

Tab 1	CS/SB 110 by ED, Brandes (CO-INTRODUCERS) Rouson ; (Similar to CS/H 00501) Public Records and Public Meetings/Information Technology/Postsecondary Education Institutions					
427674	A	S	RCS	GO, Rouson	Delete L.35 - 191:	04/03 07:39 PM
Tab 2	SB 862 by Lee (CO-INTRODUCERS) Galvano ; (Similar to H 00445) Public Records/Voters and Voter Registration					
Tab 3	SB 1166 by Lee (CO-INTRODUCERS) Torres, Galvano ; (Similar to H 00959) Honor and Remember Flag					
Tab 4	CS/SB 492 by CF, Young ; (Similar to CS/CS/H 00397) Public Records/Victim of Alleged Sexual Harassment/Identifying Information					
291542	A	S	RCS	GO, Young	Delete L.21:	04/03 07:40 PM
Tab 5	SB 1352 by Young ; (Similar to CS/H 01225) Division of Administrative Hearings					
667558	A	S	RCS	GO, Young	Delete everything after	04/03 07:40 PM
Tab 6	SB 1500 by Mayfield ; (Identical to H 01223) Retirement of Instructional Personnel and School Administrators					
463234	D	S	RCS	GO, Mayfield	Delete everything after	04/03 07:40 PM
Tab 7	SB 1526 by Bracy ; (Similar to H 01203) Public Records/Health Information/Department of Corrections					
Tab 8	CS/SB 1604 by CJ, Bracy ; (Similar to CS/CS/H 01201) Department of Corrections					
682850	A	S	RCS	GO, Bracy	Delete L.59 - 96.	04/03 07:40 PM
598206	A	S	RCS	GO, Bracy	btw L.551 - 552:	04/03 07:40 PM
755380	AA	S	RCS	GO, Bracy	Delete L.20 - 36:	04/03 07:40 PM
Tab 9	SB 1668 by Perry (CO-INTRODUCERS) Artiles ; (Compare to CS/CS/CS/1ST ENG/H 00479) Use of State Funds					
529088	A	S	RCS	GO, Perry	Delete L.83 - 226.	04/03 07:40 PM
Tab 10	CS/SB 1654 by CF, Campbell ; (Similar to H 00637) Florida Kidcare Program					
Tab 11	SB 1310 by Artiles ; (Similar to CS/H 01141) State Employment					
873100	D	S	RCS	GO, Artiles	Delete everything after	04/03 07:40 PM
Tab 12	SB 7024 by BI ; (Similar to H 07067) OGSR/Title Insurance Agencies or Insurers/Office of Insurance Regulation					
Tab 13	SB 7026 by BI ; (Identical to H 07045) OGSR/Reports of Unclaimed Property/Department of Financial Services					

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Baxley, Chair
Senator Artiles, Vice Chair

MEETING DATE: Monday, April 3, 2017

TIME: 4:00—6:00 p.m.

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	CS/SB 110 Education / Brandes (Similar CS/H 501)	Public Records and Public Meetings/Information Technology/Postsecondary Education Institutions; Creating an exemption from public records requirements for certain records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; creating an exemption from public meetings requirements for portions of public meetings which would reveal such data and information; providing for future legislative review and repeal of the exemptions; providing statements of public necessity, etc. ED 03/21/2017 Fav/CS GO 04/03/2017 Fav/CS RC	Fav/CS Yeas 6 Nays 0
2	SB 862 Lee (Similar H 445)	Public Records/Voters and Voter Registration; Providing an exemption from public records requirements for information concerning preregistered voter registration applicants who are minors; providing for future legislative review and repeal; providing a statement of public necessity, etc. EE 03/22/2017 Favorable GO 04/03/2017 Favorable RC	Favorable Yeas 6 Nays 0
3	SB 1166 Lee (Similar H 959)	Honor and Remember Flag; Designating the Honor and Remember flag as an emblem of the state; authorizing that the flag be displayed at specified locations, on specified days, and in a specified manner; requiring displayed flags to be manufactured in the United States, etc. MS 03/22/2017 Favorable GO 04/03/2017 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, April 3, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 492 Children, Families, and Elder Affairs / Young (Similar CS/CS/H 397)	Public Records/Victim of Alleged Sexual Harassment/Identifying Information; Providing an exemption from public records requirements for personal identifying information of the alleged victim in an allegation of sexual harassment; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 03/21/2017 Fav/CS GO 04/03/2017 Fav/CS RC	Fav/CS Yeas 6 Nays 0
5	SB 1352 Young (Similar CS/H 1225, Compare H 1389)	Division of Administrative Hearings; Revising positions at the division that are exempt from the Career Service System; removing the requirement that the division director is subject to Senate confirmation; requiring the Governor to appoint administrative law judges; requiring the Governor to appoint administrative law judges from nominees recommended by a statewide nominating commission unless otherwise provided, etc. GO 04/03/2017 Fav/CS JU AP	Fav/CS Yeas 6 Nays 0
6	SB 1500 Mayfield (Identical H 1223)	Retirement of Instructional Personnel and School Administrators; Directing the State Board of Education to adopt rules prohibiting instructional personnel and school administrators from selecting a retirement date that occurs during the regular school year, etc. GO 04/03/2017 Fav/CS ED AED AP	Fav/CS Yeas 6 Nays 0
7	SB 1526 Bracy (Similar H 1203, Compare CS/H 1201, Linked CS/S 1604)	Public Records/Health Information/Department of Corrections; Providing that certain protected health information held by the Department of Corrections is confidential and exempt from public records requirements; providing a statement of public necessity, etc. CJ 03/21/2017 Favorable GO 04/03/2017 Favorable RC	Favorable Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Monday, April 3, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 1604 Criminal Justice / Bracy (Identical CS/H 1201, Compare H 1203, Linked S 1526)	Department of Corrections; Exempting specified positions from the career service system; authorizing the Department of Law Enforcement to issue an investigative demand seeking the production of an inmate's protected health information, medical records, or mental health records under certain circumstances; revising membership requirements for the safety and security review committee appointed by the Department of Corrections; authorizing the department to receive specified documents electronically at its discretion, etc. CJ 03/21/2017 Fav/CS GO 04/03/2017 Fav/CS AP	Fav/CS Yeas 6 Nays 0
9	SB 1668 Perry (Compare CS/CS/CS/H 479, CS/H 1137, CS/S 880)	Use of State Funds; Providing a limitation on actual expenses of certain lodging that may be reimbursed for a state agency or judicial branch employee; requiring a state entity that requests state funds for the construction of a new building to comply with maximum cost per square foot requirements; prohibiting the use of state funds to purchase alcoholic beverages and to purchase food or beverages for certain state agency appreciation or recognition events, etc. GO 04/03/2017 Fav/CS AGG AP	Fav/CS Yeas 6 Nays 0
10	CS/SB 1654 Children, Families, and Elder Affairs / Campbell (Similar H 637)	Florida Kidcare Program; Establishing the Kidcare Operational Efficiency and Health Care Improvement Workgroup as a task force administratively housed in the Department of Health to maximize the return on investment and enhance the operational efficiencies of the Florida Kidcare program, etc. CF 03/27/2017 Fav/CS GO 04/03/2017 Favorable RC	Favorable Yeas 6 Nays 0
11	SB 1310 Artilles (Similar CS/H 1141)	State Employment; Repealing provisions relating to Florida State Employees' Charitable Campaign; prohibiting an organization, an entity, or a person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times, etc. GO 04/03/2017 Fav/CS AGG AP	Fav/CS Yeas 6 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Monday, April 3, 2017, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	SB 7024 Banking and Insurance (Similar H 7067)	OGSR/Title Insurance Agencies or Insurers/Office of Insurance Regulation; Amending provisions relating to an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation by title insurance agencies or insurers; removing the scheduled repeal of the exemption, etc. GO 04/03/2017 Favorable RC	Favorable Yeas 6 Nays 0
13	SB 7026 Banking and Insurance (Identical H 7045)	OGSR/Reports of Unclaimed Property/Department of Financial Services; Amending provisions relating to an exemption from public records requirements for social security numbers and property identifiers, contained in certain reports of unclaimed property, which are held by the Department of Financial Services; removing the scheduled repeal of the exemption, etc. GO 04/03/2017 Favorable RC	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 110

INTRODUCER: Governmental Oversight and Accountability Committee; Education Committee and Senators Brandes and Rouson

SUBJECT: Public Records and Public Meetings/Information Technology/Postsecondary Education Institutions

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Benvenisty</u>	<u>Graf</u>	<u>ED</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 110 creates a new public records and meetings exemption for records of state universities and Florida College System (FCS) institutions pertaining to Information Technology (IT) security systems if the disclosure of such records would facilitate the unauthorized access to, or unauthorized modification, disclosure, or destruction of data, information, or IT resources.

Specifically, the bill:

- Exempts from public records laws data or information from technology systems owned by, under contract, or maintained by a state university or FCS institution.
- Exempts from public meetings laws portions of public meetings that may reveal data or information from technology systems owned, contracted, or maintained by a state university or an FCS institution.
 - Requires an exempt portion of a public meeting to be recorded and transcribed but specifies such recording and transcript must be exempt from disclosure, unless a court determines that the meeting was not restricted to discussion of confidential and exempt data.
- Specifies the entities to whom exempt records must be provided.

The bill provides a statement of public necessity justifying the exemption as required by the Florida Constitution. Additionally, the bill provides for repeal of the public record and meeting

exemption on October 2, 2022, pursuant to the Open Government Sunset Review Acts unless reviewed and saved from repeal by the Legislature.

Article I, s. 24(c), of the Florida Constitution, requires a two-thirds vote of the members of each house of the Legislature for final passage of a bill that creates an exemption for public records or public meetings.

The bill takes effect upon becoming law.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Public Meetings Law

Article I, s. 24(b), of the Florida Constitution sets forth the state’s public policy regarding access to government meetings. The section requires that all meetings of any collegial public body of the executive branch of state government or of any collegial public body of a county, municipality, school district, or special district, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, be open and noticed to the public.

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law” or “Sunshine Law,” further requires that all meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation, or political subdivision, at which official acts are to be taken be open to the public at all times.¹⁵ The board or commission must provide reasonable notice of all public meetings.¹⁶ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.¹⁷ Minutes of a public meeting must be promptly recorded and open to public inspection.¹⁸

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

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

¹⁵ Section 286.011(1), F.S.

¹⁶ *Id.*

¹⁷ Section 286.011(6), F.S.

¹⁸ Section 286.011(2), F.S.

Public Records and Public Meetings Exemptions

The Legislature, however, may provide by general law for the exemption of records and meetings from the requirements of Art. I, s. 24(a) and (b), of the Florida Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.¹⁹

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁰ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²¹

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²² An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²³
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²⁴ or
- It protects trade or business secrets.²⁵

The OGSR also requires specified questions to be considered during the review process.²⁶ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹⁹ Art. I, s. 24(c), Fla. Const.

²⁰ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²¹ Section 119.15(3), F.S.

²² Section 119.15(6)(b), F.S.

²³ Section 119.15(6)(b)1., F.S.

²⁴ Section 119.15(6)(b)2., F.S.

²⁵ Section 119.15(6)(b)3., F.S.

²⁶ Section 119.15(6)(a), F.S. The specified questions are:

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁷ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁸

State Universities and Florida College System Institutions

Records and meetings held by state universities and Florida College System (FCS) institutions regarding information security incidents, such as investigations into security breaches, security technologies, processes and practices as well as security risk assessments are currently subject to Florida public records laws.²⁹ Section 282.318, F.S., exempts from public records laws data and information from technology systems owned, contracted, or maintained by a state agency.³⁰ A “state agency” means any official, officer, commission, board, authority, council, committee, or department of the executive branch of state government; the Justice Administrative Commission; and the Public Service Commission.³¹ However, state universities and university boards of trustees are specifically excluded from the definition of “state agency.”³²

Florida College System records at the state level, as part of the Department of Education, are confidential and exempt under s. 282.318, F.S., but it is unclear the extent to which the records of FCS institutions and their boards of trustees are confidential and exempt under current law.³³

III. Effect of Proposed Changes:

The bill creates a new public records and meetings exemption for records of state universities and Florida College System (FCS) institutions pertaining to Information Technology (IT) security systems if the disclosure of such records would facilitate the unauthorized access to, or unauthorized modification, disclosure, or destruction of data, information, or IT resources.

Public Records Exemption

The bill makes confidential and exempt from public disclosure data or information from technology systems owned by, under contract, or maintained by a state university or FCS institution. Such data and information includes the following types of records and portions of documents:

- Records held by the university or college which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of data or information, whether physical or virtual, or information technology resources; and

²⁷ FLA. CONST. art. I, s. 24(c).

²⁸ Section 119.15(7), F.S.

²⁹ See FLA. CONST. art. I, s. 24(c), and Ch. 119, F.S.

³⁰ State University System of Florida, Board of Governors, *2017 Legislative Bill Analysis for SB 110* (Jan. 10, 2017), at 1.

³¹ Sections 282.0041(23) and 282.318(2), F.S.

³² Section 282.0041(23), F.S.

³³ Florida Department of Education, *2017 Legislative Bill Analysis for SB 110* (Dec. 21, 2016), at 3.

- Those portions of risk assessments, evaluations, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution. These records would be confidential and exempt if disclosure of such records would lead to the unauthorized access to or unauthorized modification, disclosure, or destruction of the data, information, or IT resources.

Public Meetings Exemption

The bill closes portions of public meetings in which confidential and exempt information is discussed. Closed portions of meetings must be recorded and transcribed. However, the bill specifies that the recording and transcript of the meeting must remain confidential and exempt from disclosure unless a court with competent jurisdiction determines the meeting was not restricted to confidential and exempt data and information. If this occurs, then the court may disclose the recordings and transcripts that do not contain confidential and exempt information.

Statement of Public Necessity

The bill provides a statement of public necessity for the proposed public record and meeting exemptions created in the bill. Specifically, the bill provides the following reasons for such exemptions:

- Records held by a state university or FCS institution that identify IT detection, investigation, or response practice for suspected or confirmed IT security incidents, including breaches, may be used in the investigation of the incident. The release of such information may interfere with and jeopardize the ongoing investigation.
- An investigation into an IT security incident, including a breach, may result in the gathering of sensitive personal information exempt from disclosure under state and federal law.³⁴ Release of such information may be used to commit identity theft or other crimes and subject potential victims of the security incident to further harm.³⁵
- Disclosure of records such as an audit or forensic analysis of a state university or FCS institutions may reveal weaknesses in the university or institutions IT security system.
- Records held by a state university or FCS institution may contain proprietary information, the release of which would provide an unfair advantage for business competitors in the market place.
- Disclosure of records may compromise and interfere with the administration of ongoing education programs.

According to the Board of Governors of the State University System (BOG) "a state university is vulnerable to the disclosure of records or information that could potentially compromise the

³⁴ 20 U.S.C. s. 1232g, and ss. 1002.225 and 1006.52, F.S.

³⁵ Florida law specifies procedures that must be taken in the event the security of personal information maintained by a government entity is breached. A government entity must give notice to each individual in the state whose personal information was, or the government entity reasonably believes to have been, accessed because of a breach of security. Section 501.171(4), F.S. Email, State University System of Florida Board of Governors (March 7, 2017). On file with the Senate Committee on Education.

confidentiality, integrity, and availability of a state university's information technology system" which contain sensitive data.³⁶

Open Government Sunset Review

The bill provides for the repeal of the exemptions created by this bill on October 2, 2022, as required by the Open Government Sunset Review Act. This timeframe for scheduled repeal appears to be consistent with the law regarding state public meeting and public record exemptions.³⁷

Application

The bill provides for retroactive application of the public records exemption. As such, all prior records pertaining to the detection, investigation, and response practices for suspected or confirmed IT security incidents and related reports will become confidential and exempt from disclosure.

All records and portions of public meeting recordings and transcripts made confidential and exempt by the bill must be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, for the state universities, the Board of Governors, and for the FCS institutions, the State Board of Education. Additionally, such records and portions of meetings may be made available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

The bill takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c), of the Florida Constitution, requires a two-thirds vote of the members of each house of the Legislature for final passage of a bill that creates an exemption for public records or public meetings.

The bill creates a public record and public meeting exemption; therefore, a two-thirds vote of the members of each house of the Legislature is required for final passage of the bill.

³⁶ State University System of Florida, Board of Governors, *2017 Legislative Bill Analysis for SB 110* (Jan. 10, 2017) at 1. The Board of Governors (BOG) regulation prescribes a minimum standard for security of data and related information technology resources. Florida Board of Governors Regulation 3.0075. The president of each university is responsible for ensuring appropriate and auditable security controls are in place on his or her campus. *Id.* at (1).

³⁷ Section 119.15(2)-(3), F.S.

Public Necessity Statement

Article I, s. 24(c), of the Florida Constitution, requires that a bill creating an exemption for public records or public meetings contain a public necessity statement justifying the exemption. The bill contains statements of public necessity for the public records exemptions and the public meetings exemption. The public records exemptions and the public meetings exemption appear to be no broader than necessary to achieve the purposes set out in the public necessity statements.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill includes court procedures for disclosure of meeting records. Most public meetings exemptions do not include such provisions.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 1004.055 of the Florida Statutes.

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

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

CS/CS by Governmental Oversight and Accountability on April 3, 2017:

- Removes a definition of external audit and removes references to internal and external audits;

- Revises the public necessity statement to conform to the “information or data from technology systems” that is the subject of the public exemption. Previously, the public necessity statement centered around the types of records, risk assessments and other documents that were subsets the “information or data” that were the subject of the exemption;
- Revises the public necessity statement for the public meetings and records exemption by reiterating what subjects are not subject to public disclosure; and,
- Makes clarifying editorial changes.

CS by Education on March 21, 2017:

The committee substitute adds the State Board of Education to the entities to who exempt records and meeting transcripts for Florida’s community colleges must be made available.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
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The Committee on Governmental Oversight and Accountability
(Rouson) recommended the following:

Senate Amendment (with title amendment)

Delete lines 35 - 191
and insert:
technology systems owned, under contract, or maintained by a
state university or a Florida College System institution are
confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
of the State Constitution:

(a) Records held by the university or institution which
identify detection, investigation, or response practices for



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suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or
2. Information technology resources, which include:
 - a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) Those portions of risk assessments, evaluations, audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or
2. Information technology resources, which include:
 - a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or
 - b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.



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(2) Those portions of a public meeting as specified in s. 286.011 which would reveal data and information described in subsection (1) are exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. No exempt portion of an exempt meeting may be off the record. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.071(1) and s. 24(a), Art. 1 of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed to a third party.

(3) The records and portions of public meeting recordings and transcripts described in subsection (1) must be available to: the Auditor General; the Cybercrime Office of the Department of Law Enforcement; for a state university, the Board of Governors; and for a Florida College System institution, the State Board of Education. Such records and portions of meetings, recordings, and transcripts may be made available to a state or federal agency for security purposes or in furtherance of the agency's official duties.

(4) The exemptions listed in this section apply to such records or portions of public meetings, recordings, and transcripts held by the university or institution before, on, or after the effective date of this act.

(5) This section is subject to the Open Government Sunset



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Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1)(a) The Legislature finds that it is a public necessity that the following data or information from technology systems owned, under contract, or maintained by a state university or a Florida College System institution be confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution:

1. Records held by the university or institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

2. Those portions of risk assessments, evaluations, audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held



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by the university or institution, if the disclosure of such records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

a. Data or information, whether physical or virtual; or

b. Information technology resources, which include:

(I) Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

(II) Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) The Legislature also finds that those portions of a public meeting as specified in s. 286.011, Florida Statutes, which would reveal data and information described in subsection (1) are exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.071(1), Florida Statutes, and s. 24(a), Article 1 of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed to a third party.

(c) The Legislature further finds that it is a public necessity that records held by a state university or Florida



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College System institution which identify detection,
investigation, or response practices for suspected or confirmed
information technology security incidents, including suspected
or confirmed breaches, be made confidential and exempt from s.
119.07(1), Florida Statutes, and s. 24(a), Article I of the
State Constitution if the disclosure of such records would
facilitate unauthorized access to or the unauthorized
modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or
2. Information technology resources, which include:

a. Information relating to the security of the university's
or institution's technologies, processes, and practices designed
to protect networks, computers, data processing software, and
data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which
relates to the university's or institution's existing or
proposed information technology systems.

(d) Such records must be made confidential and exempt for
the following reasons:

1. Records held by a state university or Florida College
System institution which identify information technology
detection, investigation, or response practices for suspected or
confirmed information technology security incidents or breaches
are likely to be used in the investigations of the incidents or
breaches. The release of such information could impede the
investigation and impair the ability of reviewing entities to
effectively and efficiently execute their investigative duties.
In addition, the release of such information before an active
investigation is completed could jeopardize the ongoing



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investigation.

2. An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers, personal financial and health information, and educational records exempt from disclosure under the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and ss. 1002.225 and 1006.52, Florida Statutes. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of the security incident or breach to further harm.

3. Disclosure of a record, including a computer forensic analysis, or other information that would reveal weaknesses in a state university's or Florida College System institution's data security could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.

4. Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state university and Florida College System institution data and information technology resources, which would significantly



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impair the administration of vital educational programs. It is
necessary that this information be made confidential in order to
protect the technology systems, resources, and data of the
universities and institutions. The Legislature further finds
that this public records exemption be given retroactive
application because it is remedial in nature.

(2) (a) The Legislature also finds that it is a public
necessity that portions of risk assessments, evaluations,
audits, and other reports of a state university's or Florida
College System institution's information technology security
program for its data, information, and information technology
resources which are held by the university or institution be
made confidential and exempt from s. 119.07(1), Florida
Statutes, and s. 24(a), Article I of the State Constitution if
the disclosure of such portions of records would facilitate
unauthorized access to or the unauthorized modification,
disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's
or institution's technologies, processes, and practices designed
to protect networks, computers, data processing software, and
data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which
relates to the university's or institution's existing or
proposed information technology systems.

(b) The Legislature finds that it is valuable, prudent,

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214 And the title is amended as follows:
215 Delete lines 10 - 21
216 and insert:
217 portions of risk assessments, evaluations, audits, and
218 other reports of a university's or institution's
219 information technology security program; creating an
220 exemption from public meetings requirements for
221 portions of public meetings which would reveal such
222 data and information; providing an exemption from
223 public records requirements for a specified period for
224 the recording and transcript of a closed meeting;
225 authorizing disclosure of confidential and exempt
226 information to certain agencies and officers;
227 providing retroactive application;

By the Committee on Education; and Senator Brandes

581-02688-17

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A bill to be entitled

An act relating to public records and public meetings; creating s. 1004.055, F.S.; creating an exemption from public records requirements for certain records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents; creating an exemption from public records requirements for certain portions of risk assessments, evaluations, external and internal audits, and other reports of a university's or institution's information technology security program; creating an exemption from public meetings requirements for portions of public meetings which would reveal such data and information; providing an exemption from public records requirements for a specified period for the recording and transcript of a closed meeting; authorizing disclosure of confidential and exempt information to certain agencies and officers; defining the term "external audit"; providing retroactive application; providing for future legislative review and repeal of the exemptions; providing statements of public necessity; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

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

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Section 1. Section 1004.055, Florida Statutes, is created to read:

1004.055 Security of data and information technology in state postsecondary education institutions.—

(1) All of the following data or information from technology systems owned, contracted, or maintained by a state university or a Florida College System institution are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) Records held by the university or institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) Those portions of risk assessments, evaluations, external and internal audits, and other reports of the university's or institution's information technology security program for its data, information, and information technology resources which are held by the university or institution, if

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

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the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(2) Those portions of a public meeting as specified in s. 286.011 which would reveal data and information described in subsection (1) are exempt from s. 286.011 and s. 24(b), Art. 1 of the State Constitution. An exempt portion of the meeting may not be off the record. All exempt portions of such a meeting must be recorded and transcribed. The recording and transcript of the meeting must remain confidential and exempt from disclosure under s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution unless a court of competent jurisdiction, following an in camera review, determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this section. In the event of such a judicial determination, only that portion of the transcript which reveals nonexempt data and information may be disclosed.

