in black ink, appearing to read "Jeff Brandes", written over a horizontal line.

Senator Jeff Brandes
Florida Senate, District 24

CourtSmart Tag Report

Room: SB 401
Caption: Senate Governmental Oversight and Accountability

Type:
Judge:

Started: 2/7/2017 10:00:54 AM
Ends: 2/7/2017 10:59:36 AM
Length: 00:58:43

10:01:11 AM Meeting called to order-Roll Call
10:01:12 AM Quorum Present
10:01:14 AM Chairman Baxley
10:01:39 AM TAB 1 - SB 62 By Senator Bean; Pediatric Cardiac Care in the Children's Medical Services Program
10:02:26 AM Substitute Amendment Barcode 887070
10:02:44 AM Chairman Baxley
10:03:06 AM Amendment adopted
10:03:36 AM Jean Vansmith, Florida Hospital waives in support
10:04:00 AM Chairman Baxley
10:04:32 AM Doug Bell, Florida Chapter, American academy of Pediatrics waives in support
10:04:41 AM Rob Johnson, March of Dimes waives in support
10:04:55 AM Jean Vansmith, Florida Hospital waives in support
10:05:06 AM Ashley Boxer, Joe Dimaggio Children's Hospital
10:05:30 AM Brian Pitts, Justice-2-Jesus Speaking
10:09:50 AM Brian Pitts
10:10:48 AM Marti Coley Eubanks, Nemorb Children's Hopital waives in Support
10:11:17 AM Senator Bean
10:11:20 AM Roll Call
10:11:57 AM Senate Bill 62 Favorable
10:12:11 AM TAB 3 - SB 362 by Brandes; Agency for State Technology
10:12:15 AM Senator Brandes
10:12:16 AM Amendment Barcode 894296
10:12:37 AM Senator Brandes
10:13:03 AM Amendment Adopted
10:13:35 AM James Taylor, Florida Technoogy Council waives in support
10:13:47 AM Spence Purnell, Reason Foundation speaking
10:14:07 AM Brian Pitts waives in support
10:15:06 AM Senator Brandes
10:15:36 AM Senate Bill 362 Favorable
10:15:37 AM Roll Call
10:15:46 AM TAB 2 - SB 80 by Steube; Public Records
10:15:56 AM Recording Paused
10:15:57 AM Recording Resumed
10:17:03 AM Senator Steube
10:17:20 AM Chair Baxley
10:17:30 AM Senator Steube
10:17:30 AM Senator Rouson
10:17:50 AM Senator Rouson
10:18:05 AM Senator Steube
10:18:18 AM Senator Rouson
10:19:29 AM Senator Steube
10:19:47 AM Senator Steube
10:20:48 AM Senator Rouson
10:21:01 AM Senator Steube
10:21:30 AM Senator Stewart
10:21:56 AM Senator Steube
10:22:41 AM Senator Rader
10:23:05 AM Chairman Baxley
10:23:56 AM Buddy Jacobs, State Attorneys of Florida Speaking
10:24:27 AM Chris Lyon, Florida Association of Special Districts waives in support
10:25:24 AM Amy Mercer, Florida Police Chiefs Association waives in support
10:25:43 AM Barbara Devane waives in opposition

10:26:00 AM Jan Rubino, League of Women Voters of Florida Speaking
10:27:16 AM Senator Artiles
10:27:59 AM Jayne Walker stands in opposition
10:28:06 AM Tamara Barnette, waives in opposition
10:28:13 AM David Vucil, waives in opposition
10:28:28 AM Joe Liuzzio, waives in opposition
10:28:41 AM Steve Hall, waives in opposition
10:28:57 AM Rich Templin, Florida AFL-CIO
10:34:41 AM Senator Galvano
10:35:46 AM Rich Templin
10:36:13 AM Senator Galvano
10:37:13 AM Rich Templin
10:38:01 AM Senator Galvano
10:38:48 AM Chair Baxley
10:39:27 AM Ben Wilcox, Common Cause Florida, waves in opposition
10:39:45 AM Barbara Peterson, First Amendment Foundation speaking
10:44:12 AM Chair Baxley
10:45:13 AM Frank Roder, Florida Education Association waives in opposition
10:45:21 AM Ken Carpenter, Florida Education Association waves in opposition
10:45:28 AM Sam Morley, Florida Press Association waves in opposition
10:45:37 AM Andres Trujillo, SMART-TD waves in opposition
10:45:57 AM Brian Pitts, Justice-2-Jesus Speaking
10:49:51 AM Casey Cook, Florida League of Cities
10:50:34 AM Senator Rouson
10:50:36 AM Senator Rouson
10:53:08 AM Senator Stewart
10:54:50 AM Senator Artiles
10:54:53 AM Chair Baxley
10:55:01 AM Senator Artiles
10:55:23 AM Chair Baxley
10:56:29 AM Senator Steube
10:57:52 AM Chair Baxley
10:58:17 AM Senate Bill 80 Favorable
10:58:58 AM No further business
10:59:15 AM Meeting Adjourned