(3) The records and portions of public meeting recordings and transcripts described in subsections (1) and (2) must be available to the Auditor General; the Cybercrime Office of the

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Department of Law Enforcement; for a state university, the Board of Governors; and for a Florida College System institution, the State Board of Education. Such records and portions of meetings, recordings, and transcripts may be made available to a state or federal agency for security purposes or in furtherance of the agency's official duties. For purposes of this section, "external audit" means an audit that is conducted by an entity other than the state university or Florida College System institution that is the subject of the audit.

(4) The exemptions listed in this section apply to such records or portions of public meetings, recordings, and transcripts held by the university or institution before, on, or after the effective date of this act.

(5) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1)(a) The Legislature finds that it is a public necessity that records held by a state university or Florida College System institution which identify detection, investigation, or response practices for suspected or confirmed information technology security incidents, including suspected or confirmed breaches, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such records would facilitate unauthorized access to or unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

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a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) Such records must be made confidential and exempt for the following reasons:

1. Records held by a state university or Florida College System institution which identify information technology detection, investigation, or response practices for suspected or confirmed information technology security incidents or breaches are likely to be used in the investigation of the incident or breach. The release of such information could impede the investigation and impair the ability of reviewing entities to effectively and efficiently execute their investigative duties. In addition, the release of such information before an active investigation is completed could jeopardize the ongoing investigation.

2. An investigation of an information technology security incident or breach is likely to result in the gathering of sensitive personal information, including identification numbers, personal financial and health information, and educational records exempt from disclosure under the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g, and ss. 1002.225 and 1006.52, Florida Statutes. Such information could be used to commit identity theft or other crimes. In addition, release of such information could subject possible victims of

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the security incident or breach to further harm.

3. Disclosure of a record, including a computer forensic analysis, or other information that would reveal weaknesses in a state university's or Florida College System institution's data security could compromise that security in the future if such information were available upon conclusion of an investigation or once an investigation ceased to be active.

4. Such records are likely to contain proprietary information about the security of the system at issue. The disclosure of such information could result in the identification of vulnerabilities and further breaches of that system. In addition, the release of such information could give business competitors an unfair advantage and weaken the security technology supplier supplying the proprietary information in the marketplace.

5. The disclosure of such records could potentially compromise the confidentiality, integrity, and availability of state university and Florida College System institution data and information technology resources, which would significantly impair the administration of vital educational programs. It is necessary that this information be made confidential in order to protect the technology systems, resources, and data of the universities and institutions. The Legislature further finds that this public records exemption be given retroactive application because it is remedial in nature.

(2)(a) The Legislature also finds that it is a public necessity that portions of risk assessments, evaluations, external and internal audits, and other reports of a state university's or Florida College System institution's information

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technology security program for its data, information, and information technology resources which are held by the university or institution be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution if the disclosure of such portions of records would facilitate unauthorized access to or the unauthorized modification, disclosure, or destruction of:

1. Data or information, whether physical or virtual; or

2. Information technology resources, which include:

a. Information relating to the security of the university's or institution's technologies, processes, and practices designed to protect networks, computers, data processing software, and data from attack, damage, or unauthorized access; or

b. Security information, whether physical or virtual, which relates to the university's or institution's existing or proposed information technology systems.

(b) The Legislature finds that it may be valuable, prudent, or critical to a state university or Florida College System institution to have an independent entity conduct a risk assessment, an audit, or an evaluation or complete a report of the university's or institution's information technology program or related systems. Such documents would likely include an analysis of the university's or institution's current information technology program or systems which could clearly identify vulnerabilities or gaps in current systems or processes and propose recommendations to remedy identified vulnerabilities.

(3) (a) The Legislature further finds that it is a public necessity that those portions of a public meeting which could

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reveal information described in subsections (1) and (2) be made exempt from s. 286.011, Florida Statutes, and s. 24(b), Article I of the State Constitution. It is necessary that such meetings be made exempt from the open meetings requirements in order to protect institutional information technology systems, resources, and data. The information disclosed during portions of meetings would clearly identify a state university's or Florida College System institution's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the institution and compromise the integrity and availability of state university or Florida College System institution data and information technology resources, which would significantly impair the administration of educational programs.

(b) The Legislature further finds that it is a public necessity that the recording and transcript of those portions of meetings specified in paragraph (a) be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution unless a court determines that the meeting was not restricted to the discussion of data and information made confidential and exempt by this act. It is necessary that the resulting recordings and transcripts be made confidential and exempt from the public record requirements in order to protect institutional information technology systems, resources, and data. The disclosure of such recordings and transcripts would clearly identify a state university's or Florida College System institution's information technology systems and its vulnerabilities. This disclosure would jeopardize the information technology security of the

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233 institution and compromise the integrity and availability of
234 state university or Florida College System institution data and
235 information technology resources, which would significantly
236 impair the administration of educational programs.

237 (c) The Legislature further finds that this public meeting
238 and public records exemption must be given retroactive
239 application because it is remedial in nature.

240 Section 3. The Division of Law Revision and Information is
241 directed to replace the phrase "the effective date of this act"
242 wherever it occurs in this act with the date this act becomes a
243 law.

244 Section 4. This act shall take effect upon becoming a law.



The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 21, 2017

I respectfully request that **Senate Bill #110**, relating to **Public Records Meetings/Information Technology/ Postsecondary Education Institutions**, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

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

Senator Jeff Brandes
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-3-17

Meeting Date

110

Bill Number (if applicable)

Topic IT SECURITY

Amendment Barcode (if applicable)

Name BRIAN LOGAN

Job Title Leg Affairs Director

Address 325 W. Gaines St

Phone 850-567-0588

Street

Tallahassee FL 32303

City

State

Zip

Email brian.logan@leg.state.fl.us

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Board of Governors

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 862

INTRODUCER: Senators Lee and Galvano

SUBJECT: Public Records/Voters and Voter Registration

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Carlton	Ulrich	EE	Favorable
2.	Kim	Ferrin	GO	Favorable
3.			RC	

I. Summary:

SB 862 makes confidential and exempt from public inspection and copying requirements all information concerning 16 and 17-year-olds who preregister to vote while they are minors; once they reach the age of 18, their information will become available like any other voter registrant or voter.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This bill will take effect July 1, 2017, but applies retroactively to all currently pre-registered 16 and 17-year-olds.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

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

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

²² FLA. CONST. art. I, s. 24(c).

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Public Records Exemption for Voter Registration Information

Current law provides a public records exemption for certain information held by an agency²⁴ for purposes of voter registration.²⁵ Specifically, the following information is confidential and exempt from public record requirements:

- All declinations to register to vote made pursuant to ss. 97.057 and 97.058, F.S.
- Information relating to the place where a person registered to vote or where a person updated a voter registration.
- The social security number, driver's license number, and Florida identification number of a voter registration applicant or voter.

In addition, the signature of a voter registration applicant or a voter is exempt from copying requirements.²⁶

Voter Pre-Registration for Minors

An individual may register to vote in accordance with Florida law if he or she is at least 18 years old, a United States citizen, a legal resident of Florida, and a legal resident of the county in which he or she seeks to register.²⁷ However, individuals who are otherwise qualified to register to vote but are not yet 18 may pre-register to vote on or after the individual's 16th birthday.²⁸

Publication of Voter Information

Since 1998 when the State first began compiling all 67 counties' "official" voter registration lists into a unified statewide voter registration database,²⁹ anyone has been able to request an electronic copy of every Florida voters' non-exempt information.³⁰ The rise of the Internet has

²³ Section 119.15(7), F.S.

²⁴ Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."

²⁵ Section 97.0585, F.S.

²⁶ Section 97.0585(2), F.S.

²⁷ Section 97.041(1)(a), F.S.

²⁸ Section 97.041(1)(b), F.S.

²⁹ Ch. 97-13, ss. 39, 56, Laws of Fla., (effective January 1, 1998).

³⁰ In 2001, the Legislature sought to adopt a much more restrictive public records scheme, in connection with a then-newly-authorized statewide voter registration database. Ch. 2001-40, s. 70-72, Laws of Fla. (Codified at s. 98.0979, F.S. (2002)). Three years later, a Leon County circuit court judge struck the statute down void ab initio on procedural grounds, finding that it was adopted in a general elections bill without the requisite statement of public necessity in violation of Art. I, s. 24 of the Florida Constitution—the effect being that the statute never existed or was never on the books. *See Cable News Network, et al. v. Florida Dep't of State*, Case No. 2004 CA 001259 (2nd Jud. Cir., July 1, 2004) (Final Declaratory Summary Judgment). The Legislature repealed the statute the following year. See, Ch. 2005-278, s. 55, Laws of Fla.; Ch. 2005-277, s. 77, Laws of Fla.

enabled publication of this information for literally the entire world to see at little to no cost, thereby giving rise to serious personal privacy issues.

At least one web site³¹ that contains commercial or sponsored links, provides extensive details about every registered and pre-registered voter in the State — including the voter's name, date of birth, residence address, mailing address, voter ID number, when the person registered to vote, what political party the person is affiliated with, the voter's telephone number, e-mail address, race, precinct number, as well as other information about district races in which the person is eligible to vote. This information can be accessed by voter's name, birth date, or address.

III. Effect of Proposed Changes:

The bill makes confidential and exempt from public inspection and copying requirements all information concerning 16 and 17-year-olds who preregister to vote while they are minors; once they become adults, their non-exempt information will become available to the same degree as any other adult voter registrant or voter.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

This bill will take effect July 1, 2017, but applies retroactively to all currently pre-registered 16 and 17-year-olds.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c) of Article I of the Florida Constitution requires a two-thirds vote of the members present and voting for passage of a newly created or expanded public-records or public-meetings exemption. Therefore, this bill requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c) of Article I of the Florida Constitution requires a public necessity statement for a newly created or expanded public records or public meetings exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption.

³¹ See <http://flvoters.com/> (last visited on March 6, 2017).

This public necessity statement provides that disclosure of information concerning preregistered voter registration applicants who are 16 or 17 years of age which is held by an agency could be misused to solicit, harass, stalk, or intimidate such individuals, and without such protection, a minor may be less likely to take advantage of preregistering to vote.

Breadth of Exemption

Section 24(c) of Article I of the Florida Constitution requires a public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

The bill expands the public record exemption to include all information concerning preregistered voter registration applicants who are 16 or 17 years of age which is held by an agency.

Generally, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may adversely impact commercial web sites and businesses that profit from sharing Florida voter registration data. However, since the bill only protects the information of minors before they become age-eligible to vote, the fiscal impact, if any, is unclear.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 97.0585 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Lee

20-00676-17

2017862__

A bill to be entitled

An act relating to public records; amending s. 97.0585, F.S., and reenacting subsection (3), relating to a public records exemption for information regarding voters and voter registration; providing an exemption from public records requirements for information concerning preregistered voter registration applicants who are minors; providing for future legislative review and repeal; providing for retroactive application; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (1) of section 97.0585, Florida Statutes, is amended, and subsection (3) of that section is reenacted, to read:

97.0585 Public records exemption; information regarding voters and voter registration; confidentiality.—

(1) The following information held by an agency, as defined in s. 119.011, and obtained for the purpose of voter registration is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may be used only for purposes of voter registration:

(a) All declarations to register to vote made pursuant to ss. 97.057 and 97.058.

(b) Information relating to the place where a person registered to vote or where a person updated a voter registration.

(c) The social security number, driver license number, and Florida identification number of a voter registration applicant or voter.

20-00676-17

2017862__

(d) All information concerning preregistered voter registration applicants who are 16 or 17 years of age. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(3) This section applies to information held by an agency before, on, or after the effective date of this exemption.

Section 2. The Legislature finds that it is a public necessity that all information concerning preregistered voter registration applicants who are 16 or 17 years of age which is held by an agency, and obtained for the purpose of voter registration, be confidential and exempt from public records requirements and be used only for purposes of voter registration. Information concerning preregistered 16-year-old and 17-year-old voter registration applicants could be misused if released. Minors are more vulnerable members of society, and the widespread release of information acquired through preregistration activities may be used to solicit, harass, stalk, or intimidate such individuals. Without such protection, a minor may be less likely to take advantage of preregistering to vote, thus hindering the effective and efficient administration of a program that otherwise encourages greater participation in the democratic process.

Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 22, 2017

I respectfully request that **Senate Bill #862**, relating to Public Records/ Voters and Voter Registration, be placed on the:

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

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

Senator Tom Lee
Florida Senate, District 20

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17
Meeting Date

862
Bill Number (if applicable)

Topic Voting

Amendment Barcode (if applicable)

Name Kelly Quintero

Job Title legislative advocate

Address 540 Beverly Ct
Street
Tallahassee FL 32301
City State Zip

Phone 772 204 1792

Email lwvfvadvocacy@gmail.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.

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)

April 3rd
Meeting Date

862
Bill Number (if applicable)

Topic Pub Rec / Voter Registration

Amendment Barcode (if applicable)

Name Evan Power

Job Title _____

Address 120 S. Monroe St.
Street

Phone (850) 515-1662

Tallahassee FL 32303
City State Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Election Software & Systems

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1166

INTRODUCER: Senator Lee and others

SUBJECT: Honor and Remember Flag

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sanders	Ryon	MS	Favorable
2.	Peacock	Ferrin	GO	Favorable
3.			RC	

I. Summary:

SB 1166 designates the Honor and Remember Flag as the state's emblem of the service and sacrifice of the brave men and women of the U.S. Armed Forces who gave their lives in the line of duty. The bill authorizes the flag to be displayed at specified state-owned locations on certain days. The bill also authorizes local governments to display the flag.

The bill takes effect January 1, 2018.

II. Present Situation:

Display of Flags

Flag of the United States

Current law requires the flag of the United States to be displayed daily when the weather permits, from a staff upon the state capitol and upon each county courthouse.¹ Additionally, the U.S. flag must be flown on election day at each polling place,² at each publicly supported and controlled auditorium,³ the grounds of every public K-20 educational institution, and within each classroom of a public K-20 educational institution.⁴ Further guidance on the protocol and display of the U.S. flag is provided by the Florida Department of State.⁵

¹ Section 256.01, F.S.

² Section 256.011, F.S.

³ Section 256.11, F.S.

⁴ Section 1000.06, F.S.

⁵ See Florida Department of State, *Flag Protocols and Display, The United States Flag*, available at <http://dos.myflorida.com/about-the-department/flag-and-seal-protocol/flag-protocols-and-display/> (last visited March 20, 2017).

State Flag of Florida

Section 256.015, F.S., directs the Governor to adopt a protocol on flag display. The protocol must provide guidelines for the proper display of the state flag and for the lowering of the state flag to half-staff on appropriate occasions, such as on holidays and upon the death of high-ranking state officials, uniformed law enforcement and fire service personnel, and prominent citizens.⁶ The state flag must be displayed on the grounds of every public K-20 educational institution.⁷

POW – MIA Flag

A POW-MIA flag must be displayed at each state-owned building at which the U.S. flag is displayed, if the POW-MIA flag is available free of charge to the agency that occupies the building and if such display is in accordance with federal laws and regulations.⁸ The Department of Transportation must display the flag year round at each rest area along an interstate highway in the state.⁹ Additionally, the Department of Environmental Protection must display the POW-MIA flag year round at each state park where the U.S. flag is displayed.¹⁰

Firefighter Memorial Flag

The Division of State Fire Marshal of the Department of Financial Services is directed by law to design, produce, and implement the creation and distribution of an official state Firefighter Memorial Flag to honor firefighters who died in the line of duty.¹¹ The flag may be displayed at memorial or funeral services of firefighters who have died in the line of duty, at firefighter memorials, at fire stations, at the Fallen Firefighter Memorial located at the Florida State Fire College in Ocala, by the families of fallen firefighters, and at any other location designated by the State Fire Marshal.¹²

Honor and Remember Flag

The Honor and Remember Flag was created by the 501(c)3 charitable organization Honor and Remember, Inc., to serve as a visible reminder to all Americans of the U.S. military lives that have been lost in the defense and service of our national freedoms.¹³ The mission of the organization is to establish the Honor and Remember Flag as a nationally recognized flag.¹⁴

The Honor and Remember Flag has been endorsed by various military veteran related organizations.¹⁵ Additionally, 21 states have adopted the Honor and Remember Flag as an

⁶ Section 256.015(1), F.S. See also Executive Office of the Governor, *Flag Protocol* (Sept. 26, 2012), available at <http://www.flgov.com/wp-content/uploads/2012/09/EOG-Flag-Protocol-FINAL1.pdf> (last visited March 20, 2017).

⁷ Sections 256.032 and 1000.06(1), F.S.

⁸ Section 256.12, F.S.

⁹ Section 256.13, F.S.

¹⁰ Section 256.14, F.S.

¹¹ Section 256.15, F.S.

¹² Section 256.15(1), F.S.

¹³ Honor and Remember, *Our Mission*, available at <http://www.honorandremember.org/our-mission/> (last visited March 20, 2017).

¹⁴ *Id.*

¹⁵ Honor and Remember, *Supporters, Official Endorsements*, available at <http://www.honorandremember.org/category/supporters/official-endorsements/> (last visited March 20, 2017).

official state symbol of remembrance.¹⁶ Twenty-two additional states, including Florida, have introduced legislation to adopt the flag as an official state symbol.¹⁷

All sales of Honor and Remember Flag merchandise, to include the flag itself, and donations are applied to fulfilling the goals of the organization: encouraging congressional and state adoptions, national awareness and in particular, presenting families of the fallen with personalized flags.¹⁸

III. Effect of Proposed Changes:

Section 1 creates s. 256.16, F.S., and designates the Honor and Remember Flag (flag) as the state's emblem of the service and sacrifice of the brave men and women of the U.S. Armed Forces who gave their lives in the line of duty.

The bill authorizes the flag to be displayed at each state-owned building at which the U.S. flag is displayed; all state-owned military memorials; and any other state-owned location deemed appropriate.

The bill also authorizes the flag to be displayed on the following days:

- Armed Forces Day, the third Saturday in May;
- Memorial Day, the last Monday in May;
- Flag Day, June 14;
- Independence Day, July 4;
- National POW-MIA Recognition Day, the third Friday in September;
- Veterans' Day, November 11;
- Gold Star Mother's Day, the last Sunday in September; and
- A day on which a member of the U.S. Armed Forces who is a resident of the state loses his or her life in the line of duty.

The flag may be displayed in a manner designed to ensure visibility to the public with no more than two additional flags when displayed together on a flagpole. Additionally, a flag displayed pursuant to these provisions of the bill must be manufactured in the U.S.

A local government may choose to display the flag at any local government building at which the U.S. flag is displayed and at any other local government location it deems appropriate, on the days specified above, in a manner designed to ensure visibility to the public, and with no more than two additional flags when displayed together on a flagpole.

Section 2 provides an effective date of January 1, 2018.

¹⁶ Honor and Remember, *Legislation, Progress Map*, available at <http://www.honorandremember.org/progress-map/> (last visited March 20, 2017).

¹⁷ *Id.*

¹⁸ Honor and Remember, *FAQ, Where do the donations go?*, available at <http://www.honorandremember.org/faq/> (last visited March 21, 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 the counties' or municipalities' ability to raise revenue, or reduce the percentage of state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The fiscal impact is indeterminate because the provisions of the bill are permissive.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 215.16 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Lee

20-01558-17

20171166__

1 A bill to be entitled
 2 An act relating to the Honor and Remember flag;
 3 creating s. 256.16, F.S.; designating the Honor and
 4 Remember flag as an emblem of the state; authorizing
 5 that the flag be displayed at specified locations, on
 6 specified days, and in a specified manner; requiring
 7 displayed flags to be manufactured in the United
 8 States; authorizing local governments to display the
 9 flag; providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Section 256.16, Florida Statutes, is created to
 14 read:
 15 256.16 Honor and Remember flag.—
 16 (1) The Honor and Remember flag is designated as the
 17 state's emblem of the service and sacrifice of the brave men and
 18 women of the United States Armed Forces who have given their
 19 lives in the line of duty.
 20 (2) The flag may be displayed:
 21 (a) At the following locations:
 22 1. Each state-owned building at which the United States
 23 flag is displayed.
 24 2. All state-owned military memorials.
 25 3. Any other state-owned location deemed appropriate.
 26 (b) On the following days:
 27 1. Armed Forces Day, the third Saturday in May.
 28 2. Memorial Day, the last Monday in May.
 29 3. Flag Day, June 14.

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

20-01558-17

20171166__

30 4. Independence Day, July 4.
 31 5. National POW-MIA Recognition Day, the third Friday in
 32 September.
 33 6. Veterans' Day, November 11.
 34 7. Gold Star Mother's Day, the last Sunday in September.
 35 8. A day on which a member of the United States Armed
 36 Forces who is a resident of the state loses his or her life in
 37 the line of duty.
 38 (c) In a manner designed to ensure visibility to the
 39 public.
 40 (d) With no more than two additional flags when displayed
 41 together on a flagpole.
 42 (3) A flag displayed pursuant to this section must be
 43 manufactured in the United States.
 44 (4) A local government may choose to display the flag in
 45 accordance with paragraphs (2)(b), (c), and (d) at any local
 46 government building at which the United States flag is displayed
 47 and at any other local government location it deems appropriate.
 48 Section 2. This act shall take effect January 1, 2018.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 22, 2017

I respectfully request that **Senate Bill #1166**, relating to the Honor and Remember Flag, be placed on the:

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

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

Senator Tom Lee
Florida Senate, District 20

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 492

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families, and Elder Affairs Committee and Senator Young

SUBJECT: Public Records/Victim of Alleged Sexual Harassment/Identifying Information

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.	Kim	Ferrin	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 492 creates an exemption from the public records law for identifying information of an alleged victim of sexual harassment.

The bill provides the exemption is subject to the Open Government Sunset Review Act and unless reviewed and saved from repeal through reenactment by the Legislature shall be repealed on October 2, 2022.

This bill requires a two-thirds vote of each chamber for passage because it creates a public records exemption.

The bill is not expected to have a fiscal impact on the state and will become effective upon becoming law.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

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

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Sexual Harassment

It is unlawful to harass a person (an applicant or employee) because of that person's sex. Harassment can include "sexual harassment" or unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.²⁴

Harassment does not have to be of a sexual nature, however, it can include offensive remarks about a person's sex. For example, it is illegal to harass a woman by making offensive comments about women in general.²⁵ Both victim and the harasser can be either a woman or a man, and the victim and harasser can be the same sex.

Although Title VII of the Civil Rights Act of 1964 does not "prohibit simple teasing, offhand comments, or isolated incidents that are not very serious, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment or when it results in an adverse employment decision (such as the victim being fired or demoted)."²⁶ The harasser can be the victim's supervisor, a supervisor in another area, a co-worker, or someone who is not an employee of the employer, such as a client or customer.

Florida law states that sexual harassment is a form of discrimination.²⁷ The Department of Management Services, the state's personnel agency, has adopted rules on sexual harassment applicable to all executive agencies. Rule 60L-40.001, F.A.C., provides that,

Sexual harassment means unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature from any person directed towards or in the presence of an employee or applicant when:

- (a) Submission to such conduct is either explicitly or implicitly a term or condition of an individual's employment;
- (b) Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual; or
- (c) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ U.S. Equal Employment Opportunity Commission website https://www.eeoc.gov/laws/types/sexual_harassment.cfm. (Last visited March 15, 2017.)

²⁵ *Id.*

²⁶ U.S. Equal Employment Opportunity Commission https://www1.eeoc.gov/laws/types/sexual_harassment.cfm?renderforprint=1 (Last visited March 30, 2017.)

²⁷ Section 110.1221, F.S.

Public Records Exemptions Related to Discrimination and Employee Misconduct

Records related to discrimination on the basis of sex, race, color, religion, national origin, age, handicap, or marital status, which are held by any government agency are exempt from public disclosure until:

- A finding is made relating to probable cause;
- The investigation of the complaint becomes inactive; or
- The complaint or other record becomes part of the official record of any hearing or court proceeding.²⁸

These records may be released to a state or federal agency in furtherance of that agency's duties.²⁹ If an alleged victim chooses not to file a complaint, and requests that the records of the complaint remain confidential, all records relating to the allegation are considered confidential and exempt.³⁰

Complaints of misconduct filed with an agency against an employee is confidential and exempt from public disclosure until one of the following events occurs:

- The investigation ceases to be active; or
- The agency has concluded its investigation and provides written notice to the employee who is the subject of the complaint.³¹

The written notice will inform the employee whether the agency will or will not proceed with disciplinary action and file charges.³²

Universities have an additional public records exemption. Personnel records at a university limit access to sexual harassment "records which identify the complainant, a witness, or information which could reasonably lead to the identification of the complainant or a witness are limited-access."³³

III. Effect of Proposed Changes:

The bill amends s. 119.071, F.S., to provide that personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from public record requirements indefinitely. The government agency who holds the identity of the alleged victim can only reveal the personal identifying information to another governmental entities in the furtherance of their duties.

The bill provides a public necessity statement as required by the State Constitution, specifying that it is a public necessity to protect personal identifying information of alleged victims because disclosure of the information could place them at risk of further harassment and retaliation. In

²⁸ Section 119.071(2)(g)1., F.S.

²⁹ Section 119.017(2)(g)1.b., F.S.

³⁰ Section 119.017(2)(g)2., F.S.

³¹ Section 119.071(2)(k)1., F.S.

³² Section 119.071(2)(k)1., F.S.

³³ Section 1012.91(2), F.S.

addition, the potential for disclosure of identifying information could discourage alleged victims from reporting instances of alleged harassment.

The bill provides for repeal of the exemption on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

This bill becomes effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the state purpose of the law. The bill exempts certain identifying information contained in state agency investigations of sexual harassment indefinitely. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide any means of releasing the identity of the alleged victim of the sexual harassment to anyone other than another governmental entity. This may be problematic because, it could be interpreted in a manner that prohibits the subject of the alleged sexual harassment to confront their accuser and defend him or herself.

This public records exemption will have broad application to all state and local government entities, as well as private companies that act on behalf of an agency.³⁴ Each of these entities may have different human resources policies for investigating and disciplining employees. While the bill clearly exempts outside access to identifying information, it is unclear what effect this public records exemption will have on the investigatory and disciplinary policies in these entities.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

CS/CS by Governmental Oversight and Accountability on April 3, 2017:

The CS/CS provides that another governmental entity may have access to the identifying information of the alleged sexual harassment victim.

CS by Children, Families, and Elder Affairs on March 21, 2017:

The committee substitute removes examples of personal identifying information that would be exempt from the public records law.

B. Amendments:

None.

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

³⁴ See footnote 20.



291542

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
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	.	
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The Committee on Governmental Oversight and Accountability
(Young) recommended the following:

Senate Amendment (with title amendment)

Delete line 21
and insert:
Constitution. Such information may be disclosed to another
governmental entity in the furtherance of its official duties
and responsibilities. This paragraph is subject to the Open
Government

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



291542

11 And the title is amended as follows:
12 Delete line 6
13 and insert:
14 sexual harassment; authorizing the disclosure of such
15 information under certain circumstances; providing for
16 future legislative

By the Committee on Children, Families, and Elder Affairs; and
Senator Young

586-02679-17

2017492c1

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for personal identifying information of the alleged victim in an allegation of sexual harassment; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

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

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

(2) AGENCY INVESTIGATIONS.—

(m) Personal identifying information of the alleged victim in an allegation of sexual harassment is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that personal identifying information of the alleged victim in an allegation of sexual harassment be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The disclosure of

Page 1 of 2

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

586-02679-17

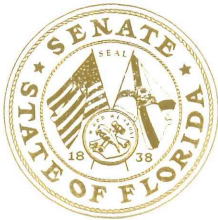
2017492c1

such information could harm alleged victims by placing them at risk of further harassment and retaliation. Additionally, the potential for disclosure of such information could create a disincentive for victims to report instances of harassment. The Legislature finds that the potential harm that may result from the release of such information outweighs any public benefit that may be derived from the disclosure of such information.

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

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

March 22, 2017

Senator Dennis Baxley, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chair Baxley,

My Senate Bill 492, Public Records/ Victim of Alleged Sexual Harassment/ Identifying Information has been referred to your committee for a hearing. I respectfully request that this bill be placed on the next available agenda.

If I may provide any additional information, please do not hesitate to contact me.

Sincerely,


Dana Young
State Senator – 18th District

cc: Jay Ferrin, Staff Director – Committee on Governmental Oversight and Accountability

REPLY TO:

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17
Meeting Date

492
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Samantha Fekrin

Job Title Deputy Legislative Affairs Director

Address 4050 Esplanade Way
Street
Tallahassee FL 32308
City State Zip

Phone _____

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing DMS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1352

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Young

SUBJECT: Division of Administrative Hearings

DATE: April 4, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1352 changes the employment classification for an Administrative Law Judge (ALJ) serving in the Division of Administrative Hearings (DOAH) from Career Service to Senior Management Service.

The bill also requires the chief ALJ, who is appointed by the Governor and Cabinet and serves as the DOAH director, to appoint ALJs from a list of individuals nominated by a statewide nominating commission. The bill specifies the composition of the nominating commission and the process by which its members must be appointed.

The bill also establishes a process by which the chief ALJ must appoint, reappoint, or remove ALJs and specifies the length of ALJs' terms, which are not to exceed eight years. The bill requires DOAH to maintain the 33 ALJ positions as they exist on June 30, 2017, and allows each currently serving ALJ to continue to serve until June 30, 2018. Each ALJ currently serving may be appointed under the reappointment process.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

Administrative Law Judges

Administrative Law Judges (ALJs) preside over disputes arising under the Administrative Procedure Act (APA)¹ and other state laws in which the substantial interests of a person are determined by an agency² and which involve a disputed issue of material fact.³ When a state agency proposes to take some action that is adverse to a person, the affected person is normally entitled to request an administrative hearing to determine the matter.⁴

Each ALJ is employed by the Division of Administrative Hearings (DOAH) and must have been a member of The Florida Bar in good standing for the preceding five years.⁵ DOAH is administratively housed under the Department of Management Services (DMS); however, DOAH is not subject to the control, supervision, or direction of DMS. The head of DOAH is a director who also serves as chief ALJ. The director must be appointed by the Administration Commission⁶ and confirmed by the Senate. The director and any deputy chief ALJ must possess the same minimum qualifications as the ALJs employed by DOAH.⁷

Career Service System

Chapter 110, F.S., establishes the state's personnel management system. The system must provide means to recruit, select, train, develop, and maintain an effective and responsible workforce and must include policies and procedures for employee hiring and advancement, training and career development, position classification, salary administration, benefits,

¹ Chapter 120, F.S.

² The term "agency" means the following officers or governmental entities if acting pursuant to powers other than those derived from the Constitution:

(a) The Governor; each state officer and state department, and each departmental unit described in s. 20.04, F.S.; the Board of Governors of the State University System; the Commission on Ethics; the Fish and Wildlife Conservation Commission; a regional water supply authority; a regional planning agency; a multicounty special district, but only if a majority of its governing board is comprised of nonelected persons; educational units; and each entity described in chs. 163, 373, 380, and 582, F.S., and s. 186.504, F.S.

(b) Each officer and governmental entity in the state having statewide jurisdiction or jurisdiction in more than one county.

(c) Each officer and governmental entity in the state having jurisdiction in one county or less than one county, to the extent they are expressly made subject to this chapter by general or special law or existing judicial decisions.

This definition does not include a municipality or legal entity created solely by a municipality; a legal entity or agency created in whole or in part pursuant to part II of ch. 361, F.S.; a metropolitan planning organization created pursuant to s. 339.175, F.S.; a separate legal or administrative entity created pursuant to s. 339.175, F.S., of which a metropolitan planning organization is a member; an expressway authority pursuant to ch. 348, F.S. or any transportation authority or commission under ch. 343, F.S., or ch. 349, F.S.; or a legal or administrative entity created by an interlocal agreement pursuant to s. 163.01(7), F.S., unless any party to such agreement is otherwise an agency pursuant to this definition. Section 120.52(1), F.S.

³ Section 120.57(1), F.S.

⁴ DOAH, *Representing Yourself Before the Division of Administrative Hearings*, <https://www.doah.state.fl.us/ALJ/RepYourself.pdf> (last visited March 28, 2017).

⁵ Section 120.65(4), F.S.

⁶ The Administration Commission is part of the Executive Office of the Governor and is comprised of the Governor and Cabinet. Section 14.202, F.S.

⁷ Section 120.65(1), F.S.

discipline, discharge, employee performance evaluations, affirmative action, and other related activities.⁸

DMS is charged with establishing and maintaining a classification and compensation program addressing Career Service, Selected Exempt Service, and Senior Management Service positions.⁹ The classification of a position determines the types of benefits assigned to the position and the compensation and collective bargaining status of the position. A position must be classified as Career Service unless it is specifically exempted by statute.¹⁰

A Career Service employee who has satisfactorily completed at least a one-year probationary period may only be suspended or dismissed for cause. Cause includes poor performance, negligence, inefficiency or inability to perform assigned duties, insubordination, violation of the provisions of law or agency rules, conduct unbecoming a public employee, misconduct, habitual drug abuse, or conviction of any crime.¹¹ Career Service employees that have completed the probationary period are also entitled to a grievance process¹² and have the right to appeal a suspension, reduction in pay, demotion, involuntary transfer of more than 50 miles by highway, or dismissal.¹³

Selected Exempt Service is a separate system of personnel administration for positions that are exempt from the Career Service System.¹⁴ Employees in the Selected Exempt Service serve at the pleasure of the agency head and are subject to suspension, dismissal, reduction in pay, demotion, transfer, or other personnel action at the discretion of the agency head.¹⁵ The Selected Exempt Service provides greater pay and benefits overall than are provided for Career Service employees, but less pay and benefits overall than are provided for the Senior Management Service.¹⁶

Current law exempts from the Career Service System all positions that require as a prerequisite to employment the receipt of a Bachelor of Laws or Juris Doctor degree from a law school accredited by the American Bar Association and thereafter membership in The Florida Bar. However, attorneys who serve as ALJs within DOAH are specifically excluded from this exemption; therefore, they are classified as Career Service employees.¹⁷

III. Effect of Proposed Changes:

Section 1 repeals the provision that excludes attorneys who serve as ALJs from the Career Service exemption, and classifies ALJs as Senior Management Service employees.

⁸ Section 110.105(1), F.S.

⁹ Section 110.2035(1), F.S.

¹⁰ Section 110.205(1), F.S.

¹¹ Section 110.227(1), F.S.

¹² Section 110.227(4), F.S.

¹³ Section 110.227(5) and (6), F.S.

¹⁴ Section 110.602, F.S.

¹⁵ Section 110.604, F.S.

¹⁶ See s. 110.603, F.S.

¹⁷ Section 110.205(2)(r), F.S.

Section 2 requires full-time ALJs to be appointed by the chief ALJ, and prohibits an ALJ from engaging in the private practice of law during his or her term of office. The ALJ must be appointed from a list of three individuals nominated by a statewide nominating commission created by the bill.

The statewide nominating commission must be composed of the following members:

- Three members appointed by the Governor, at least one of whom must be a minority person as defined in s. 288.703, F.S.;
- Two members appointed by the Attorney General;
- Two members appointed by the Chief Financial Officer; and
- Two members appointed by the Commissioner of Agriculture.

Beginning July 1, 2017, the Governor and each member of the Cabinet must appoint one member to serve a two-year term and appoint the remaining members to serve four-year terms. Thereafter, each member must be appointed for a four-year term. If a vacancy occurs on the nominating commission, it must be filled by the original appointing authority for the unexpired balance of the term. The bill administratively houses the nominating commission within DOAH, and requires the meetings and determinations of the nominating commission to be open to the public.

The bill requires each ALJ to be appointed for an eight-year term, but authorizes the chief ALJ to remove an ALJ during their term for cause. Before the expiration of an ALJ's term, the nominating commission must review the ALJ's conduct and determine whether the ALJ's performance is satisfactory. In determining whether an ALJ's performance is satisfactory, the commission must consider the extent to which the ALJ has met the requirements of the APA. The nominating commission must report its findings to the chief ALJ at least six months before the ALJ's term expires. The chief ALJ must review the commission's report and may reappoint the ALJ for an additional eight-year term. If the chief ALJ does not reappoint the ALJ, he or she must inform the nominating commission. The ALJ must continue serving until a successor is appointed. If a vacancy occurs during an ALJ's unexpired term, if the nominating commission does not find the ALJ's performance satisfactory, or if the chief ALJ does not reappoint the ALJ, the chief ALJ must appoint a successor judge for an eight-year term in accordance with the process described below.

Each ALJ must be appointed by June 30, 2018, for a term beginning on July 1, 2018. For the term beginning on July 1, 2018, ALJs must be appointed in the following manner:

- Eight ALJs appointed to a two-year term;
- Eight ALJs appointed to a four-year term;
- Eight ALJs appointed to a six-year term; and
- Nine ALJs appointed to an eight-year term.

Thereafter, each term of office must be eight years, and there is no limit to the number of terms and ALJ may serve.

The bill requires DOAH to maintain the 33 ALJ positions in existence as of June 30, 2017, and allows each ALJ to continue to serve until June 30, 2018. The bill specifies that it does not

prohibit an ALJ serving before July 1, 2018, from being appointed to serve as an ALJ by the chief ALJ.

Section 3 provides an effective date of July 1, 2107.

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:

None.

C. Government Sector Impact:

The change in the classification of the 33 ALJ positions from Career Service employees to Senior Management Service employees will probably have a negative fiscal impact to the state because the Senior Management classification provides greater pay and benefits than Career Service or Select Exempt Service.¹⁸

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 110.205 and 120.65 of the Florida Statutes.

¹⁸ See s. 110.603, F.S.

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 April 3, 2017:

- Places ALJs in the Senior Management Service;
- Retains existing law for the appointment of the chief ALJ and DOAH director by the Governor and Cabinet;
- Authorizes the chief ALJ to appoint, reappoint, and remove ALJs; and
- Increases the regular term for ALJs from four years to eight years.

- B. **Amendments:**

None.



667558

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (j), (r), and (w) of subsection (2)
of section 110.205, Florida Statutes, are amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not
covered by this part include the following:

(j) The appointed secretaries and the State Surgeon



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General, assistant secretaries, deputy secretaries, and deputy assistant secretaries of all departments; attorneys who serve as administrative law judges pursuant to s. 120.65; the executive directors, assistant executive directors, deputy executive directors, and deputy assistant executive directors of all departments; the directors of all divisions and those positions determined by the department to have managerial responsibilities comparable to such positions, which positions include, but are not limited to, program directors, assistant program directors, district administrators, deputy district administrators, the Director of Central Operations Services of the Department of Children and Families, the State Transportation Development Administrator, the State Public Transportation and Modal Administrator, district secretaries, district directors of transportation development, transportation operations, transportation support, and the managers of the offices of the Department of Transportation specified in s. 20.23(3)(b). Unless otherwise fixed by law, the department shall set the salary and benefits of these positions and the positions of county health department directors and county health department administrators of the Department of Health in accordance with the rules of the Senior Management Service.

(r) All positions not otherwise exempt under this subsection which require as a prerequisite to employment: licensure as a physician pursuant to chapter 458, licensure as an osteopathic physician pursuant to chapter 459, licensure as a chiropractic physician pursuant to chapter 460, including those positions which are occupied by employees who are exempted from licensure pursuant to s. 409.352; licensure as an engineer



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pursuant to chapter 471, which are supervisory positions; or for 12 calendar months, which require as a prerequisite to employment that the employee have received the degree of Bachelor of Laws or Juris Doctor from a law school accredited by the American Bar Association and thereafter membership in The Florida Bar, ~~except for any attorney who serves as an administrative law judge pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a).~~ Unless otherwise fixed by law, the department shall set the salary and benefits for these positions in accordance with the rules established for the Selected Exempt Service.

(w) Managerial employees, as defined in s. 447.203(4), confidential employees, as defined in s. 447.203(5), and supervisory employees who spend the majority of their time communicating with, motivating, training, and evaluating employees, and planning and directing employees' work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors. Excluded are employees also designated as special risk or special risk administrative support ~~and attorneys who serve as administrative law judges pursuant to s. 120.65 or for hearings conducted pursuant to s. 120.57(1)(a).~~ Additionally, registered nurses licensed under chapter 464, dentists licensed under chapter 466, psychologists licensed under chapter 490 or chapter 491, nutritionists or dietitians licensed under part X of chapter 468, pharmacists licensed under chapter 465, psychological specialists licensed under chapter 491, physical



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therapists licensed under chapter 486, and speech therapists licensed under part I of chapter 468 are excluded, unless otherwise collectively bargained.

Section 2. Subsections (1) through (4) of section 120.65, Florida Statutes, are amended to read:

120.65 Administrative law judges.—

(1) The Division of Administrative Hearings within the Department of Management Services shall be headed by a director who shall be appointed by the Administration Commission and confirmed by the Senate. The director, who shall also serve as the chief administrative law judge, and any deputy chief administrative law judge must possess the same minimum qualifications as the administrative law judges employed by the division. The Deputy Chief Judge of Compensation Claims must possess the minimum qualifications established in s. 440.45(2) and shall report to the director. The division is ~~shall be~~ a separate budget entity, and the director shall be its agency head for all purposes. The Department of Management Services shall provide administrative support and service to the division to the extent requested by the director. The division shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The chief administrative law judge shall appoint full-time administrative law judges to conduct hearings in accordance with this chapter. A person may not serve as an administrative law judge unless he or she has been a member of The Florida Bar in good standing for the previous 5 years. An administrative law



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judge may not engage in the private practice of law during his or her term of office.

(a)1. Except as provided in paragraph (b), the chief administrative law judge shall appoint an administrative law judge from a list of three persons nominated by a statewide nominating commission. The statewide nominating commission shall be composed of three members, at least one of whom must be a minority person as defined in s. 288.703, appointed by the Governor; two members appointed by the Attorney General; two members appointed by the Chief Financial Officer; and two members appointed by the Commissioner of Agriculture.

2. Beginning July 1, 2017, the Governor and each member of the Cabinet shall appoint one member of the statewide nominating commission to serve a 2-year term and appoint the remaining members to serve 4-year terms. Thereafter, each member shall be appointed for a 4-year term. A vacancy occurring on the commission shall be filled by the original appointing authority for the unexpired balance of the term.

3. The meetings and determinations of the statewide nominating commission as to the administrative law judges shall be open to the public.

4. The statewide nominating commission shall be administratively housed within the division.

(b) Each administrative law judge shall be appointed for an 8-year term, but during his or her term of office may be removed by the chief administrative law judge for cause. Before the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. In determining



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whether a judge's performance is satisfactory, the commission shall consider the extent to which the judge has met the requirements of this chapter. The commission shall report its finding to the chief administrative law judge no later than 6 months before the expiration of the judge's term of office. The chief administrative law judge shall review the commission's report and may reappoint the administrative law judge for an additional 8-year term. If the chief administrative law judge does not reappoint the judge, the chief administrative law judge shall inform the commission. The judge shall remain in office until the chief administrative law judge has appointed a successor judge in accordance with this subsection. If a vacancy occurs during a judge's unexpired term, the commission does not find the judge's performance satisfactory, or the chief administrative law judge does not reappoint the judge, the chief administrative law judge must appoint a successor judge for an 8-year term in accordance with paragraph (a).

(c) The chief administrative law judge shall appoint each administrative law judge by June 30, 2018, for a term beginning on July 1, 2018. For the term beginning on July 1, 2018, administrative law judges shall be appointed in the following manner: eight judges appointed to a 2-year term, eight judges appointed to a 4-year term, eight judges appointed to a 6-year term, and nine judges appointed to an 8-year term. Thereafter, each term of office shall be 8 years. Nothing herein limits a chief administrative law judge's ability to reappoint an administrative law judge to additional terms in accordance with this subsection.

(d) The Division of Administrative Hearings shall maintain



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33 administrative law judges as they existed on June 30, 2017.
Each administrative law judge may continue to serve until June
30, 2018, and may be appointed for additional terms under the
process for reappointments in paragraphs (b) and (c).

~~(3)(2)~~ The director has the right to appeal actions by the Executive Office of the Governor that affect amendments to the division's approved operating budget or any personnel actions pursuant to chapter 216 to the Administration Commission, which shall decide such issue by majority vote. The appropriations committees may advise the Administration Commission on the issue. If the President of the Senate and the Speaker of the House of Representatives object in writing to the effects of the appeal, the appeal may be affirmed by the affirmative vote of two-thirds of the commission members present.

~~(4)(3)~~ Each state agency as defined in chapter 216 and each political subdivision shall make its facilities available, at a time convenient to the provider, for use by the division in conducting proceedings pursuant to this chapter.

~~(4) The division shall employ administrative law judges to conduct hearings required by this chapter or other law. Any person employed by the division as an administrative law judge must have been a member of The Florida Bar in good standing for the preceding 5 years.~~

Section 3. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:



667558

A bill to be entitled
An act relating to the Division of Administrative
Hearings; amending s. 110.205, F.S.; revising
positions at the division that are exempt from the
Career Service System; amending s. 120.65, F.S.;
requiring the chief administrative law judge to
appoint administrative law judges; prohibiting an
administrative law judge from engaging in the private
practice of law during his or her term of office;
requiring the chief administrative law judge to
appoint administrative law judges from nominees
recommended by a statewide nominating commission;
specifying the composition and term lengths of members
of the commission; providing that meetings and
determinations of the commission be open to the
public; providing that the commission be
administratively housed within the division;
specifying term lengths of administrative law judges;
prescribing procedures for the commission to review a
judge's performance before the expiration of a term;
requiring the chief administrative law judge to take
certain action regarding a judge after the
commission's review; providing for initial
appointments of administrative law judges and
staggered terms; providing transitional provisions;
providing an effective date.

By Senator Young

18-00554-17

20171352__

1 A bill to be entitled
 2 An act relating to the Division of Administrative
 3 Hearings; amending s. 110.205, F.S.; revising
 4 positions at the division that are exempt from the
 5 Career Service System; amending s. 120.65, F.S.;
 6 requiring the Administration Commission to select from
 7 full-time administrative law judges employed with the
 8 division in appointing a division director; removing
 9 the requirement that the division director is subject
 10 to Senate confirmation; deleting provisions regarding
 11 minimum qualifications of the division director and
 12 deputy chief administrative law judges; requiring the
 13 Governor to appoint administrative law judges;
 14 prohibiting an administrative law judge from engaging
 15 in the private practice of law during his or her term
 16 of office; requiring the Governor to appoint
 17 administrative law judges from nominees recommended by
 18 a statewide nominating commission unless otherwise
 19 provided; specifying the composition and term lengths
 20 of members of the commission; prohibiting certain
 21 attorneys from serving on the commission; providing
 22 that meetings and determinations of the commission are
 23 open to the public; specifying term lengths of
 24 administrative law judges; prescribing procedures for
 25 the commission to review a judge's performance before
 26 the expiration of a term; requiring the Governor to
 27 take certain action regarding a judge after the
 28 commission's review; providing for initial
 29 appointments of administrative law judges and

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

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30 staggered terms; providing transitional provisions;
 31 providing an effective date.
 32
 33 Be It Enacted by the Legislature of the State of Florida:
 34
 35 Section 1. Paragraph (r) of subsection (2) of section
 36 110.205, Florida Statutes, is amended to read:
 37 110.205 Career service; exemptions.—
 38 (2) EXEMPT POSITIONS.—The exempt positions that are not
 39 covered by this part include the following:
 40 (r) All positions not otherwise exempt under this
 41 subsection which require as a prerequisite to employment:
 42 licensure as a physician pursuant to chapter 458, licensure as
 43 an osteopathic physician pursuant to chapter 459, licensure as a
 44 chiropractic physician pursuant to chapter 460, including those
 45 positions which are occupied by employees who are exempted from
 46 licensure pursuant to s. 409.352; licensure as an engineer
 47 pursuant to chapter 471, which are supervisory positions; or for
 48 12 calendar months, which require as a prerequisite to
 49 employment that the employee have received the degree of
 50 Bachelor of Laws or Juris Doctor from a law school accredited by
 51 the American Bar Association and thereafter membership in The
 52 Florida Bar, ~~except for any attorney who serves as an~~
 53 ~~administrative law judge pursuant to s. 120.65 or for hearings~~
 54 ~~conducted pursuant to s. 120.57(1)(a).~~ Unless otherwise fixed by
 55 law, the department shall set the salary and benefits for these
 56 positions in accordance with the rules established for the
 57 Selected Exempt Service.
 58 Section 2. Subsections (1) through (4) of section 120.65,

Page 2 of 6

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Florida Statutes, are amended to read:

120.65 Administrative law judges.—

(1) The Division of Administrative Hearings within the Department of Management Services shall be headed by ~~the a~~ director of the Division of Administrative Hearings. The ~~director who~~ shall be appointed by the Administration Commission and must be a full-time administrative law judge employed by the division and confirmed by the Senate. The director, who shall ~~also serve as the chief administrative law judge, and any deputy chief administrative law judge must possess the same minimum qualifications as the administrative law judges employed by the division.~~ The Deputy Chief Judge of Compensation Claims must possess the minimum qualifications established in s. 440.45(2) and shall report to the director. The division ~~is~~ shall be a separate budget entity, and the director shall be its agency head for all purposes. The Department of Management Services shall provide administrative support and service to the division to the extent requested by the director. The division ~~is~~ shall not be subject to control, supervision, or direction by the Department of Management Services in any manner, including, but not limited to, personnel, purchasing, transactions involving real or personal property, and budgetary matters.

(2) The Governor shall appoint full-time administrative law judges to conduct hearings in accordance with this chapter. A person may not serve as an administrative law judge unless he or she has been a member of The Florida Bar in good standing for the previous 5 years. An administrative law judge may not engage in the private practice of law during his or her term of office.

(a)1. Except as provided in paragraph (b), the Governor

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shall appoint an administrative law judge from a list of three persons nominated by a statewide nominating commission. The statewide nominating commission shall be composed of three members, at least one of whom must be a minority person as defined in s. 288.703, appointed by the Governor; two members appointed by the Attorney General; two members appointed by the Chief Financial Officer; and two members appointed by the Commissioner of Agriculture.

2. Beginning July 1, 2017, the Governor and each member of the Cabinet shall appoint one member to serve a 2-year term and appoint the remaining members to serve 4-year terms. Thereafter, each member shall be appointed for a 4-year term. A vacancy occurring on the commission shall be filled by the original appointing authority for the unexpired balance of the term.

3. An attorney who appears before any administrative law judge more than 4 times a year may not serve on the statewide nominating commission. The meetings and determinations of the nominating commission as to the administrative law judges shall be open to the public.

(b) Each administrative law judge shall be appointed for a 4-year term, but during his or her term of office may be removed by the Governor for cause. Before the expiration of a judge's term of office, the statewide nominating commission shall review the judge's conduct and determine whether the judge's performance is satisfactory. In determining whether a judge's performance is satisfactory, the commission shall consider the extent to which the judge has met the requirements of this chapter. The commission shall report its finding to the Governor no later than 6 months before the expiration of the judge's term

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 117 of office. The Governor shall review the commission's report and
 118 may reappoint the administrative law judge for an additional 4-
 119 year term. If the Governor does not reappoint the judge, the
 120 Governor shall inform the commission. The judge shall remain in
 121 office until the Governor has appointed a successor judge in
 122 accordance with this subsection. If a vacancy occurs during a
 123 judge's unexpired term, the commission does not find the judge's
 124 performance satisfactory, or the Governor does not reappoint the
 125 judge, the Governor shall appoint a successor judge for a 4-year
 126 term in accordance with paragraph (c).

(c) The Governor shall appoint each administrative law
 judge by June 30, 2018, for a term beginning on July 1, 2018.
 For the term beginning on July 1, 2018, administrative law
 judges shall be appointed in the following manner: 8 judges
 appointed to a 1-year term; 8 judges appointed to a 2-year term;
 8 judges appointed to a 3-year term; and 9 judges appointed to a
 4-year term. Thereafter, each term of office shall be 4 years.

(d) The division shall maintain the 33 administrative law
 judge positions in existence as of June 30, 2017. Each
 administrative law judge may continue to serve until June 30,
 2018. This subsection does not prohibit an administrative law
 judge serving before July 1, 2018, from being appointed to serve
 as an administrative law judge pursuant to paragraph (c).

~~(3)(2)~~ The director has the right to appeal actions by the
 Executive Office of the Governor that affect amendments to the
 division's approved operating budget or any personnel actions
 pursuant to chapter 216 to the Administration Commission, which
 shall decide such issue by majority vote. The appropriations
 committees may advise the Administration Commission on the

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 146 issue. If the President of the Senate and the Speaker of the
 147 House of Representatives object in writing to the effects of the
 148 appeal, the appeal may be affirmed by the affirmative vote of
 149 two-thirds of the commission members present.

~~(4)(3)~~ Each state agency as defined in chapter 216 and each
 political subdivision shall make its facilities available, at a
 time convenient to the provider, for use by the division in
 conducting proceedings pursuant to this chapter.

~~(4) The division shall employ administrative law judges to~~
~~conduct hearings required by this chapter or other law. Any~~
~~person employed by the division as an administrative law judge~~
~~must have been a member of The Florida Bar in good standing for~~
~~the preceding 5 years.~~

Section 3. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Health Policy, *Chair*
Appropriations Subcommittee on Pre-K - 12
Education, *Vice Chair*
Commerce and Tourism
Communications, Energy, and Public Utilities
Regulated Industries

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DANA YOUNG

18th District

March 23, 2017

Senator Dennis Baxley, Chair
Senate Government Oversight and Accountability Committee
525 Knott Building
404 S. Monroe Street
Tallahassee, Florida 32399-1100

Dear Chairman Baxley,

My Senate Bill 1352, Division of Administrative Hearings has been referred to your committee for a hearing. I respectfully request that this bill be placed on your next available agenda.

Thank you for your consideration of this request. If I need to provide you with more information, please do not hesitate to contact me.

Sincerely,

Dana Young
State Senator – 18th District

cc: Jay Ferrin, Staff Director – Senate Governmental Oversight & Accountability Committee

REPLY TO:

- ☐ 1211 N. Westshore Blvd, Suite 409, Tampa, Florida 33607 (813) 281-5507
- ☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

April 3, 2017

Meeting Date

1352

Bill Number (if applicable)

Topic DOAH

667558

Amendment Barcode (if applicable)

Name FRED DUDLEY

Job Title ATTORNEY

Address 3522 THOMASVILLE RD. SUITE 301

Street

Phone (850) 294-3471

TALL

City

FL.

State

32309

Zip

Email DUDLEY@MYLISELAW.COM

Speaking: ☒ For ☒ Against ☐ Information
Amend. Orig. Bill

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

(BUT NOT ON THIS BILL)

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

1352
Bill Number (if applicable)

667558
Amendment Barcode (if applicable)

Topic _____

Name Brian Newman

Job Title Attorney

Address _____

Phone _____

Street

Email _____

City

State

Zip

Speaking: ☒ For ☒ Against ☐ Information

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

Representing Amendment orig. 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

04/03/2017

Meeting Date

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

1352

Bill Number (if applicable)

667558

Amendment Barcode (if applicable)

Topic Division of Administrative Hearings

Name Robert S. Cohen

Job Title Director and Chief Judge DOAH

Address 1230 Apalachee Parkway

Street

Tallahassee

City

FL

State

32399-3060

Zip

Phone 850-488-9675

Email Bob.Cohen@doah.state.fl.us

Speaking: ☒ For ☐ Against ☒ Information

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

Representing Division of Administrative Hearings

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)

4/3/17

Meeting Date

1352

Bill Number (if applicable)

Topic DOAH

Amendment Barcode (if applicable)

Name Amy Schrader

Job Title Attorney, Baker Donelson

Address 101 N. Monroe St., #923

Phone 850-251-2671

Street

Tallah

City

FL

State

32309

Zip

Email aschrader@bakerdonelson.com

Speaking: ☒ For ☒ Against ☐ Information

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

Representing Amendment orig

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)

9/3/17

Meeting Date

5R 1352

Bill Number (if applicable)

667558

Amendment Barcode (if applicable)

Topic Admin Law Judges

Name Curt Kiser

Job Title

Address 5385 WPA Rd

Street

Lamont

City

Fl.

State

32336

Zip

Phone 850 591-5416

Email KiserCurtis@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
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 1500

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Mayfield

SUBJECT: Retirement of Instructional Personnel and School Administrators

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ferrin	Ferrin	GO	Fav/CS
2.			ED	
3.			AED	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1500 modifies the Deferred Retirement Option Program (DROP) for instructional and administrative personnel in grades K-12 to prevent the classroom disruption caused by such personnel's retirement when it occurs during the school year. For current DROP participants, the bill allows termination of DROP after the school year. For participants who enter DROP on or after July 1, 2017, the bill requires termination of DROP after the school year.

The bill provides an effective date of July 1, 2017.

II. Present Situation:

The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a

closed group.¹ The FRS is a contributory system, with most members contributing three percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2016, the FRS had 630,350 active members, 394,907 annuitants, 16,248 disabled retirees, and 29,602 active participants of the Deferred Retirement Option Program (DROP).³ As of June 30, 2016, the FRS consisted of 1,029 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 193 cities and 270 special districts that have elected to join the system.⁴

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

- The Regular Class⁵ consists of 545,680 active members, plus 3,709 in renewed membership;
- The Special Risk Class⁶ includes 70,695 active members;
- The Special Risk Administrative Support Class⁷ has 76 active members;
- The Elected Officers' Class⁸ has 2,026 active members, plus 115 in renewed membership; and
- The Senior Management Service Class⁹ has 7,876 members, plus 143 in renewed membership.¹⁰

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

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

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

¹ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at p. 29. Available online at: https://www.rol.frs.state.fl.us/forms/2015-16_CAFR.pdf.

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

³ Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at 120.

⁴ *Id.*, at 154.

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁸ The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures from Florida Retirement System Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2016, at 123.

Investment Plan

In 2000, the Legislature created the Public Employee Optional Retirement Program (investment plan), a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.

A member vests immediately in all employee contributions paid to the investment plan.¹¹ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹² Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹³ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.¹⁴ An FRS member who qualifies for disability while enrolled in the investment plan must apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁵

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁶ The SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.¹⁷

Pension Plan

The pension plan is administered by the secretary of the Department of Management Services through the Division of Retirement.¹⁸ Investment management is handled by the SBA.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰

Benefits payable under the pension plan are calculated based on the member's years of creditable

¹¹ Section 121.4501(6)(a), F.S.

¹² If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, then any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b)-(d), F.S.

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

¹⁵ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate an in-line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line of duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date. Section 121.091(4)(f), F.S.

¹⁶ Section 121.4501(8), F.S.

¹⁷ FLA CONST. art. IV, s. 4.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

service multiplied by the service accrual rate multiplied by the member's average final compensation.²¹ For most members of the pension plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.²² Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65.²³ Members may retire before attaining the minimum years of service or age, but will receive an early retirement benefit which is reduced by five-twelfths of one percent per month (or five percent per year) that the member retires early.²⁴

Optional Retirement Programs

Eligible employees may choose to participate in one of three retirement programs instead of participating in the FRS:

- Members of the Senior Management Service Class may elect to enroll in the Senior Management Service Optional Annuity Program;²⁵
- Members in specified positions in the State University System may elect to enroll in the State University System Optional Retirement Program;²⁶ and
- Members in specified positions at a Florida College institution may elect to enroll in the State Community College System Optional Retirement Program.²⁷

The Deferred Retirement Option Program (DROP)

The Deferred Retirement Option Program (DROP) is a program available to eligible members of the FRS pension plan. All membership classes in the FRS Pension Plan may participate in DROP, which allows a member to retire without terminating employment; a member who enters DROP may extend employment for an additional five years.²⁸ However, certain instructional personnel may participate in DROP for up to an additional 36 months.²⁹

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁴ See Sections 121.021 (30), F.S., and 121.091(3), F.S.

²⁵ The Senior Management Service Optional Annuity Program (SMSOAP) was established in 1986 for members of the Senior Management Service Class. Employees in eligible positions may irrevocably elect to participate in the SMSOAP rather than the FRS. Section 121.055(6), F.S.

²⁶ Eligible participants of the State University System Optional Retirement Program (SUSORP) are automatically enrolled in the SUSORP. However, the member must execute a contract with a SUSORP provider within the first 90 days of employment or the employee will default into the pension plan. If the employee decides to remain in the SUSORP, the decision is irrevocable and the member must remain in the SUSORP as long as the member remains in a SUSORP-eligible position. Section 121.35, F.S.

²⁷ If the member is eligible for participation in a State Community College System Optional Retirement Program, the member must elect to participate in the program within 90 days of employment. Unlike the other optional programs, an employee who elects to participate in this optional retirement program has one opportunity to transfer to the FRS. Section 1012.875, F.S.

²⁸ Section 121.091(13)(a) and (b), F.S. Instructional personnel may extend employment up to eight years under certain circumstances.

²⁹ Section 121.091(13)(b)1., F.S.

While in DROP, the member's retirement benefits accumulate and earn interest compounded monthly.³⁰ Upon termination of employment, the member receives the total DROP accumulations and the previously determined normal retirement benefits.³¹

For most members, the election to participate in DROP must be made no later than twelve months after reaching normal retirement.³² For K-12 instructional personnel, as defined in s. 1012.01(2), F.S., the election to participate in DROP may be made at any time following the date on which the member first reaches normal retirement.³³

Members in the FRS Investment Plan may not participate in DROP; investment plan members are considered retired from the FRS when the member takes a distribution from his or her account.³⁴

Disability Retirement Benefits for Members of the FRS

There are two types of disability retirement available under the FRS: in the line of duty disability retirement and regular disability retirement. To qualify for either type of disability retirement, members must be totally and permanently disabled to the extent that they are unable to work. An employee who is physically or mentally unable to continue performing in his or her present occupation, but is able to perform another type of work, will not qualify for disability benefits.³⁵ To be eligible for regular disability retirement under the FRS, members must complete 8 years of creditable service.³⁶

Under the FRS pension plan, the minimum benefit under regular disability retirement is 25 percent of the employee's average final compensation.³⁷ The in the line of duty disability benefit is available to members on their first day of employment and is 42 percent of the employee's monthly compensation.³⁸ There is no vesting period for in the line of duty disability benefits.³⁹

Under the investment plan, the disability benefits are in lieu of the normal benefits (the accumulations of contributions and investment earnings in the member's account).⁴⁰ Instead, the member must transfer all of the member's accumulations to the investment plan disability account and will receive a monthly benefit calculated the same as a similarly situated pension plan member.⁴¹

³⁰ If DROP participation began prior to July 1, 2011, the effective annual interest rate was 6.5 percent. On or after July 1, 2011, the annual interest rate for DROP is 1.3 percent.

³¹ Section 121.091(13), F.S.

³² Section 121.091(13)(a)2., F.S.

³³ Section 121.091(13)(a)6., F.S.

³⁴ See s. 121.4501(2)(k) and (4)(f), F.S.

³⁵ Florida Retirement System Employer Handbook, Disability Retirement, Ch. 10-3, available at https://www.rol.frs.state.fl.us/forms/EH_ch10.pdf (last visited Jan. 19, 2017).

³⁶ Sections 121.091(4)(a) and 121.591(2)(b), F.S.

³⁷ Section 121.091(4)(f), F.S.

³⁸ *Id.*

³⁹ Section 121.091(4)(a)1.b., F.S.

⁴⁰ Section 121.591(2), F.S.

⁴¹ Section 121.591(2)(g), F.S.

Employment after Retirement

Section 121.091, F.S., governs the payment of benefits under the FRS. It requires a member of the FRS to terminate employment to begin receiving benefits or begin participation in DROP to defer and accrue those benefits until termination from DROP. Termination occurs when a member ceases all employment relationships with her or his FRS employer.⁴² Termination is void if any FRS-participating employer reemploys a member during a specified period of time.⁴³

Subsection 121.091(9), F.S., governs employment after retirement. It allows reemployment of FRS retirees by a non-FRS employer and authorizes those retirees to continue receiving retirement benefits.⁴⁴

Before July 1, 2010,⁴⁵ an FRS retiree was allowed to be reemployed by an FRS employer provided certain requirements were met. A member was allowed to be reemployed by an FRS employer one calendar month after retiring or after the member's DROP termination date. If the retiree was reemployed during months two through 12 after retiring or terminating DROP, the retiree was not authorized to receive her or his pension benefit until month 13. However, a retiree was authorized to be reemployed as instructional personnel on an annual contractual basis after one calendar month without having her or his retirement benefits disrupted.⁴⁶

A member who retires on or after July 1, 2010, may not be reemployed by an FRS employer until month seven after retiring or after the member's DROP termination date. If the retiree is reemployed during months seven through 12 after retiring or terminating DROP, the retiree may not receive her or his pension benefit until month 13.⁴⁷ The reemployment exception for retirees reemployed as instructional personnel no longer applies to members who retire and are reemployed on or after July 1, 2010.

Renewed Membership

Retirees of the FRS Pension Plan or the FRS Investment Plan who were initially re-employed in covered employment by June 30, 2010, renewed their membership in the FRS (the member could choose to participate in either the pension plan or the investment plan) or other state-administered retirement system and earn service credit toward a subsequent retirement benefit. Renewed members are not eligible to participate in DROP or the Special Risk Class, and are not eligible for disability retirement. However, the surviving spouse and dependent child of a renewed member may qualify for survivor benefits.⁴⁸

Currently, retirees initially reemployed in a regularly established position on or after July 1, 2010, are not eligible for renewed membership and do not earn creditable service toward a subsequent retirement benefit.⁴⁹ This restriction from renewed membership includes retirees of

⁴² Section 121.091(39)(a), F.S.

⁴³ *Id.*

⁴⁴ Section 121.091(9)(a), F.S.

⁴⁵ Ch. 2009-209, Laws of Fla.

⁴⁶ Section 121.091(9)(b), F.S.

⁴⁷ Section 121.091(9)(c), F.S.

⁴⁸ Section 121.122(1), F.S.

⁴⁹ Section 121.122(2), F.S.

the FRS Pension Plan and the FRS Investment Plan, as well as members of an optional retirement program.

Regular School Year

Each district school board in Florida is responsible for setting the dates for the opening and closing of schools.⁵⁰ School districts are required to file an official copy of the annual calendar adopted by each school board with the DOE.⁵¹ Beginning with the 2015-2016 academic school year, schools governed by a district school board may not have an opening date earlier than August 10 each year.⁵² For the 2016-2017 school year, school district calendars began the traditional school year with students reporting for classes between August 10 and August 22.⁵³ Dates for the close of the school year were between May 19 and June 8.⁵⁴ Generally, the teachers' school year began seven to ten days before students report and will end seven to ten day after classes end.⁵⁵

Instructional Personnel and School Administrators

Instructional personnel include classroom teachers,⁵⁶ staff who provide student personnel services,⁵⁷ librarians and media specialists, other instructional staff,⁵⁸ and education paraprofessionals under the direct supervision of instructional personnel in K-12 schools.⁵⁹ School administrators include school principals, school or career center directors, and assistant principals in K-12 schools.⁶⁰

Contracts for Instructional Personnel

Three types of contracts are used to employ instructional personnel in Florida— continuing contracts, professional service contracts, and annual contracts. Holding a continuing contract or professional service contract is often referred to as having tenured status.⁶¹

Instructional personnel hired before July 1, 1984, entered into continuing contracts upon meeting eligibility requirements.⁶² A continuing contract entitles the employee to continue employment

⁵⁰ Section 1001.42(4)(f), F.S.

⁵¹ Rule 6A-10.019(3), F.A.C.

⁵² Section 1001.42(4)(f), F.S., *as amended by* ch. 2015-6, Laws of Fla.

⁵³ Florida Department of Education, *2016-2017 School District Calendars*, <http://www.fldoe.org/accountability/data-sys/edu-info-accountability-services/pk-12-public-school-data-pubs-reports/index.stml> (last visited March 28, 2017).

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *See* Section 1012.012(2)(s), F.S. Classroom teachers include substitute teachers.

⁵⁷ Includes guidance counselors, social workers, career specialists, and school psychologists.

⁵⁸ Includes learning resource specialists.

⁵⁹ Section 1012(2), F.S.

⁶⁰ Section 1012(3)(c), F.S.

⁶¹ *See* s. 1012.33(3)(d), F.S. (2010). Tenure is an employment policy which limits a public school district's ability to terminate the employment of instructional personnel. *See* 67B Am. Jur. 2d Schools s. 195; *see also* s. 1012.33(3), F.S. Tenure usually takes the form of a continuous or automatically renewing employment contract. Tenured instructional personnel may only be dismissed for specified reasons after statutorily required hearings. *See Board of Regents v. Roth*, 408 U.S. 564 (1972); 67B Am. Jur. 2d Schools s.211.

⁶² Section 15, ch. 82-242, Laws of Fla. Legislation enacted in 1982 discontinued the award of new continuing contracts effective July 1, 1984.

without the necessity of annual renewal until discontinuation of the position, resignation, dismissal, or removal from continuing contract status.⁶³

Instructional personnel hired on or after July 1, 1984, and up to July 1, 2011, were awarded professional service contracts after three years of probationary service on annual contracts if certified, recommended for a professional service contract by the superintendent, and reappointed by the school board.⁶⁴ Professional service contracts automatically renew each year, unless the employee is charged with unsatisfactory performance based upon his or her annual performance evaluation or the employee's performance evaluations indicate chronically ineffective performance.⁶⁵

As of July 1, 2011, instructional personnel under an annual contract and personnel hired thereafter may only be employed on an annual contract basis. An annual contract is an employment contract for a period of no longer than one school year that a district school board may choose to award or not award without cause.⁶⁶

Contracts for School Administrators

School administrators hired before July 1, 1984, entered into continuing contracts upon meeting eligibility requirements.⁶⁷ After completing three years of probationary service on annual contracts, an administrator was eligible for a continuing contract if her or she was fully certified, recommended for a continuing contract by the superintendent, and reappointed by the school board.⁶⁸

School administrators hired on or after July 1, 1984, must receive a written contract. Such contract may be for an initial period not to exceed three years and is subject to annual review and renewal.⁶⁹

Effect of Proposed Changes:

Section 1 modifies DROP for instructional and administrative personnel in grades K-12 to prevent the classroom disruption caused by such personnel's retirement when it occurs during the school year. The bill *allows* instructional personnel and administrative personnel who enter

⁶³ Section 231.36(3)(e), F.S. (1981). A continuing contract employee may be dismissed or returned to annual contract status for a period of three years based upon the recommendation of the district school superintendent, school principal, or a majority of the school board. Section 1012.33(4)(b), F.S.; *see also* s. 231.36(4), F.S. (1981).

⁶⁴ Section 1012.33(3)(a)1.-3., F.S. (2010). Probationary employment must be completed in the same school district during a period not to exceed five successive years, except for leave duly authorized and granted. *Id.* Probationary employment may be extended to four years if agreed upon in writing by the district school board and the employee. Section 1012.33(3)(c), F.S. (2010).

⁶⁵ Sections 1012.33(3) and 1012.34(4), F.S. A professional service contract is not required to be renewed if the employee has two consecutive annual performance evaluation ratings of unsatisfactory, two annual ratings of unsatisfactory within a three-year period, or three consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. Section 1012.33(3)(b), F.S.

⁶⁶ Section 1012.335(1)(a), F.S.

⁶⁷ *See supra* note 64.

⁶⁸ Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

⁶⁹ Section 1012.34(1)(b), F.S.

DROP before July 1, 2017, to continue to participate in DROP until the last day of the last calendar month of the school year in which his or her termination date occurs.

The bill *requires* instructional personnel and administrative personnel who enter DROP on or after July 1, 2017, to continue to participate in DROP until the last day of the last calendar month of the school year in which his or her termination date occurs.

Section 2 provides a finding of proper and legitimate state purpose.

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

III. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the Florida Constitution provides that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the expenditure is required to comply with a law that applies to all persons similarly situated...”

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Instructional personnel and school administrators’ DROP termination dates could be extended as a result of the bill, and such personnel may earn additional interest on their deferred benefits as a result of the extended time spent in DROP.

C. Government Sector Impact:

Employer contributions made for employees in DROP are made at a higher blended contribution rate than for employees in the Regular Class.⁷⁰ If a member's DROP participation is extended until the completion of the school year, the employer will pay a higher contribution rate for the additional months the member stays in DROP.

V. Technical Deficiencies:

None.

VI. Related Issues:

District school boards negotiate with the certified bargaining agent (union) that represents the district's instructional personnel to determine the provisions of a collective bargaining agreement, including wages, hours, and terms and conditions of employment.⁷¹ It is currently unclear, if through terms of employment negotiated during collective bargaining process, instructional personnel and school administrators are being allowed to retire without completing the terms of their contracts, or if contracts for instructional personnel and school administrators are being allowed to end on dates that occur during the school year.

VII. Statutes Affected:

This bill creates an unnumbered section of the Florida Statutes.

VIII. 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 April 3, 2017:

The amendment adopted by the Committee modifies DROP for instructional and administrative personnel in grades K-12 to allow for termination of DROP after a school year for participants in DROP as of July 1, 2017. Termination of DROP will be required to occur after a school year for participants who enter DROP on or after July 1, 2017.

B. Amendments:

None.

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

⁷⁰ See ss. 121.091(13) and 121.71, F.S.

⁷¹ Sections 447.203(2) and 447.309(1), F.S.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
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The Committee on Governmental Oversight and Accountability
(Mayfield) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (b) of subsection (13) of section
121.091, Florida Statutes, is amended to read:

121.091 Benefits payable under the system.—Benefits may not
be paid under this section unless the member has terminated
employment as provided in s. 121.021(39) (a) or begun
participation in the Deferred Retirement Option Program as



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provided in subsection (13), and a proper application has been filed in the manner prescribed by the department. The department may cancel an application for retirement benefits when the member or beneficiary fails to timely provide the information and documents required by this chapter and the department's rules. The department shall adopt rules establishing procedures for application for retirement benefits and for the cancellation of such application when the required information or documents are not received.

(13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and subject to this section, the Deferred Retirement Option Program, hereinafter referred to as DROP, is a program under which an eligible member of the Florida Retirement System may elect to participate, deferring receipt of retirement benefits while continuing employment with his or her Florida Retirement System employer. The deferred monthly benefits shall accrue in the Florida Retirement System on behalf of the member, plus interest compounded monthly, for the specified period of the DROP participation, as provided in paragraph (c). Upon termination of employment, the member shall receive the total DROP benefits and begin to receive the previously determined normal retirement benefits. Participation in the DROP does not guarantee employment for the specified period of DROP. Participation in DROP by an eligible member beyond the initial 60-month period as authorized in this subsection shall be on an annual contractual basis for all participants.

(b) *Participation in DROP.*—

1.a. An eligible member may elect to participate in DROP for a period not to exceed a maximum of 60 calendar months.



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However, members who are instructional personnel employed by the Florida School for the Deaf and the Blind and authorized by the Board of Trustees of the Florida School for the Deaf and the Blind, who are instructional personnel as defined in s. 1012.01(2)(a)-(d) in grades K-12 and authorized by the district school superintendent, or who are instructional personnel as defined in s. 1012.01(2)(a) employed by a developmental research school and authorized by the school's director, or if the school has no director, by the school's principal, may participate in DROP for up to 36 calendar months beyond the 60-month period.

b. For instructional personnel and administrative personnel in grades K-12, as defined in s. 1012.01(2)(a)-(d) and (3), respectively, who enter DROP before July 1, 2017, the member may continue to participate in DROP until the last day of the last calendar month of the school year in which his or her termination date occurs, notwithstanding the limitations on the length of participation established in this subsection and the termination date designated pursuant to sub-subparagraph 2.b., if a date other than the last day of the last calendar month of the school year is designated. The employer shall notify the division of the change in termination date and the additional period of DROP participation for each affected member. For instructional personnel and administrative personnel in grades K-12, as defined in s. 1012.01(2)(a)-(d) and (3), respectively, who enter DROP on or after July 1, 2017, the member's termination date shall be the last day of the last calendar month of the school year in which his or her termination date would otherwise occur in accordance with the limitations on the length of participation established in this subsection.



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69 2. Upon deciding to participate in DROP, the member shall
70 submit, on forms required by the division:

71 a. A written election to participate in DROP;

72 b. Selection of DROP participation and termination dates
73 that satisfy the limitations stated in paragraph (a) and
74 subparagraph 1. The termination date must be in a binding letter
75 of resignation to the employer establishing a deferred
76 termination date. The member may change the termination date
77 within the limitations of subparagraph 1., but only with the
78 written approval of the employer;

79 c. A properly completed DROP application for service
80 retirement as provided in this section; and

81 d. Any other information required by the division.

82 3. The DROP participant is a retiree under the Florida
83 Retirement System for all purposes, except for paragraph (5)(f)
84 and subsection (9) and ss. 112.3173, 112.363, 121.053, and
85 121.122. DROP participation is final and may not be canceled by
86 the participant after the first payment is credited during the
87 DROP participation period. However, participation in DROP does
88 not alter the participant's employment status, and the member is
89 not deemed retired from employment until his or her deferred
90 resignation is effective and termination occurs as defined in s.
91 121.021.

92 4. Elected officers are eligible to participate in DROP
93 subject to the following:

94 a. An elected officer who reaches normal retirement date
95 during a term of office may defer the election to participate
96 until the next succeeding term in that office. An elected
97 officer who exercises this option may participate in DROP for up



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to 60 calendar months or no longer than the succeeding term of office, whichever is less.

b. An elected or a nonelected participant may run for a term of office while participating in DROP and, if elected, extend the DROP termination date accordingly; however, if such additional term of office exceeds the 60-month limitation established in subparagraph 1., and the officer does not resign from office within such 60-month limitation, the retirement and the participant's DROP is null and void as provided in subparagraph (c)5.d.

c. An elected officer who is dually employed and elects to participate in DROP must terminate all employment relationships as provided in s. 121.021(39) for the nonelected position within the original 60-month period or maximum participation period as provided in subparagraph 1. For DROP participation ending:

(I) Before July 1, 2010, the officer may continue employment as an elected officer as provided in s. 121.053. The elected officer shall be enrolled as a renewed member in the Elected Officers' Class or the Regular Class, as provided in ss. 121.053 and 121.122, on the first day of the month after termination of employment in the nonelected position and termination of DROP. Distribution of the DROP benefits shall be made as provided in paragraph (c).

(II) On or after July 1, 2010, the officer may continue employment as an elected officer but must defer termination as provided in s. 121.053.

Section 2. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents,



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

Section 3. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled

An act relating to retirement of instructional
personnel and administrative personnel; amending s.
121.091, F.S.; revising limitations on the maximum
length of participation in the Deferred Retirement
Option Program for certain instructional personnel and
administrative personnel; requiring an employer to
notify the Division of Retirement of the Department of
Management Services regarding any change in
termination date and program participation for each
affected member; providing a statement of important
state interest; providing an effective date.

By Senator Mayfield

17-01265-17

20171500__

A bill to be entitled

An act relating to the retirement of instructional personnel and school administrators; directing the State Board of Education to adopt rules prohibiting instructional personnel and school administrators from selecting a retirement date that occurs during the regular school year; providing exceptions to the rules; providing an effective date.

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

Section 1. The State Board of Education is directed to adopt rules prohibiting instructional personnel and school administrators from selecting a retirement date that occurs during the regular school year, except for retirement due to disability or illness.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Education, *Vice Chair*
Appropriations Subcommittee on the Environment
and Natural Resources
Appropriations Subcommittee on General
Government
Banking and Insurance
Judiciary

JOINT COMMITTEE:

Joint Legislative Auditing Committee,
Alternating Chair

SENATOR DEBBIE MAYFIELD

17th District

March 16, 2017

Chairman Dennis Baxley
Government Oversight and Accountability
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Re: SB 1500

Dear Chairman Baxley,

I am respectfully requesting Senate Bill 1500, a bill relating to Retirement of Instructional Personnel and School Administrators, be placed on the agenda for your committee on Government Oversight and Accountability.

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

Thank you,

A handwritten signature in cursive script, appearing to read "Debbie", with a large loop at the end.

Senator Debbie Mayfield
District 17

Cc: Jay Ferrin, Tamra Redig, Debbie Dennis, Lily Tysinger

REPLY TO:

- ☐ 900 E. Strawbridge Avenue, Melbourne, Florida 32901 (321) 409-2025
- ☐ 1801 27th Street, Vero Beach, Florida 32960 (772) 226-1970
- ☐ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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: SB 1526

INTRODUCER: Senator Bracy

SUBJECT: Public Records/Health Information/Department of Corrections

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Hrdlicka	CJ	Favorable
2.	Kim	Ferrin	GO	Favorable
3.			RC	

I. Summary:

SB 1526 amends s. 945.10, F.S., to include protected health information of inmates and information related to HIV testing held by the Department of Corrections as records that are confidential and exempt from public disclosure in accordance with the federal Health Insurance Portability and Accountability Act (HIPAA).

The bill aligns Florida law with the exemptions established in the HIPAA Privacy Rule by authorizing the release of protected health information and mental health, medical, and substance abuse records to other agencies, including law enforcement agencies, for legitimate state purposes.

The bill provides that the exemptions for protected health information of an inmate and identity of an inmate upon whom an HIV test has been performed are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

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

The Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates public record exemptions; thus, it requires a two-thirds vote for final passage.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

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

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

1. What specific records or meetings are affected by the exemption?
2. Whom does the exemption uniquely affect, as opposed to the general public?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

The Health Insurance Portability and Accountability Act (HIPAA) and the Privacy Rule

HIPAA was enacted on August 21, 1996, to publicize standards for the electronic exchange, privacy, and security of health information.²⁴ The Privacy Rule (rule) adopted by the U.S. Department of Health and Human Services (HHS) was required by the HIPAA²⁵ to address the use and disclosure of personal health information. The requirements of the rule apply to individual and group health plans that provide or pay the cost of medical care, every health care provider that electronically transmits health information in connection with certain transactions, and health care clearinghouses that process nonstandard information received from another entity into a standard format or that process standard information into a nonstandard format. Under the rule, all “individually identifiable health information” is protected. Such information includes demographic data such as an individual’s name, address, date of birth, and social security number; the individual’s past, present, or future physical or mental health condition; the provision of health care to such individual; and payments made or to be made for the provision of health care to the individual. Unless for the purposes authorized by the rule, protected health information may not be disclosed without the written authorization of the protected individual.

Department of Corrections and HIPAA

The Florida Department of Corrections (department) is a covered entity for purposes of the rule. The department provides comprehensive health care for inmates, including medical, nursing, pharmacy, mental health, and dental.²⁶

“Within [a correctional] system, inmates’ health information may originate from or reside in many locations, including booking notes (e.g., infectious or chronic disease status), sick-call triage systems, physician notes, and other departments such as housing and work details (e.g., mobility or injury status).”²⁷ The rule protects the health information of inmates, but also recognizes that correctional facilities have legitimate needs to use and share the information

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3. What is the identifiable public purpose or goal of the exemption?
 4. Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
 5. Is the record or meeting protected by another exemption?
 6. Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ United States Department of Health and Human Services, *Summary of the HIPAA Privacy Rule*, Last Revised May 2003.

²⁵ 45 CFR Parts 160, 162, and 164.

²⁶ Department of Corrections, *Health Care Facts*, available at <http://www.dc.state.fl.us/oth/hlthfact.html> (last visited March 16, 2017).

²⁷ Melissa M. Goldstein, JD, *Health Information Privacy and Health Information Technology in the US Correctional Setting*, AM J Public Health, 2014 May, 104(5): 803-809, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3987588/> (last visited March 16, 2017).

without authorization by the inmate. Thus, the rule includes provisions regarding permissible uses and disclosures of inmates' health information in the correctional context.

Covered entities may disclose the PHI [personal health information] of inmates without their authorization to correctional institutions or law enforcement officials who have lawful custody of an inmate for the purpose of providing health care to the inmate or for the health and safety of the inmate, other inmates, the officers and employees of the institution and others at the facility, and those responsible for inmate transfer. Covered entities may also disclose the PHI of inmates without authorization for law enforcement purposes on the premises of an institution and for the administration and maintenance of the safety, security, and good order of the institution. These provisions apply only to the release of the PHI of current inmates. When inmates are released, they have the same privacy rights under HIPAA as all other individuals.²⁸

The department states that it is “unable to share inmate or offender protected health information and medical and mental health records for legitimate governmental functions in the absence of consent, a subpoena, or other court involvement.”²⁹

Confidential Information

Section 945.10, F.S., makes confidential and exempts from Florida public record laws the following department records:

- Mental health, medical, or substance abuse records of an inmate or an offender;
- Preplea, pretrial intervention, and presentence or postsentence investigative records;
- Information regarding a person in the federal witness protection program;
- Florida Commission on Offender Review records which are confidential or exempt from public disclosure by law;
- Information which if released would jeopardize a person's safety;
- Information concerning a victim's statement and identity;
- Information which identifies an executioner, or any person prescribing, preparing, compounding, dispensing, or administering a lethal injection; and
- Records that are otherwise confidential or exempt from public disclosure by law.

Currently, the only permitted statutory disclosure of mental health, medical, or substance abuse records of an inmate or offender is to the Department of Health and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection (HIV).³⁰ The identity of a person upon whom a test has been performed and the test results are generally confidential and exempt from public records pursuant to s. 381.004(2), F.S.

²⁸ *Id.*

²⁹ Department of Corrections, *Agency Bill Analysis: SB 1526*, (March 10, 2017) (on file with the Senate Committee on Criminal Justice).

³⁰ Section 945.10(1)(a), F.S.

Section 456.057, F.S., which also governs medical and mental health records maintained by the department, also contains limited record sharing. Most of the allowed disclosures deal with issues such as insurance, billing, investigations of medical malpractice, or medical research, which do not “contemplate the unique needs” of the department.³¹

III. Effect of Proposed Changes:

Confidential Information

The bill amends s. 945.10(1), F.S., to classify the following department records and information as confidential and exempt from Florida’s public record law:

- “Protected health information”³² of an inmate or an offender;
- HIV tests³³ of an inmate or offender; and
- HIV test results³⁴ received on an inmate or offender.

The identity of a person upon whom a test has been performed and the test results are also currently confidential and exempt from public records pursuant to s. 381.004(2), F.S.

These additions to the department’s confidential and exempt information are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

Release of protected health information and mental health, medical, or substance abuse records

The bill aligns Florida law with the exemptions established in the HIPAA Privacy Rule by authorizing the release of protected health information and mental health, medical, and substance abuse records. The bill allows the department’s protected health information and mental health, medical, or substance abuse records of an inmate³⁵ to be released to:

- The Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or inspections relating to the provision of health services;³⁶

³¹ Department of Corrections, *Agency Bill Analysis: SB 1526*, (March 10, 2017).

³² “Protected health information” means individually identifiable health information that is: transmitted by electronic media; maintained in electronic media; or transmitted or maintained in any other form or medium. (45 C.F.R. s. 160.103). It excludes identifiable health information: in education records covered by the Family Educational Rights and Privacy Act; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv)(education records on a student who is eighteen years of age or older, or is attending an institution of postsecondary education, which are made or maintained by physician, psychiatrist, psychologist); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than 50 years.

³³ “HIV test” means a test ordered after July 6, 1988, to determine the presence of the antibody or antigen to human immunodeficiency virus or the presence of human immunodeficiency virus infection. (Section 381.004, F.S.).

³⁴ “HIV test result” means a laboratory report of a human immunodeficiency virus test result entered into a medical record on or after July 6, 1988, or any report or notation in a medical record of a laboratory report of a human immunodeficiency virus test. The term does not include test results reported to a health care provider by a patient. (Section 381.004, F.S.).

³⁵ Section 945.10(1)(a), F.S.

³⁶ 45 C.F.R. 164.512(d).

- A state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation if the inmate agrees to the disclosure and provides written consent. If the inmate refuses to provide written consent, in response to a court order, a subpoena, investigative, or administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process³⁷ the records can be released to such persons provided that:
 - The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;
 - There is a clear connection between the investigated incident and the inmate's protected health information;
 - The request is specific and limited in scope to the extent reasonably practicable; and
 - De-identified information could not be reasonably used.³⁸
- A state attorney or a law enforcement agency if an inmate is or is suspected of being a victim of a crime if the inmate agrees to the disclosure and provides written consent. If the inmate is unable to agree because of incapacity or other emergency circumstances³⁹ provided that:
 - The information is needed to determine whether a violation of law by a person other than the inmate has occurred;
 - The information is not intended to be used against the inmate victim;
 - The immediate law enforcement activity would be materially and adversely affected by waiting until the inmate victim is able to agree to the disclosure; and
 - The disclosure is in the best interests of the inmate victim, as determined by the department.⁴⁰
- A state attorney or a law enforcement agency if the department believes in good faith that the information and records constitute evidence of criminal conduct that occurred in a correctional institution or facility provided that:
 - The protected information and records are specific and limited in scope to the extent reasonably practicable in light of the purpose for which the information or records are sought;
 - There is a clear connection between the criminal conduct and the inmate whose protected health information and records are sought; and
 - De-identified information could not reasonably be used.⁴¹
- The Division of Risk Management of the Department of Financial Services upon certification by the Division that the information is necessary to investigate and provide legal representation for a claim against the department.⁴²
- The Department of Legal Affairs or an attorney retained to represent the department if the inmate is bringing a legal action against the department.⁴³
- Another correctional institution or law enforcement official having lawful custody of the inmate if the protected health information or records are necessary for:
 - The provision of health care to the inmate;
 - The health and safety of the inmate or other inmates;

³⁷ All orders, subpoenas, warrants, or other statutorily authorized demand must be in accordance with 45 C.F.R. 164, part E, governing security and privacy of health information.

³⁸ 45 C.F.R. 164.512(f)(1).

³⁹ The circumstances must be in accordance with 45 C.F.R. 164, part E, governing security and privacy of health information.

⁴⁰ 45 C.F.R. 164.512(f)(3).

⁴¹ 45 C.F.R. 164.512(f)(5).

⁴² 45 C.F.R. 164.508(a)(2)(C).

⁴³ *Id.*

- The health and safety of the officers, employees, or others at the correctional institution or facility;
- The health and safety of the individuals or officers responsible for transporting the inmate from one correctional institution, facility, or setting to another;
- Law enforcement on the premises of the correctional institution or facility; or
- The administration and maintenance of the safety, security, and good order of the correctional institution or facility.⁴⁴
- The Department of Children and Families and the Florida Commission on Offender Review if the inmate received mental health treatment while in the custody of the department and becomes eligible for release under supervision or upon the end of his or her sentence.⁴⁵

The bill also allows the department's protected health information and mental health, medical, or substance abuse records of an inmate be released to persons acting on behalf of a deceased inmate or offender only for the purpose of requesting access to the information if:⁴⁶

- The person is appointed by a court to act as the personal representative, executor, administrator, curator, or temporary administrator of the deceased inmate's or offender's estate;
- A court has not made a judicial appointment, but the person was designated as a personal representative in a last will and testament; or
- A court has not made a judicial appointment and the inmate or offender has not designated a person in a self-proved last will. In such case, persons include surviving spouses, adult children, and parents of the inmate or offender.

All requests for access to a deceased inmate or offender's protected health information are required to be in writing and accompanied by the following:

- If a person appointed by the court is acting as a personal representative, a copy of the letter of administration and a copy of the court order appointing the personal representative.
- If made by a person designated by the inmate as the personal representative in a last will and testament, a copy of the self-proved last will designating the person as the inmate's or offender's representative.
- If made by a surviving spouses, adult children, and parents of the inmate or offender, a letter from the person's attorney verifying the person's relationship to the inmate or offender and the absence of a court-appointed representative and self-proved last will.

Public Necessity

The bill provides that the Legislature finds that it is a public necessity that an inmate's or offender's protected health information and HIV testing information held by the department remain confidential and exempt from public disclosure.

The bill is effective July 1, 2017.

⁴⁴ 45 C.F.R. 164.512(f)(5).

⁴⁵ 45 C.F.R. 164.512(d)(2) or (6).

⁴⁶ 45 C.F.R. 164.512(g).

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

None.

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

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record exemption. The bill creates a public record exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created public record exemption. The bill creates a public record exemption and includes a public necessity statement.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, the bill does not appear to be in conflict with this constitutional requirement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

SB 1604 (2017) amends s. 943.04, F.S., to authorize the Florida Department of Law Enforcement, when conducting an investigation or assisting in the investigation of an injury to or death of an inmate under the custody or control of the DOC, to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC. The records disclosed remain confidential and exempt from public records laws.

VIII. Statutes Affected:

This bill substantially amends section 945.10 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By Senator Bracy

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A bill to be entitled

An act relating to public records; amending s. 945.10, F.S.; providing that certain protected health information held by the Department of Corrections is confidential and exempt from public records requirements; authorizing the release of protected health information and other records of an inmate to certain entities, subject to specified conditions and under certain circumstances; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) of section 945.10, Florida Statutes, is amended, present paragraph (h) of that subsection is redesignated as paragraph (i), a new paragraph (h) is added to that subsection, subsection (2) of that section is amended, and subsection (6) is added to that section, to read:

945.10 Confidential information.—

(1) Except as otherwise provided by law or in this section, the following records and information held by the Department of Corrections are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

(a) 1. Mental health, medical, or substance abuse records of an inmate or an offender; and

2. Protected health information of an inmate or an offender. Protected health information, as used in this section, has the same meaning as provided in 45 C.F.R. s. 160.103. This

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subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(h) The identity of any inmate or offender upon whom an HIV test has been performed and the inmate's or offender's test results, in accordance with s. 381.004. The term "HIV test" has the same meaning as provided in s. 381.004. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(2) The records and information specified in paragraphs (1) (a) - (i) ~~(1) (a) - (h)~~ may be released as follows unless expressly prohibited by federal law:

(a) Information specified in paragraphs (1) (b), (d), and (f) to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under a contract, the Department of Legal Affairs, a state attorney, the court, or a law enforcement agency. A request for records or information pursuant to this paragraph need not be in writing.

(b) Information specified in paragraphs (1) (c), (e), and (i) ~~(h)~~ to the Executive Office of the Governor, the Legislature, the Florida Commission on Offender Review, the Department of Children and Families, a private correctional facility or program that operates under contract, the Department of Legal Affairs, a state attorney, the court, or a law

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enforcement agency. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(c) Information specified in paragraph (1) (b) to an attorney representing an inmate under sentence of death, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records of information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(d) Information specified in paragraph (1) (b) to a public defender representing a defendant, except those portions of the records containing a victim's statement or address, or the statement or address of a relative of the victim. A request for records or information pursuant to this paragraph need not be in writing.

(e) Information specified in paragraph (1) (b) to state or local governmental agencies. A request for records or information pursuant to this paragraph must be in writing and a statement provided demonstrating a need for the records or information.

(f) Information specified in paragraph (1) (b) to a person conducting legitimate research. A request for records and information pursuant to this paragraph must be in writing, the person requesting the records or information must sign a confidentiality agreement, and the department must approve the request in writing.

(g) Protected health information and records specified in ~~paragraphs paragraph~~ (1) (a) and (h) to the Department of Health

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and the county health department where an inmate plans to reside if he or she has tested positive for the presence of the antibody or antigen to human immunodeficiency virus infection or as authorized in s. 381.004.

(h) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1) (a) to the Executive Office of the Governor, the Correctional Medical Authority, and the Department of Health for health care oversight activities authorized by state or federal law, including audits; civil, administrative, or criminal investigations; or inspections relating to the provision of health services, in accordance with 45 C.F.R. part 164, subpart E.

(i) Protected health information and mental health, medical, or substance abuse records specified in paragraph (1) (a) to a state attorney, a state court, or a law enforcement agency conducting an ongoing criminal investigation, if the inmate agrees to the disclosure and provides written consent or, if the inmate refuses to provide written consent, in response to an order of a court of competent jurisdiction, a subpoena, including a grand jury, investigative, or administrative subpoena, a court-ordered warrant, or a statutorily authorized investigative demand or other process as authorized by law, in accordance with 45 C.F.R. part 164, subpart E, provided that:

1. The protected health information and records sought are relevant and material to a legitimate law enforcement inquiry;

2. There is a clear connection between the investigated incident and the inmate whose protected health information and records are sought;

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117 3. The request is specific and limited in scope to the
 118 extent reasonably practicable in light of the purpose for which
 119 the information or records are sought; and

120 4. De-identified information could not reasonably be used.

121 (j) Protected health information and mental health,
 122 medical, or substance abuse records specified in paragraph
 123 (1) (a) of an inmate who is or is suspected of being the victim
 124 of a crime, to a state attorney or a law enforcement agency if
 125 the inmate agrees to the disclosure and provides written consent
 126 or, if the inmate is unable to agree because of incapacity or
 127 other emergency circumstance, in accordance with 45 C.F.R. part
 128 164, subpart E, provided that:

129 1. Such protected health information and records are needed
 130 to determine whether a violation of law by a person other than
 131 the inmate victim has occurred;

132 2. Such protected health information or records are not
 133 intended to be used against the inmate victim;

134 3. The immediate law enforcement activity that depends upon
 135 the disclosure would be materially and adversely affected by
 136 waiting until the inmate victim is able to agree to the
 137 disclosure; and

138 4. The disclosure is in the best interests of the inmate
 139 victim, as determined by the department.

140 (k) Protected health information and mental health,
 141 medical, or substance abuse records specified in paragraph
 142 (1) (a) to a state attorney or a law enforcement agency if the
 143 department believes in good faith that the information and
 144 records constitute evidence of criminal conduct that occurred in
 145 a correctional institution or facility, in accordance with 45

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146 C.F.R. part 164, subpart E, provided that:

147 1. The protected health information and records disclosed
 148 are specific and limited in scope to the extent reasonably
 149 practicable in light of the purpose for which the information or
 150 records are sought;

151 2. There is a clear connection between the criminal conduct
 152 and the inmate whose protected health information and records
 153 are sought; and

154 3. De-identified information could not reasonably be used.

155 (l) Protected health information and mental health,
 156 medical, or substance abuse records specified in paragraph
 157 (1) (a) to the Division of Risk Management of the Department of
 158 Financial Services, in accordance with 45 C.F.R. part 164,
 159 subpart E, upon certification by the Division of Risk Management
 160 that such information and records are necessary to investigate
 161 and provide legal representation for a claim against the
 162 Department of Corrections.

163 (m) Protected health information and mental health,
 164 medical, or substance abuse records specified in paragraph
 165 (1) (a) of an inmate who is bringing a legal action against the
 166 department, to the Department of Legal Affairs or to an attorney
 167 retained to represent the department in a legal proceeding, in
 168 accordance with 45 C.F.R. part 164, subpart E.

169 (n) Protected health information and mental health,
 170 medical, or substance abuse records of an inmate as specified in
 171 paragraph (1) (a) to another correctional institution or facility
 172 or law enforcement official having lawful custody of the inmate,
 173 in accordance with 45 C.F.R. part 164, subpart E, if the
 174 protected health information or records are necessary for:

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175 1. The provision of health care to the inmate;
 176 2. The health and safety of the inmate or other inmates;
 177 3. The health and safety of the officers, employees, or
 178 others at the correctional institution or facility;
 179 4. The health and safety of the individuals or officers
 180 responsible for transporting the inmate from one correctional
 181 institution, facility, or setting to another;
 182 5. Law enforcement on the premises of the correctional
 183 institution or facility; or
 184 6. The administration and maintenance of the safety,
 185 security, and good order of the correctional institution or
 186 facility.

187 (o) Protected health information and mental health,
 188 medical, or substance abuse records of an inmate as specified in
 189 paragraph (1)(a) to the Department of Children and Families and
 190 the Florida Commission on Offender Review, in accordance with 45
 191 C.F.R. part 164, subpart E, if the inmate received mental health
 192 treatment while in the custody of the Department of Corrections
 193 and becomes eligible for release under supervision or upon the
 194 end of his or her sentence.

195 (p) Notwithstanding s. 456.057 and in accordance with 45
 196 C.F.R. part 164, subpart E, protected health information and
 197 mental health, medical, or substance abuse records specified in
 198 paragraph (1)(a) of a deceased inmate or offender to an
 199 individual with authority to act on behalf of the deceased
 200 inmate or offender, upon the individual's request. For purposes
 201 of this section, the following individuals have authority to act
 202 on behalf of a deceased inmate or offender only for the purpose
 203 of requesting access to such protected health information and

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204 records:
 205 1. A person appointed by a court to act as the personal
 206 representative, executor, administrator, curator, or temporary
 207 administrator of the deceased inmate's or offender's estate;
 208 2. If a court has not made a judicial appointment under
 209 subparagraph 1., a person designated by the inmate or offender
 210 to act as his or her personal representative in a last will that
 211 is self-proved under s. 732.503; or
 212 3. If a court has not made a judicial appointment under
 213 subparagraph 1. or if the inmate or offender has not designated
 214 a person in a self-proved last will as provided in subparagraph
 215 2., only the following individuals:
 216 a. A surviving spouse.
 217 b. If there is no surviving spouse, a surviving adult child
 218 of the inmate or offender.
 219 c. If there is no surviving spouse or adult child, a parent
 220 of the inmate or offender.

221 (q) All requests for access to a deceased inmate's or
 222 offender's protected health information or mental health,
 223 medical, or substance abuse records specified in paragraph
 224 (1)(a) must be in writing and must be accompanied by the
 225 following:
 226 1. If made by a person authorized under subparagraph (p)1.,
 227 a copy of the letter of administration and a copy of the court
 228 order appointing such person as the representative of the
 229 inmate's or offender's estate.
 230 2. If made by a person authorized under subparagraph (p)2.,
 231 a copy of the self-proved last will designating the person as
 232 the inmate's or offender's representative.

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233 3. If made by a person authorized under subparagraph (p)3.,
 234 a letter from the person's attorney verifying the person's
 235 relationship to the inmate or offender and the absence of a
 236 court-appointed representative and self-proved last will.

237
 238 Records and information released under this subsection remain
 239 confidential and exempt from the provisions of s. 119.07(1) and
 240 s. 24(a), Art. I of the State Constitution when held by the
 241 receiving person or entity.

242 (6) This section does not limit any right to obtain records
 243 by subpoena or other court process.

244 Section 2. The Legislature finds that it is a public
 245 necessity that an inmate's or offender's protected health
 246 information and HIV testing information held by the Department
 247 of Corrections pursuant to s. 945.10, Florida Statutes, remain
 248 confidential and exempt from public disclosure as the
 249 Legislature envisioned in this statute and as provided in
 250 department rules. Allowing protected health information to be
 251 publicly disclosed would in some cases cause a conflict with
 252 existing federal law and would be a violation of an inmate's or
 253 offender's privacy under the State Constitution. Maintaining the
 254 confidentiality of an inmate's or offender's HIV testing
 255 information is essential to his or her participation in such
 256 testing. Thus, the harm from disclosure would outweigh any
 257 public benefit derived therefrom. Appropriate records and
 258 protected health information are available, however, to various
 259 governmental entities in order for them to perform their duties.
 260 It is mandatory that prisons function as effectively,
 261 efficiently, and nonviolently as possible. To release such

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262 information to the public would severely impede that function
 263 and would jeopardize the health and safety of those within and
 264 outside the prison system.

265 Section 3. This act shall take effect July 1, 2017.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Banking and Insurance
Judiciary
Regulated Industries

SENATOR RANDOLPH BRACY

11th District

March 24, 2017

The Honorable Senator Baxley
320 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chairman Baxley,

I respectfully request SB1526 be placed on the agenda for the Government Oversight and Accountability Committee at its next scheduled committee hearing. This bill is pertaining to the Department of Corrections and public records exemption as it relates to medical records. This bill is a priority of the Department of Corrections and has been reported favorably out of the Criminal Justice Committee.

I thank you in advance for your consideration and should you have any further questions please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Randolph Bracy". The signature is stylized with a large, flowing "B" and "R".

Senator Randolph Bracy
Senate District 11

Cc: Senator Frank Artiles , Vice Chair
Jay Ferrin, Staff Director
Tamra Redig, Committee Administrative Assistant

REPLY TO:

- ☐ 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716
- ☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17

Meeting Date

SB 1526

Bill Number (if applicable)

Topic SB 1526-Public Records/Health Information/Department of Corrections

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director

Address 501 S. Calhoun Street

Phone 850-488-7436

Street

Tallahassee

FL

32311

Email Jared.Torres@fdc.myflorida.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Corrections

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1604

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

SUBJECT: Department of Corrections

DATE: April 4, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sumner</u>	<u>Hrdlicka</u>	<u>CJ</u>	<u>Fav/CS</u>
2.	<u>Ferrin</u>	<u>Ferrin</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1604 amends various provisions related to the Department of Corrections (DOC).

The bill authorizes the Florida Department of Law Enforcement (FDLE), when conducting an investigation or assisting the investigation of an injury to or death of an inmate under the custody or control of the Department of Corrections (DOC), to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC.

The bill also makes the following changes:

- Revises the duties of the security review committee and the Secretary of Corrections;
- Authorizes the DOC to receive documents electronically for inmate admission;
- Allows *all* inmates who are recommended and otherwise eligible to be granted a one-time award of 60 additional days of incentive gain-time;
- Revises training requirements for prisoner transport company employees;
- Exempts employees of contracted community correctional centers from health testing regulations for administering urine screen drug tests on inmates and releasees;

- Aligns the age limits for housing youthful offenders with the federal Prison Rape Elimination Act (PREA) by reducing the maximum age from 19 to 18 years of age when designating separate institutions and programs for youthful offenders and making conforming changes; and
- Expands the eligibility of inmates released under the conditional medical release program to include inmates with debilitating illnesses and places additional criteria on eligibility for this type of supervised release.

II. Present Situation:

Criminal Justice Investigations and Forensic Science Program

The FDLE houses the Criminal Justice Investigations and Forensic Science Program. The purpose of the program is to investigate violations of any of the criminal laws of the state. Investigators have the authority to bear arms, make arrests and apply for, serve, and execute warrants, *capias*, and other process of the court.¹

The General Appropriations Act directs the FDLE to investigate all deaths of inmates who are in the custody of the DOC and all use of force incidents that result in death or serious bodily injury.² An investigation can be initiated by executive order of the Governor or by an existing MOU which requires the FDLE to investigate any incident that results in life-threatening injuries or death of an inmate or person on the property at a DOC facility which occurs as a result of anything other than apparent natural causes. Additionally, the DOC can request the FDLE to assist with the investigation of a credible complaint or other significant evidence of major organized criminal activity involving inmates or DOC employees. In Fiscal Year 2015-2016, there were 148 cases related to the DOC that were investigated by the FDLE.³

Security of Corrections Institutions and Facilities

Pursuant to s. 944.151, F.S., the DOC is responsible for the security of the state's correctional institutions and facilities. To ensure public safety and contain violent and chronic offenders until released from the DOC's custody, the Secretary of Corrections is assigned certain minimum responsibilities:

- Appoint a security review committee.
- Maintain and produce quarterly reports with accurate escape statistics.
- Adopt, enforce, and annually evaluate the emergency escape response procedures, which include, at a minimum, the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement.
- Submit in the annual legislative budget request a prioritized summary of critical repair and renovation security needs.

¹ Section 943.04, F.S.

² Introductory proviso for specific appropriations 1217 through 1229, ch. 2016-66, L.O.F. See also introductory proviso for specific appropriations 1252 through 1264, ch. 2015-232, L.O.F.

³ Florida Department of Law Enforcement, *Long Range Program Plan FY 17-18 through 21-22*, September 30, 2016, pages 6-7.

The security review committee is required to be composed of the following individuals, appointed by the Secretary: the DOC's inspector general, the statewide security coordinator, the regional security coordinators, three wardens, and one correctional officer. The security review committee must:

- Establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution to determine security deficiencies. Priority must be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a significant number of escapes or escape attempts in the past.
- Conduct announced and unannounced comprehensive security audits of all state and private correctional institutions. Priority must be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts. The audit must include an evaluation of the physical plant, landscaping, fencing, security alarms and perimeter lighting, and inmate classification and staffing policies. Each correctional institution must be audited at least annually. The Secretary reports the general survey findings annually to the Governor and the Legislature.
- Adopt and enforce minimum security standards and policies that include, but are not limited to:
 - Random monitoring of outgoing telephone calls by inmates;
 - Maintenance of current photographs of all inmates;
 - Daily inmate counts at varied intervals;
 - Use of canine units, where appropriate;
 - Use of escape alarms and perimeter lighting;
 - Florida Crime Information Center/National Crime Information Center capabilities; and
 - Employment background investigations.
- Make annual written prioritized budget recommendations to the Secretary that identify critical security deficiencies at major correctional institutions.
- Investigate and evaluate the usefulness and dependability of existing security technology at the institutions and new technology available and make periodic written recommendations to the Secretary on the discontinuation or purchase of various security devices.
- Contract, if deemed necessary, with security personnel, consulting engineers, architects, or other security experts for security audits and security consultant services.
- Establish a periodic schedule for conducting announced and unannounced escape simulation drills.

Commitments and Classification; Transfers

Section 944.17, F.S., provides that prisoners sentenced to state prison must be committed by the court to the custody of the DOC. Usually the prisoner has been in the custody of a sheriff in county jail. The sheriff receives the documents from the clerk of court required for the DOC to accept an inmate.⁴

⁴ Department of Corrections, *Agency Bill Analysis: SB 1604*, March 10, 2017 (on file with the Senate Committee on Criminal Justice).

The sheriff or chief correctional officer, or a designated representative, must submit the following forms before a person will be admitted into the state correctional system:

- The uniform commitment and judgment and sentence forms;
- The sheriff's certificate (information related to time spent in the sheriff's custody);
- A certified copy of the indictment or information relating to the offense for which the person was convicted;
- A copy of the probable cause affidavit for each offense identified in the current indictment or information;
- A copy of the Criminal Punishment Code scoresheet and any attachments thereto prepared pursuant to Rule 3.701, Rule 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or any other rule pertaining to the preparation of felony sentencing scoresheets;
- A copy of the restitution order or the reasons by the court for not requiring restitution;
- The name and address of any victim, if available;
- A printout of a current criminal history record as provided through an FCIC/NCIC printer; and
- Any available health assessments including medical, mental health, and dental, including laboratory or test findings; custody classification; disciplinary and adjustment; and substance abuse assessment and treatment information which may have been developed during the period of incarceration prior to the transfer of the person to the DOC's custody.⁵

In addition to the above, the sheriff or other officer must provide any available presentence investigation reports and any attached documents. Usually, transport officers provide the documents to DOC's staff at the reception facility at the time the inmate is transported.⁶ After a prisoner is admitted into the state correctional system, the DOC may request such additional records relating to the prisoner from the clerk of the court, the Department of Children and Families, or any other state or county agency for determining the prisoner's proper custody classification, gain-time eligibility, or eligibility for early release programs.

Gain-Time

Section 944.275, F.S., allows the DOC to grant deductions from sentences in the form of gain-time in order to encourage satisfactory prisoner behavior, to provide incentive for prisoners to participate in productive activities, and to reward prisoners who perform outstanding deeds or services.

The DOC grants basic gain-time at the rate of 10 days for each month of each sentence imposed on a prisoner to encourage satisfactory behavior, subject to the following:

- Portions of any sentences to be served concurrently are treated as a single sentence when determining basic gain-time;
- Basic gain-time for a partial month is prorated on the basis of a 30-day month; and
- When a prisoner receives a new maximum sentence expiration date because of additional sentences imposed, basic gain-time is granted for the amount of time the maximum sentence expiration date was extended.⁷

⁵ Section 944.17(5), F.S.

⁶ Department of Corrections, *Agency Bill Analysis: SB 1604*, March 10, 2017.

⁷ Section 944.275(4)(a), F.S.

The DOC may grant incentive gain-time for each month during which an inmate works diligently, participates in training, uses time constructively, or otherwise engages in positive activities. The rate of incentive gain-time in effect on the date the inmate committed the offense which resulted in his or her incarceration is the inmate's rate of eligibility to earn incentive gain-time throughout the period of incarceration and cannot be altered by a subsequent change in the severity level of the offense for which the inmate was sentenced.⁸

The DOC may grant meritorious gain-time to an inmate who performs some outstanding deed, such as saving a life or assisting in recapturing an escaped inmate, or who in some manner performs an outstanding service that would merit the granting of additional deductions from the term of his or her sentence. The grant of meritorious gain-time may be 1 to 60 days.⁹

The DOC may grant, upon a recommendation of the education program manager, a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is awarded a high school equivalency diploma or vocational certificate. An inmate may not receive more than 60 days for educational attainment.¹⁰

For sentences imposed for offenses committed on or after October 1, 1995, an inmate cannot earn any type of gain-time in an amount that would cause his or her sentence to expire, end, or terminate, or that would result in his or her release, prior to serving a minimum of 85 percent of the sentence imposed.¹¹ However, inmates with sentences imposed for offenses committed prior to October 1, 1995, can earn the educational gain-time over and above the rate of monthly gain-time eligibility limitations.¹²

Transportation and Return of Prisoners by Private Transport Company

Section 944.597, F.S., authorizes the DOC to contract with private companies for the transport of prisoners within and beyond the limits of the state. A contract with the transport company must include, but is not limited to, the following requirements:

- That the transport company maintains adequate liability coverage with respect to the transportation of prisoners;
- That transport company personnel based in the state meet the minimum standards in accordance with the statutory requirements for Florida law enforcement and correctional officers, and that personnel based outside of Florida meet the minimum standards for a law enforcement or correctional officers in the state where the employee is based;
- That the transport company adheres to standards which provide for humane treatment of prisoners while in the custody of the transport company; and
- That the transport company submits reports to the DOC regarding incidents of escape, use of force, and accidents involving prisoners in the custody of the transport company.

⁸ Section 944.275(4)(b), F.S.

⁹ Section 944.275(4)(c), F.S.

¹⁰ Section 944.275(4)(d), F.S.

¹¹ Section 944.275(4)(b)3., F.S.

¹² Section 944.275(4)(d), F.S. ("Notwithstanding subparagraphs (b)1. and 2., ..."). *See also* s. 944.275(4)(b)1. and 2., F.S.

Exemptions From Health Testing Regulations for Personnel Conducting Drug Tests on Inmates and Releasees

Section 945.36, F.S., exempts law enforcement officers, state or county probation officers, or employees of the DOC from the minimum standards found under part I of ch. 483, F.S., governing state clinical laboratories, when administering a urine screen drug test to:

- Persons during incarceration;
- Persons released, as a condition of probation for either a felony or misdemeanor; or
- Persons released, as a condition of community control, conditional release, control release, parole, provisional release, or pretrial release.

The DOC is required to develop a procedure for certification of any law enforcement officer, state or county probation officer, or DOC employee to perform a urine screen drug test on the persons specified above.

Institutions and Programs for Youthful Offenders

Section 958.11, F.S., requires the DOC to designate separate institutions and programs for youthful offenders and employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders.

Youthful offenders who are at least 14 years of age but are under 19 years of age at the time of reception must be separated from youthful offenders who are 19 years of age or older. If the population of the facilities designated for 14 to 18-year-old youthful offenders exceeds 100 percent of lawful capacity, the DOC may assign 18-year-old youthful offenders to the 19 to 24-year-old facility.

If the youthful offender was originally assigned to a facility designated for 14 to 18-year-old youthful offenders, but subsequently reaches 19 years of age, the DOC may retain the youthful offender in the facility if the DOC determines it is in the best interest of the youthful offender and the DOC.

If the DOC determines that a youthful offender assigned to the 19 to 24-year-old facility is mentally or physically vulnerable, the youthful offender may be reassigned to a facility designated for the 14 to 18-year-old group if the department determines that a reassignment is necessary to protect the safety of the youthful offender or the institution.

If the DOC determines that a youthful offender originally assigned to a facility designated for the 14 to 18-year-old group is disruptive, incorrigible, or uncontrollable, the youthful offender may be assigned to a facility designated for the 19 to 24-year-old group if the DOC determines that a reassignment would best serve the interests of the youthful offender and the DOC.

The guidelines of the Federal Prison Rape Elimination Act (PREA) of 2003 require that inmates under the age of 18 be separated from anyone 18 years of age or older.¹³ The DOC states that it currently maintains separate housing for those inmates who are 17 years of age and under, those who are 18 years of age, and those who are 19 to 21 years of age, in order to meet both the statutes and PREA guidelines.¹⁴

Conditional Medical Release

In 1992, the Florida Legislature created the Conditional Medical Release Program¹⁵ which is a discretionary release process allowing the Florida Commission on Offender Review (FCOR) to release inmates on supervision who are terminally ill¹⁶ or permanently incapacitated¹⁷ and who are not a danger to others.¹⁸ The DOC is responsible for recommending to the FCOR inmates who are eligible to be considered for conditional medical release.¹⁹ The FCOR has the discretion and sole authority on whether or not to grant conditional medical release.²⁰ Upon release, the offender is subject to conditions of supervision set by the FCOR. The FCOR monitors the offender's progress through periodic medical reviews.²¹ Supervision can be revoked and the offender returned to prison if the FCOR determines that a willful and substantial violation of supervision has occurred or if their medical or physical condition improves to the point that the offender no longer meets release criteria.²² The DOC has recommended 107 inmates for release in the past three fiscal years. The FCOR granted release to 52, or 49%, of those recommended. In the 2015-2016 fiscal year, the FCOR granted 29 of the 51 inmates recommended for conditional medical release, or 57%.²³

III. Effect of Proposed Changes:

Criminal Justice Investigations (Section 1)

Currently, the DOC requires the FDLE to serve on the DOC a HIPPA complaint subpoena or search warrant in order to receive an inmate's protected health information, medical record, or mental health record when the FDLE is investigating or assisting the DOC in the investigation of

¹³ National PREA Resource Center, *Youthful Inmate Implementation*, available at <https://www.prearesourcecenter.org/training-technical-assistance/prea-in-action/youthful-inmate-implementation> (last visited March 16, 2017). 28 CFR 115.5 (*youthful inmate*) and 115.14.

¹⁴ Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017.

¹⁵ Ch.92-310, Laws of Fla.

¹⁶ Section 947.149(1)(b), F.S. Terminally ill means an inmate who has a condition caused by injury, disease, or illness, which, to a reasonable degree of medical certainty renders the inmate permanently and irreversibly physical, incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

¹⁷ Section 947.149(1)(a), F.S. Permanently incapacitated means inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

¹⁸ Section 947.149(1), F.S.

¹⁹ Section 947.149(2), F.S.

²⁰ Section 947.149(3), F.S.

²¹ Section 947.149(4), F.S.

²² Section 947.149(5), F.S.

²³ Florida Commission on Offender Review, *2016 Annual Report*, available at <https://www.fcior.state.fl.us/docs/reports/FCORannualreport201516.pdf> (last visited April 4, 2017).

an inmate's injury or death and the inmate cannot (due to unresponsiveness or death) or does not consent to release of the information.²⁴

The bill amends s. 943.04, F.S., to provide that if the FDLE is conducting an investigation or assisting in the investigation of an injury to or death of an inmate under the custody or control of the DOC, then the FDLE is authorized to serve a demand for production of the inmate's protected health information, medical records, or mental health records on the DOC. The FDLE must use the records for the limited purpose of investigating or assisting in an investigation of an injury to or death of an inmate. Any records disclosed to the FDLE pursuant to the investigation must remain confidential and exempt from public records laws.²⁵

Security of Corrections Institutions and Facilities (Section 2)

The bill amends s. 944.151, F.S., to align the statute with current DOC policies and practices.²⁶

The bill adds to the DOC's responsibilities:

- "Safe operation" of correctional institutions and facilities.
- Ensuring the "safety of department employees and offenders."

The bill revises the duties of the security review committee and the Secretary of Corrections.

The bill revises the composition, title, and duties of the security review committee making it the "safety and security review committee" and providing that the committee shall evaluate new safety and security technology, review and discuss current issues impacting state and private correctional institutions and facilities, and review and discuss other issues as requested by DOC management. The bill replaces the former composition of the committee with "appropriate department staff" appointed by the Secretary.

Other duties of the former security review committee, discussed above in the Present Situation, are transferred to the Secretary, who is required to direct appropriate DOC staff to accomplish the duties. Under the bill, these former duties are also amended as follows:

- Inspect institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse.
- Announced an unannounced comprehensive security audits must give priority to institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or sexual abuse. This replaces current statutory priority given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts.
- Audit requirements include an evaluation of the confinement, arsenal, key and lock, and entrance and exit policies.

²⁴ *Id.*

²⁵ These records are already confidential and exempt under s. 945.10, F.S. See SB 1526 (2017), which amends s. 945.10, F.S., to expand the public records exemption to include additional health information and aligns disclosures allowed by the statute with federal Health Insurance Portability and Accountability Act laws.

²⁶ Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017.

- Evaluation of the physical plant policies include the identification of blind spots or areas where staff or inmates may be isolated and the deployment of video monitoring systems and other appropriate monitoring technologies in the spots or areas.

Commitments and Classification; Transfers (Section 3)

The bill amends s. 944.17, F.S., to allow for the electronic transmission of documents from the sheriff, chief correctional officer, other officer, clerk of the court, and other state agencies to the DOC relating to the admission of the inmate into the correctional system. The DOC states that it has been working on converting the process from paper based to electronic transmittal.²⁷

Gain-Time (Section 4)

The bill revises the conditions in s. 944.275(4)(d), F.S., allowing the education program manager to recommend a one-time award of 60 additional days of incentive gain-time to an inmate who is otherwise eligible and who successfully completes requirements for and is or has been during the current commitment, awarded a high school equivalency diploma or vocational certificate.²⁸ An inmate with a sentence imposed for an offense committed on or after October 1, 1995, will be ineligible to earn educational gain-time if earning such gain-time would cause his or her sentence to expire, end, or terminate, or would result in his or her release, prior to serving a minimum of 85 percent of the sentence imposed.

Transportation and Return of Prisoners by Private Transport Company (Section 5)

The bill amends s. 944.597, F.S., by revising the requirements for contract provisions relating to training of transport company employees. The transport company must require its employees to complete at least 100 hours of training before transporting prisoners. The training curriculum must be approved by the DOC and include instruction in:

- Use of restraints;
- Searches of prisoners;
- Use of force, including use of appropriate weapons and firearms;
- Cardiopulmonary resuscitation;
- Map reading; and
- Defensive driving.

The DOC states that this will allow a transport company to hire licensed security personnel instead of correctional officers similar to requirements for transport of prisoners from jails.²⁹

²⁷ *Id.*

²⁸ Offenses committed prior to January 1, 1994; on or after January 1, 1994, and before October 1, 1995; and on or after October 1, 1995.

²⁹ Department of Corrections, *2017 Agency Bill Analysis: SB 1604*, March 10, 2017. The DOC cites the example of s. 30.24, F.S., dealing with sheriffs' transportation and return of prisoners, which exempts personnel employed by any transport company for the transportation of prisoners from being deputy sheriffs, providing bond, or meeting requirements and training as provided by the Criminal Justice Standards and Training.

Exemptions From Health Testing Regulations for Personnel Conducting Drug Tests on Inmates and Releasees (Section 6)

The bill amends s. 945.36, F.S., by exempting employees of a contracted community correctional center from health testing regulations (found under part I of ch. 483, F.S., governing state clinical laboratories) for the limited purpose of administering urine screen drug tests on inmates and releasees. The DOC states that this will allow on-site testing and eliminate the need for a correctional officer to travel to a facility to perform the test.³⁰

Institutions and Programs for Youthful Offenders (Section 7)

The bill amends s. 958.11, F.S., changing the age limits on the housing of youthful offenders to align with the federal PREA requirements. It changes the maximum age from 19 to 18 years of age when designating separate institutions and programs for youthful offenders.

The bill authorizes the DOC to assign a youthful offender who is 18 years of age or older to a facility that is not designated for youthful offenders or an age group if he or she is convicted of a new crime that is a felony; is a serious management or disciplinary problem that is detrimental to the program or other inmates; needs medical or other treatment; should be transferred outside of the facility for services; or when bed space is not available in a designated community residential facility.

The bill authorizes inmates who are 17 years of age or under to be placed at an adult facility for medical or mental health reasons, for protective management, or for close management. The youthful offender must be separated from offenders who are 18 years of age or older.

If the youthful offender was originally assigned to a facility designated for 14 to 17-year-old youthful offenders, but subsequently reaches 18 years of age, the DOC may retain the youthful offender in the facility if the DOC determines it is in the best interest of the youthful offender and the DOC. Additionally, if the youthful offender was originally assigned to a facility designated for 18 to 22-year-old youthful offenders, but subsequently reaches 23 years of age, the DOC may retain the youthful offender in the facility until he or she reaches 25 years of age if the department determines that it is in the best interest of the child and the DOC.

The bill repeals a provision that allowed reassignment of mentally or physically vulnerable youthful offenders between 19 to 24 years of age to facilities designated for the 14 to 18-year-old age group if the DOC determined that the reassignment was necessary to protect the safety of the youthful offender or the institution.

The bill also repeals a provision that allowed reassignment of disruptive, incorrigible, or uncontrollable youthful offenders between 14 and 18 years of age to facilities for the 19 to 24-year-old age group if the department determined that a reassignment would be in the youthful offender's and the DOC's best interests.

³⁰ *Id.*

Conditional Medical Release Program (Section 9)

The bill amends s. 947.149, F.S. to expand the eligibility of inmate release under the conditional medical release program to include inmates with debilitating illnesses. An “inmate with a debilitating illness” is defined as an inmate who is determined to be suffering from a significant and permanent non-terminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society and must have served at least 50 percent of their sentence.

Under the bill, an inmate eligible for supervised medical release must have a debilitating illness, be permanently incapacitated, or be terminally ill, and:

- Have been convicted of a felony;
- Have no current or prior conviction for a capital or first degree felony, for a sexual offense, or for an offense involving a child;
- Have not received a disciplinary report within the previous 6 months;
- Have never received a disciplinary report for a violent act; and
- Have renounced any gang affiliation.

The bill requires that DOC refer the eligible inmates to the Florida Commission on Offender Review (FCOR) who must verify the referral.

The referral must include a proposed conditional medical release plan, medical history, and prison experience, criminal history, any history of substance abuse and mental health issues, any disciplinary action against the inmate while in prison, any participation in prison work and other prison programs, any other information deemed necessary by DOC. The criminal history must include:

- A claim of innocence, if any;
- The degree to which the inmate accepts responsibility for the acts leading to the conviction; and
- How any claim of responsibility has affected the inmate’s feelings of remorse.

The bill requires FCOR to finish its verification of the eligibility of an inmate within 60 days after the DOC refers the inmate for conditional medical release. It also requires conditional medical release to be granted to inmates that FCOR verifies are eligible. Any discretion the FCOR has is limited to conditions placed on the supervision of a released inmate.

Effective Date

The bill is effective July 1, 2017.

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:

None.

C. Government Sector Impact:**(Section 4 – Educational Gain-Time)**

The DOC states that because the impact is a small shift in the release date of some inmates (those that meet the criteria and do not already get to their 85 percent dates), the estimated long-term impact is indeterminate.

However, using the inmate variable per diem (health care costs and personal care items), the DOC estimates that the first year of implementation will have an impact on the average daily population (ADP) of approximately 86 fewer inmates.

Year 1 Impact-Population Reduction: $(86) \times \$15.91 = (\$499,415)$

(Section 9 – Conditional Medical Release)

The cost of the changes to the Conditional Medical Release program are unknown at this time. The expansion of eligibility for conditional medical release together with the requirement for DOC to refer eligible inmates to FCOR for review will increase the volume and workload for both the DOC and the FCOR. However, costs associated with the supervised release of eligible inmates may be offset by savings related to the housing and care of such inmates by the DOC.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 943.04, 944.151, 944.17, 944.275, 944.597, 945.36, 947.149, and 958.11.

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

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

CS/CS by Governmental Oversight and Accountability on April 3, 2017:

- Removes Section 1 of CS/SB 1604, which converted employee classification for correctional officer lieutenants and captains and correctional probation officer supervisors and senior supervisors from Career Service to Select Exempt Service.
- Expands the eligibility of inmate release under the conditional medical release program to include inmates with debilitating illnesses, and places additional criteria on eligibility for this type of supervised release.

CS by Criminal Justice on March 21, 2017:

The CS amends s. 944.275, F.S., clarifying that the 85 percent limitation on earning gain-time applies to all the types of gain-time.

B. Amendments:

None.



682850

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 59 - 96.

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

And the title is amended as follows:

Delete lines 3 - 4

and insert:

amending s.



598206

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 551 and 552

insert:

Section 10. Section 947.149, Florida Statutes, is amended
to read:

947.149 Conditional medical release.—

(1) The commission shall, in conjunction with the
department, establish the conditional medical release program.
An inmate is eligible for supervised ~~consideration for~~ release



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under the conditional medical release program when the inmate, because of an existing medical or physical condition, is determined by the department to be within one of the following designations:

(a) "Inmate with a debilitating illness," which means an inmate who is determined to be suffering from a significant and permanent non-terminal condition, disease, or syndrome that has rendered the inmate so physically or cognitively debilitated or incapacitated as to create a reasonable probability that he or she does not present any danger to society.

(b) ~~(a)~~ "Permanently incapacitated inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate permanently and irreversibly physically incapacitated to the extent that the inmate does not constitute a danger to herself or himself or others.

(c) ~~(b)~~ "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(2) To be eligible, an inmate must also be determined by the department to meet all of the following criteria:

(a) Has been convicted of a felony and has served at least 50 percent of his or her sentence.

(b) Has no current or prior conviction for a capital or first degree felony, for a sexual offense, or for an offense involving a child.



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40 (c) Has not received a disciplinary report within the
41 previous 6 months.

42 (d) Has never received a disciplinary report for a violent
43 act.

44 (e) Has renounced any gang affiliation.

45 (2) Notwithstanding any provision to the contrary, any
46 person determined eligible under this section and sentenced to
47 the custody of the department shall ~~may~~, upon referral by the
48 department and verification of eligibility by commission, be
49 placed on ~~considered for~~ conditional medical release by the
50 commission, ~~in addition to any parole consideration for which~~
51 ~~the inmate may be considered, except that conditional medical~~
52 ~~release is not authorized for an inmate who is under sentence of~~
53 ~~death.~~

54 (3) No inmate has a right to conditional medical release or
55 to a medical evaluation to determine eligibility for such
56 release.

57 (4) (a) (3) The commission has the authority and whether or
58 not to grant conditional medical release and establish
59 additional conditions of conditional medical release rests
60 solely within the discretion of the commission, in accordance
61 with the provisions of this section, together with the authority
62 to approve the release plan proposed by the department to
63 include necessary medical care and attention.

64 (b) The department shall identify inmates who may be
65 eligible for conditional medical release based upon available
66 medical information and shall refer them to the commission if
67 they are eligible under this section for consideration. In
68 considering an inmate for conditional medical release, the



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~~commission may require that additional medical evidence be produced or that additional medical examinations be conducted, and may require such other investigations to be made as may be warranted.~~

(d) The referral by the department to the commission must include the following information:

1. Proposed conditional medical release plan.

2. Any relevant medical history, including current medical prognosis.

3. Prison experience and criminal history. The criminal history must include all of the following:

a. A claim of innocence, if any.

b. The degree to which the inmate accepts responsibility for his or her acts leading to the conviction of the crime.

c. How any claim of responsibility has affected the inmate's feelings of remorse.

4. Any history of substance abuse and mental health issues.

5. Any disciplinary action taken against the inmate while in prison.

6. Any participation in prison work and other prison programs.

7. Any other information deemed necessary by the department.

(e) In verifying eligibility of an inmate for conditional medical release, the commission shall review the information provided by the department.

(f) The commission must finish its verification of the eligibility of an inmate within 60 days after the department refers the inmate for conditional medical release.



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98 (5)~~(4)~~ The conditional medical release term of an inmate
99 released on conditional medical release is for the remainder of
100 the inmate's sentence, without diminution of sentence for good
101 behavior. Supervision of the medical releasee must include
102 periodic medical evaluations at intervals included in the
103 recommended release plan and approved ~~determined~~ by the
104 commission at the time of release. Supervision may also include
105 electronic monitoring.

106 (6) (a)~~(5) (a)~~ If it is discovered during the conditional
107 medical release that the medical or physical condition of the
108 medical releasee has improved to the extent that she or he would
109 no longer be eligible for conditional medical release under this
110 section, the commission may order that the releasee be returned
111 to the custody of the department for a conditional medical
112 release revocation hearing, in accordance with s. 947.141. If
113 conditional medical release is revoked due to improvement in the
114 medical or physical condition of the releasee, she or he shall
115 serve the balance of her or his sentence with credit for the
116 time served on conditional medical release and without
117 forfeiture of any gain-time accrued prior to conditional medical
118 release. If the person whose conditional medical release is
119 revoked due to an improvement in medical or physical condition
120 would otherwise be eligible for parole or any other release
121 program, the person may be considered for such release program
122 pursuant to law.

123 (b) In addition to revocation of conditional medical
124 release pursuant to paragraph (a), conditional medical release
125 may also be revoked for violation of any condition of the
126 release established by the commission, in accordance with s.



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947.141, and the releasee's gain-time may be forfeited pursuant to s. 944.28(1).

(7)~~(6)~~ The department and the commission shall adopt rules as necessary to implement the conditional medical release program.

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

And the title is amended as follows:

Delete line 55
and insert:

reference; amending s. 947.149, F.S.; defining the term "inmate with a debilitating illness"; expanding eligibility for conditional medical release to include inmates with debilitating illnesses; providing criteria for eligibility; requiring the Department of Corrections to refer an eligible inmate for release; requiring the Commission on Offender Review to verify the referral; requiring that the Department of Corrections's referral for release include certain documents; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (598206)

Delete lines 20 - 36
and insert:
she does not present any danger to society. He or she must have
served at least 50 percent of his or her sentence.

(b) ~~(a)~~ "Permanently incapacitated inmate," which means an
inmate who has a condition caused by injury, disease, or illness
which, to a reasonable degree of medical certainty, renders the
inmate permanently and irreversibly physically incapacitated to



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the extent that the inmate does not constitute a danger to herself or himself or others.

(c) ~~(b)~~ "Terminally ill inmate," which means an inmate who has a condition caused by injury, disease, or illness which, to a reasonable degree of medical certainty, renders the inmate terminally ill to the extent that there can be no recovery and death is imminent, so that the inmate does not constitute a danger to herself or himself or others.

(2) To be eligible, an inmate must also be determined by the department to meet all of the following criteria:

(a) Has been convicted of a felony.

By the Committee on Criminal Justice; and Senator Bracy

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1 A bill to be entitled
 2 An act relating to the Department of Corrections;
 3 amending s. 110.205, F.S.; exempting specified
 4 positions from the career service system; amending s.
 5 943.04, F.S.; authorizing the Department of Law
 6 Enforcement to issue an investigative demand seeking
 7 the production of an inmate's protected health
 8 information, medical records, or mental health records
 9 under certain circumstances; specifying requirements
 10 for the investigative demand; amending s. 944.151,
 11 F.S.; revising legislative intent; revising membership
 12 requirements for the safety and security review
 13 committee appointed by the Department of Corrections;
 14 specifying the duties of the committee; requiring the
 15 department to direct appropriate staff to complete
 16 specified duties of the department; revising
 17 scheduling requirements for inspections of state and
 18 private correctional institutions and facilities;
 19 revising the list of institutions that must be given
 20 priority for inspection; revising the list of
 21 institutions that must be given priority for certain
 22 security audits; revising minimum audit and evaluation
 23 requirements; requiring the department to direct
 24 appropriate staff to review staffing policies and
 25 practices as needed; conforming provisions to changes
 26 made by the act; amending s. 944.17, F.S.; authorizing
 27 the department to receive specified documents
 28 electronically at its discretion; amending s. 944.275,
 29 F.S.; revising the conditions on which an inmate may

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

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30 be granted a one-time award of 60 additional days of
 31 incentive gain-time by the department; clarifying when
 32 gain-time can be earned; amending s. 944.597, F.S.;
 33 revising provisions relating to training of transport
 34 company's employees before transporting prisoners;
 35 amending s. 945.36, F.S.; exempting employees of a
 36 contracted community correctional center from certain
 37 health testing regulations for the limited purpose of
 38 administering urine screen drug tests on inmates and
 39 releasees; amending s. 958.11, F.S.; deleting a
 40 provision authorizing the department to assign 18-
 41 year-old youthful offenders to the 19-24 age group
 42 facility under certain circumstances; deleting a
 43 condition that all female youth offenders are allowed
 44 to continue to be housed together only until certain
 45 institutions are established or adapted for separation
 46 by age and custody classifications; authorizing
 47 inmates who are 17 years of age or under to be placed
 48 at an adult facility for specified purposes, subject
 49 to certain conditions; authorizing the department to
 50 retain certain youthful offenders until 25 years of
 51 age in a facility designated for 18- to 22-year-old
 52 youth offenders under certain circumstances;
 53 conforming provisions to changes made by the act;
 54 amending s. 921.002, F.S.; conforming a cross-
 55 reference; providing an effective date.

57 Be It Enacted by the Legislature of the State of Florida:
 58

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Section 1. Paragraph (m) of subsection (2) of section 110.205, Florida Statutes, is amended to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not covered by this part include the following:

(m) All assistant division director, deputy division director, and bureau chief positions in any department, and those positions determined by the department to have managerial responsibilities comparable to such positions, which include, but are not limited to:

1. Positions in the Department of Health and the Department of Children and Families which are assigned primary duties of serving as the superintendent or assistant superintendent of an institution.

2. Positions in the Department of Corrections which are assigned primary duties of serving as the warden, assistant warden, colonel, ~~or~~ major, captain, or lieutenant of an institution or which ~~that~~ are assigned primary duties of serving as the circuit administrator, ~~or~~ deputy circuit administrator, correctional probation supervisor, or senior supervisor.

3. Positions in the Department of Transportation which are assigned primary duties of serving as regional toll managers and managers of offices, as specified in s. 20.23(3)(b) and (4)(c).

4. Positions in the Department of Environmental Protection which are assigned the duty of an Environmental Administrator or program administrator.

5. Positions in the Department of Health which are assigned the duties of Environmental Administrator, Assistant County Health Department Director, and County Health Department

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Financial Administrator.

6. Positions in the Department of Highway Safety and Motor Vehicles which are assigned primary duties of serving as captains in the Florida Highway Patrol.

Unless otherwise fixed by law, the department shall set the salary and benefits of the positions listed in this paragraph in accordance with the rules established for the Selected Exempt Service.

Section 2. Subsection (6) is added to section 943.04, Florida Statutes, to read:

943.04 Criminal Justice Investigations and Forensic Science Program; creation; investigative, forensic, and related authority.—

(6)(a) In furtherance of the duties and responsibilities of the inspector general under s. 944.31, if the Department of Law Enforcement is conducting an investigation or assisting in the investigation of an injury to or death of an inmate which occurs while the inmate is under the custody or control of the Department of Corrections, the department is authorized to, before the initiation of a criminal proceeding relating to such injury or death, issue in writing and serve upon the Department of Corrections an investigative demand seeking the production of the inmate's protected health information, medical records, or mental health records as specified in s. 945.10(1)(a). The department shall use such records for the limited purpose of investigating or assisting in an investigation of an injury to or death of an inmate for which the records were requested. Any records disclosed pursuant to this subsection remain

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confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution in accordance with s. 945.10(2).

(b) The investigative demand must be specific and limited in scope to the extent reasonably practicable in light of the purpose for which the protected health information or records are sought and must include a certification that:

1. The protected health information or records sought are relevant and material to a legitimate law enforcement inquiry;

2. There is a clear connection between the investigated incident and the inmate whose protected health information and records are sought; and

3. De-identified information could not reasonably be used.

Section 3. Section 944.151, Florida Statutes, is amended to read:

944.151 Safe operation and security of correctional institutions and facilities.—It is the intent of the Legislature that the Department of Corrections shall be responsible for the safe operation and security of the correctional institutions and facilities. The safe operation and security of the state's correctional institutions and facilities are ~~is~~ critical to ensure public safety and the safety of department employees and offenders, and to contain violent and chronic offenders until offenders are otherwise released from the department's custody pursuant to law. The Secretary of Corrections shall, at a minimum:

(1) Appoint appropriate department staff to a safety and security review committee that which shall evaluate new safety and security technology, review and discuss current issues impacting state and private correctional institutions and

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facilities, and review and discuss other issues as requested by department management., at a minimum, be composed of: the inspector general, the statewide security coordinator, the regional security coordinators, and three wardens and one ~~correctional officer. The security review committee shall.~~

(2)(a) Direct appropriate department staff to establish a periodic schedule for the physical inspection of buildings and structures of each state and private correctional institution and facility to determine safety and security deficiencies. In scheduling the inspections, priority shall be given to older institutions and facilities; ~~institutions and facilities that~~ house a large proportion of violent offenders; institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or inmate sexual abuse; ~~and institutions and facilities that have experienced a significant number of escapes or escape attempts in the past.~~

(3)(b) Direct appropriate department staff to conduct or cause to be conducted announced and unannounced comprehensive security audits of all state and private correctional institutions and facilities. Priority shall be given to those institutions and facilities that have experienced a significant number of inappropriate incidents of use of force on inmates, assaults on employees, or sexual abuse ~~In conducting the security audits, priority shall be given to older institutions, institutions that house a large proportion of violent offenders, and institutions that have experienced a history of escapes or escape attempts.~~ At a minimum, the audit ~~must~~ shall include an evaluation of the physical plant, landscaping, fencing, security

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alarms and perimeter lighting, and confinement, arsenal, key and lock, and entrance and exit inmate classification and staffing policies. The evaluation of the physical plant policies must include the identification of blind spots or areas where staff or inmates may be isolated and the deployment of video monitoring systems and other appropriate monitoring technologies in such spots or areas. Each correctional institution and facility shall be audited at least annually. The secretary shall annually report the audit general survey findings annually to the Governor and the Legislature.

~~(c) Adopt and enforce minimum security standards and policies that include, but are not limited to:~~

~~1. Random monitoring of outgoing telephone calls by inmates.~~

~~2. Maintenance of current photographs of all inmates.~~

~~3. Daily inmate counts at varied intervals.~~

~~4. Use of canine units, where appropriate.~~

~~5. Use of escape alarms and perimeter lighting.~~

~~6. Florida Crime Information Center/National Crime Information Center capabilities.~~

~~7. Employment background investigations.~~

~~(d) Annually make written prioritized budget recommendations to the secretary that identify critical security deficiencies at major correctional institutions.~~

(4)(e) Direct appropriate department staff to investigate and evaluate the usefulness and dependability of existing safety and security technology at state and private correctional the institutions and facilities, investigate and evaluate new available safety and security technology, available and make

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periodic written recommendations to the secretary on the discontinuation or purchase of various safety and security devices.

~~(5)(f) Direct appropriate department staff to contract, if deemed necessary, with security personnel, consulting engineers, architects, or other safety and security experts the department committee deems necessary for safety and security audits and security consultant services.~~

~~(6)(g) Direct appropriate department staff, in conjunction with the regional offices, to establish a periodic schedule for conducting announced and unannounced escape simulation drills.~~

~~(7)(2) Direct appropriate department staff to maintain and produce quarterly reports with accurate escape statistics. For the purposes of these reports, the term "escape" includes all possible types of escape, regardless of prosecution by the state attorney, and includes including offenders who walk away from nonsecure community facilities.~~

~~(8)(3) Direct appropriate department staff to adopt, enforce, and annually evaluate the emergency escape response procedures, which must shall at a minimum include the immediate notification and inclusion of local and state law enforcement through a mutual aid agreement.~~

(9) Direct appropriate department staff to review staffing policies and practices as needed.

(10) Direct appropriate department staff to adopt and enforce minimum safety and security standards and policies that include, but are not limited to:

(a) Random monitoring of outgoing telephone calls by inmates.

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233 (b) Maintenance of current photographs of all inmates.
 234 (c) Daily inmate counts at varied intervals.
 235 (d) Use of canine units, where appropriate.
 236 (e) Use of escape alarms and perimeter lighting.
 237 (f) Use of the Florida Crime Information Center and
 238 National Crime Information Center capabilities.
 239 (g) Employment background investigations.
 240 (11)(4) Direct appropriate department staff to submit in
 241 the annual legislative budget request a prioritized summary of
 242 critical safety and security deficiencies and repair and
 243 renovation security needs.
 244 Section 4. Subsection (5) of section 944.17, Florida
 245 Statutes, is amended to read:
 246 944.17 Commitments and classification; transfers.—
 247 (5) The department shall also refuse to accept a person
 248 into the state correctional system unless the following
 249 documents are presented in a completed form by the sheriff or
 250 chief correctional officer, or a designated representative, to
 251 the officer in charge of the reception process. The department
 252 may, at its discretion, receive such documents electronically:
 253 (a) The uniform commitment and judgment and sentence forms
 254 as described in subsection (4).
 255 (b) The sheriff's certificate as described in s. 921.161.
 256 (c) A certified copy of the indictment or information
 257 relating to the offense for which the person was convicted.
 258 (d) A copy of the probable cause affidavit for each offense
 259 identified in the current indictment or information.
 260 (e) A copy of the Criminal Punishment Code scoresheet and
 261 any attachments thereto prepared pursuant to Rule 3.701, Rule

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262 3.702, or Rule 3.703, Florida Rules of Criminal Procedure, or
 263 any other rule pertaining to the preparation of felony
 264 sentencing scoresheets.
 265 (f) A copy of the restitution order or the reasons by the
 266 court for not requiring restitution pursuant to s. 775.089(1).
 267 (g) The name and address of any victim, if available.
 268 (h) A printout of a current criminal history record as
 269 provided through an FCIC/NCIC printer.
 270 (i) Any available health assessments including medical,
 271 mental health, and dental, including laboratory or test
 272 findings; custody classification; disciplinary and adjustment;
 273 and substance abuse assessment and treatment information which
 274 may have been developed during the period of incarceration
 275 before ~~prior to~~ the transfer of the person to the department's
 276 custody. Available information shall be transmitted on standard
 277 forms developed by the department.
 278
 279 In addition, the sheriff or other officer having such person in
 280 charge shall also deliver with the foregoing documents any
 281 available presentence investigation reports as described in s.
 282 921.231 and any attached documents. After a prisoner is admitted
 283 into the state correctional system, the department may request
 284 such additional records relating to the prisoner as it considers
 285 necessary from the clerk of the court, the Department of
 286 Children and Families, or any other state or county agency for
 287 the purpose of determining the prisoner's proper custody
 288 classification, gain-time eligibility, or eligibility for early
 289 release programs. An agency that receives such a request from
 290 the department must provide the information requested. The

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291 department may, at its discretion, receive such information
 292 electronically.

293 Section 5. Paragraphs (b) and (d) of subsection (4) of
 294 section 944.275, Florida Statutes, are amended, and paragraph
 295 (f) is added to that subsection, to read:

296 944.275 Gain-time.—

297 (4)

298 (b) For each month in which an inmate works diligently,
 299 participates in training, uses time constructively, or otherwise
 300 engages in positive activities, the department may grant
 301 incentive gain-time in accordance with this paragraph. The rate
 302 of incentive gain-time in effect on the date the inmate
 303 committed the offense which resulted in his or her incarceration
 304 shall be the inmate's rate of eligibility to earn incentive
 305 gain-time throughout the period of incarceration and shall not
 306 be altered by a subsequent change in the severity level of the
 307 offense for which the inmate was sentenced.

308 1. For sentences imposed for offenses committed prior to
 309 January 1, 1994, up to 20 days of incentive gain-time may be
 310 granted. If granted, such gain-time shall be credited and
 311 applied monthly.

312 2. For sentences imposed for offenses committed on or after
 313 January 1, 1994, and before October 1, 1995:

314 a. For offenses ranked in offense severity levels 1 through
 315 7, under former s. 921.0012 or former s. 921.0013, up to 25 days
 316 of incentive gain-time may be granted. If granted, such gain-
 317 time shall be credited and applied monthly.

318 b. For offenses ranked in offense severity levels 8, 9, and
 319 10, under former s. 921.0012 or former s. 921.0013, up to 20

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320 days of incentive gain-time may be granted. If granted, such
 321 gain-time shall be credited and applied monthly.

322 3. For sentences imposed for offenses committed on or after
 323 October 1, 1995, the department may grant up to 10 days per
 324 month of incentive gain-time, ~~except that no prisoner is~~
 325 ~~eligible to earn any type of gain-time in an amount that would~~
 326 ~~cause a sentence to expire, end, or terminate, or that would~~
 327 ~~result in a prisoner's release, prior to serving a minimum of 85~~
 328 ~~percent of the sentence imposed. For purposes of this~~
 329 ~~subparagraph, credits awarded by the court for time physically~~
 330 ~~incarcerated shall be credited toward satisfaction of 85 percent~~
 331 ~~of the sentence imposed. Except as provided by this section, a~~
 332 ~~prisoner shall not accumulate further gain time awards at any~~
 333 ~~point when the tentative release date is the same as that date~~
 334 ~~at which the prisoner will have served 85 percent of the~~
 335 ~~sentence imposed. State prisoners sentenced to life imprisonment~~
 336 ~~shall be incarcerated for the rest of their natural lives,~~
 337 ~~unless granted pardon or clemency.~~

338 (d) Notwithstanding the monthly maximum awards of incentive
 339 gain-time under subparagraphs (b)1., and 2., and 3., the
 340 education program manager shall recommend, and the Department of
 341 Corrections may grant, a one-time award of 60 additional days of
 342 incentive gain-time to an inmate who is otherwise eligible and
 343 who successfully completes requirements for and is, or has been
 344 during the current commitment, awarded a high school equivalency
 345 diploma or vocational certificate. Under no circumstances may an
 346 inmate receive more than 60 days for educational attainment
 347 pursuant to this section.

348 (f) An inmate who is subject to subparagraph (b)3. is not

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349 eligible to earn or receive gain-time under paragraph (a),
 350 paragraph (b), paragraph (c), or paragraph (d) or any other type
 351 of gain-time in an amount that would cause a sentence to expire,
 352 end, or terminate, or that would result in a prisoner's release,
 353 before serving a minimum of 85 percent of the sentence imposed.
 354 For purposes of this paragraph, credits awarded by the court for
 355 time physically incarcerated shall be credited toward
 356 satisfaction of 85 percent of the sentence imposed. Except as
 357 provided by this section, a prisoner may not accumulate further
 358 gain-time awards at any point when the tentative release date is
 359 the same as that date at which the prisoner will have served 85
 360 percent of the sentence imposed. State prisoners sentenced to
 361 life imprisonment shall be incarcerated for the rest of their
 362 natural lives, unless granted a pardon or clemency.

363 Section 6. Subsection (2) of section 944.597, Florida
 364 Statutes, is amended to read:

365 944.597 Transportation and return of prisoners by private
 366 transport company.—

367 (2) The department shall include, but is shall not be
 368 limited to, the following requirements in any contract with any
 369 transport company:

370 (a) That the transport company shall maintain adequate
 371 liability coverage with respect to the transportation of
 372 prisoners.†

373 (b) That the transport company shall require its employees
 374 to complete at least 100 hours of training before transporting
 375 prisoners. The curriculum for such training must be approved by
 376 the department and include instruction in:

377 1. Use of restraints;

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378 2. Searches of prisoners;
 379 3. Use of force, including use of appropriate weapons and
 380 firearms;
 381 4. Cardiopulmonary resuscitation;
 382 5. Map reading; and
 383 6. Defensive driving. ~~personnel employed with the transport~~
 384 ~~company who are based in the state shall meet the minimum~~
 385 ~~standards in accordance with s. 943.13 and that personnel~~
 386 ~~employed with the transport company based outside of Florida~~
 387 ~~shall meet the minimum standards for a correctional officer or~~
 388 ~~law enforcement officer in the state where the employee is~~
 389 ~~based.~~
 390 (c) That the transport company shall adhere to standards
 391 which provide for humane treatment of prisoners while in the
 392 custody of the transport company.†
 393 (d) That the transport company shall submit reports to the
 394 department regarding incidents of escape, use of force, and
 395 accidents involving prisoners in the custody of the transport
 396 company.
 397 Section 7. Section 945.36, Florida Statutes, is amended to
 398 read:
 399 945.36 Exemption from health testing regulations for law
 400 enforcement personnel conducting drug tests on inmates and
 401 releasees.—
 402 (1) Any law enforcement officer, state or county probation
 403 officer, ~~or~~ employee of the Department of Corrections, or
 404 employee of a contracted community correctional center who is
 405 certified by the Department of Corrections pursuant to
 406 subsection (2), is exempt from part I of chapter 483, for the

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limited purpose of administering a urine screen drug test to:

(a) Persons during incarceration;

(b) Persons released as a condition of probation for either a felony or misdemeanor;

(c) Persons released as a condition of community control;

(d) Persons released as a condition of conditional release;

(e) Persons released as a condition of parole;

(f) Persons released as a condition of provisional release;

(g) Persons released as a condition of pretrial release; or

(h) Persons released as a condition of control release.

(2) The Department of Corrections shall develop a procedure for certification of any law enforcement officer, state or county probation officer, ~~or~~ employee of the Department of Corrections, or employee of a contracted community correctional center to perform a urine screen drug test on the persons specified in subsection (1).

Section 8. Section 958.11, Florida Statutes, is amended to read:

958.11 Designation of institutions and programs for youthful offenders; assignment from youthful offender institutions and programs.—

(1) The department shall by rule designate separate institutions and programs for youthful offenders and shall employ and utilize personnel specially qualified by training and experience to operate all such institutions and programs for youthful offenders. Youthful offenders who are at least 14 years of age but who have not yet reached the age of 18 ~~19~~ years at the time of reception shall be separated from youthful offenders who are 18 ~~19~~ years of age or older, ~~except that if the~~

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~~population of the facilities designated for 14-year-old to 18-year-old youthful offenders exceeds 100 percent of lawful capacity, the department may assign 18-year-old youthful offenders to the 19-24 age group facility.~~

(2) Youthful offender institutions and programs shall contain only those youthful offenders sentenced as such by a court or classified as such by the department, pursuant to the requirements of subsections (7) ~~(4)~~ and (9) ~~(6)~~, except that under special circumstances select adult offenders may be assigned to youthful offender institutions. All female youthful offenders ~~of all ages~~ may continue to be housed together at those institutions designated by department rule ~~until such time as institutions for female youthful offenders are established or adapted to allow for separation by age and to accommodate all custody classifications.~~

(3) The department may assign a youthful offender who is 18 years of age or older to a facility in the state correctional system which is not designated for the care, custody, control, and supervision of youthful offenders or an age group only in the following circumstances:

(a) If the youthful offender is convicted of a new crime that ~~which~~ is a felony under the laws of this state.

(b) If the youthful offender becomes such a serious management or disciplinary problem resulting from serious violations of the rules of the department that his or her original assignment would be detrimental to the interests of the program and to other inmates committed thereto.

(c) If the youthful offender needs medical treatment, health services, or other specialized treatment otherwise not

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available at the youthful offender facility.

(d) If the department determines that the youthful offender should be transferred outside of the state correctional system, as provided by law, for services not provided by the department.

(e) If bed space is not available in a designated community residential facility, the department may assign a youthful offender to a community residential facility, provided that the youthful offender is separated from other offenders insofar as is practical.

(4) The department may assign a youthful offender whose age does not exceed 17 years to an adult facility for medical or mental health reasons, for protective management, or for close management. The youthful offender shall be separated from offenders who are 18 years of age or older.

(5) (f) If the youthful offender was originally assigned to a facility designated for 14- to 17-year-old 14-year-old to 18-year-old youthful offenders, but subsequently reaches the age of 18 19 years, the department may retain the youthful offender in a the facility designated for 18- to 22-year-old youthful offenders if the department determines that it is in the best interest of the youthful offender and the department.

(6) If the youthful offender was originally assigned to a facility designated for 18- to 22-year-old youthful offenders, but subsequently reaches the age of 23 years, the department may retain the offender in the facility until the age of 25 if the department determines that it is in the best interest of the youthful offender and the department.

~~(g) If the department determines that a youthful offender originally assigned to a facility designated for the 19-24 age~~

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~~group is mentally or physically vulnerable by such placement, the department may reassign a youthful offender to a facility designated for the 14-18 age group if the department determines that a reassignment is necessary to protect the safety of the youthful offender or the institution.~~

~~(h) If the department determines that a youthful offender originally assigned to a facility designated for the 14-18 age group is disruptive, incorrigible, or uncontrollable, the department may reassign a youthful offender to a facility designated for the 19-24 age group if the department determines that a reassignment would best serve the interests of the youthful offender and the department.~~

(7) (4) The department shall continuously screen all institutions, facilities, and programs for any inmate who meets the eligibility requirements for youthful offender designation specified in s. 958.04(1)(a) and (c) whose age does not exceed 24 years and whose total length of sentence does not exceed 10 years, and the department may classify and assign as a youthful offender any inmate who meets the criteria of this subsection.

(8) (5) The department shall coordinate all youthful offender assignments or transfers and shall review and maintain access to full and complete documentation and substantiation of all such assignments or transfers of youthful offenders to or from facilities in the state correctional system which are not designated for their care, custody, and control, except assignments or transfers made pursuant to paragraph (3)(c).

(9) (6) The department may assign to a youthful offender facility any inmate, except a capital or life felon, whose age does not exceed 19 years but who does not otherwise meet the

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523 criteria of this section, if the department determines that such
 524 inmate's mental or physical vulnerability would substantially or
 525 materially jeopardize his or her safety in a nonyouthful
 526 offender facility. Assignments made under this subsection shall
 527 be included in the department's annual report.

528 Section 9. Paragraph (e) of subsection (1) of section
 529 921.002, Florida Statutes, is amended to read:

530 921.002 The Criminal Punishment Code.—The Criminal
 531 Punishment Code shall apply to all felony offenses, except
 532 capital felonies, committed on or after October 1, 1998.

533 (1) The provision of criminal penalties and of limitations
 534 upon the application of such penalties is a matter of
 535 predominantly substantive law and, as such, is a matter properly
 536 addressed by the Legislature. The Legislature, in the exercise
 537 of its authority and responsibility to establish sentencing
 538 criteria, to provide for the imposition of criminal penalties,
 539 and to make the best use of state prisons so that violent
 540 criminal offenders are appropriately incarcerated, has
 541 determined that it is in the best interest of the state to
 542 develop, implement, and revise a sentencing policy. The Criminal
 543 Punishment Code embodies the principles that:

544 (e) The sentence imposed by the sentencing judge reflects
 545 the length of actual time to be served, shortened only by the
 546 application of incentive and meritorious gain-time as provided
 547 by law, and may not be shortened if the defendant would
 548 consequently serve less than 85 percent of his or her term of
 549 imprisonment as provided in s. 944.275(4) ~~s. 944.275(4)(b)~~ 3. The
 550 provisions of chapter 947, relating to parole, shall not apply
 551 to persons sentenced under the Criminal Punishment Code.

591-02667-17 20171604c1

552 Section 10. This act shall take effect July 1, 2017.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations Subcommittee on Criminal and
Civil Justice, *Vice Chair*
Appropriations
Banking and Insurance
Judiciary
Regulated Industries

SENATOR RANDOLPH BRACY

11th District

March 24, 2017

The Honorable Senator Baxley
320 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399

Dear Chairman Baxley,

I respectfully request SB1604 be placed on the agenda for the Government Oversight and Accountability Committee at its next scheduled committee hearing. This bill is pertaining to the Department of Corrections and inmate medical records. This bill is a priority of the Department of Corrections and has been reported favorably out of the Criminal Justice Committee.

I thank you in advance for your consideration and should you have any further questions please feel free to contact me.

Sincerely,

A handwritten signature in blue ink that reads "Randolph Bracy". The signature is stylized with a large, flowing "B" and "R".

Senator Randolph Bracy
Senate District 11

Cc: Senator Frank Artiles, Vice Chair
Jay Ferrim, Staff Director
Tamra Redig, Committee Administrative Assistant

REPLY TO:

- ☐ 150 N. Lakeshore Drive, Ocoee, Florida 34761 (407) 656-6716
- ☐ 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17

Meeting Date

SB 1604

Bill Number (if applicable)

Topic SB 1604-Department of Corrections

Amendment Barcode (if applicable)

Name Jared Torres

Job Title Legislative Affairs Director

Address 501 S. Calhoun Street

Phone 850-488-7436

Street

Tallahassee

FL

32311

Email Jared.Torres@fdc.myflorida.com

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Florida Department of Corrections

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)

4/3/17

Meeting Date

1604

Bill Number (if applicable)

Topic DEPT OF CORRECTIONS

Amendment Barcode (if applicable)

Name JASON JONES

Job Title GENERAL COUNSEL

Address P.O. BOX 1489
Street

Phone 850 410-7676

TALLAHASSEE FL 32302
City State Zip

Email JASON.JONES@FDLE.STATE.FL.US

Speaking: ☐ For ☐ Against ☐ Information

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

Representing FDLE

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)

4/3/2017
Meeting Date

SB 1604
Bill Number (if applicable)

682850
Amendment Barcode (if applicable)

Topic Department of Corrections

Name Matt Rickett

Job Title lobbyist

Address 300 East Brevard St.

Street

Tallahassee

City

FL

State

32301

Zip

Phone _____

Email _____

Speaking: ☒ For ☐ Against ☐ Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair: ☐ Yes ☒ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
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 1668

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Perry and Artiles

SUBJECT: Use of State Funds

DATE: April 4, 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 1668 provides a limitation on certain lodging expenses that may be reimbursed for a state agency or judicial branch employee. The bill authorizes such employees to expend their own funds on lodging expenses that exceed a specified amount.

Also, the bill prohibits the use of state funds for the purchase of alcoholic beverages and the purchase of food or beverages for certain state agency appreciation events.

The bill takes effect July 1, 2017.

II. Present Situation:

Per Diem and Travel Expenses

The Legislature has established standard travel reimbursement rates applicable to all public officers,¹ public employees,² and other individuals³ whose travel is authorized and paid for by a public agency.⁴ Section 112.061(2)(f), F.S., defines the term “traveler” as a public officer, public employee, or authorized person, when performing authorized travel.

All travel must be authorized by the head of the agency, or his or her designated representative, from whose funds the travel expenses are paid.⁵ In addition, travel expenses must be limited to those necessarily incurred in the performance of a public purpose authorized by law to be performed by the agency.⁶ Current law establishes the following three categories of travel:

- Class A – Continuous travel of 24 hours or more away from official headquarters.⁷
- Class B – Continuous travel of less than 24 hours that involves overnight absence from official headquarters.⁸
- Class C – Travel for short or day trips where the traveler is not away from his or her official headquarters overnight.⁹

Currently, Florida allows \$80 per diem for Class A and B travel.¹⁰ If expenses exceed \$80, the state will pay a maximum of \$36 (\$6 for breakfast, \$11 for lunch, and \$19 for dinner) in addition to the actual expenses for lodging at a single-occupancy rate supported by paid bills.¹¹ Class C travel is not reimbursed on a per diem basis, but instead for each meal during which the travel occurred.¹²

¹ Section 112.061(2)(c), F.S., defines officer or public officer as an individual who in the performance of his or her official duties is vested by law with sovereign powers of government and who is either elected by the people, or commissioned by the Governor and has jurisdiction extending throughout the state, or any person lawfully serving instead of either of the foregoing two classes of individuals as initial designee or successor.

² Section 112.061(2)(d), F.S., defines employee or public employee as an individual, whether commissioned or not, other than an officer or authorized person as defined herein, who is filling a regular or full-time authorized position and is responsible to an agency head.

³ See s. 112.061(2)(e), F.S., which defines authorized person as:

1. A person other than a public officer or employee as defined herein, whether elected or commissioned or not, who is authorized by an agency head to incur travel expenses in the performance of official duties.
2. A person who is called upon by an agency to contribute time and services as consultant or adviser.
3. A person who is a candidate for an executive or professional position.

⁴ Section 112.061(1), F.S. The term “public agency” is defined as any office, department, agency, division, subdivision, political subdivision, board, bureau, commission, authority, district, public body, body politic, county, city, town, village, municipality, or any other separate unit of government created pursuant to law. Section 112.061(2)(a), F.S.

⁵ Section 112.061(3), F.S.

⁶ *Id.*

⁷ Section 112.061(2)(k), F.S.

⁸ Section 112.061(2)(l), F.S.

⁹ Section 112.061(2)(m), F.S.

¹⁰ Section 112.061(6), F.S.

¹¹ *Id.*

¹² Section 112.061(5)(b), F.S.

During the 2016 legislative session, HB 5003¹³ was passed that created a limit on the amount of actual expenses for lodging that may be reimbursed under certain circumstances. The bill provided that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed \$150 per day. However, an employee may expend his or her own funds for any lodging expenses in excess of the limit. This limit expires on July 1, 2017.

State Fund Prohibitions

Section 286.27, F.S., prohibits the use of state funds for the purchase, preparation, printing, or mailing of any card the sole purpose of which is to convey holiday greetings.

III. Effect of Proposed Changes:

Section 1 amends s. 112.061, F.S., and provides that when an employee of a state agency or the judicial branch is attending a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch, the reimbursement for lodging expenses may not exceed \$150 per day. The bill further provides that the employee may expend his or her own funds for any lodging expenses that exceed \$150 per day.

Section 112.061, F.S., does not use the term “state employee” or “employee of the judicial branch”. Section 112.061, F.S., uses the terms “officer or public officer,” “employee or public employee,” “authorized person,” or “traveler.”

Section 2 amends s. 286.27, F.S., to prohibit the use of state funds for the following additional purposes:

- The purchase of alcoholic beverages; and
- The purchase of food or beverages for events related to state agency employee, board member, or vendor appreciation or recognition.

Section 3 provides that the bill will take effect on 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 state tax shared with counties and municipalities.

B. Public Records/Open Meetings Issues:

None.

¹³ See Ch. 2016-62, s. 120, Laws of Fla.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Department of Financial Services (DFS) noted that it is possible state employees would be required to spend their own money for lodging expenses incurred for mandated travel to areas in the state where standard hotel rates exceed \$150 a night during peak season and in areas where available lodging in safe areas is at a premium.¹⁴ Placing employees in situations where they must use their own funds to support a state function could constitute a “taking.” The Fifth Amendment to the U.S. Constitution provides “nor shall property be taken for public use, without just compensation.”¹⁵ The due process clause of the Fourteenth Amendment to the U.S. Constitution makes the takings clause applicable to the states as well as the federal government.¹⁶ The government’s duty to pay just compensation is not limited to government seizures of real property; it also applies to personal property.¹⁷

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Under this bill, it is possible that state agency or judicial branch employees would be required to spend their own funds to pay for lodging expenses incurred for employer mandated travel. The DFS noted that the receipt of the benefit of payment of state expenses by the employee could be viewed as a gift or donation to the State of Florida, allowing a tax deduction by the employee and requiring an appropriate accounting of gift receipt by the state.¹⁸ Florida law recognizes the authority of agency heads to receive gifts and donations. Section 20.05(1)(f), F.S., states that each head of a department must:

Exercise authority on behalf of the department to accept gifts, grants, bequests, loans, and endowments for purposes consistent with the powers, duties, and functions of the department. All such funds must be deposited

¹⁴ Florida Department of Financial Services, *2017 Legislative Bill Analysis HB 1137* (March 14, 2017) (Copy on file with the Senate Governmental Oversight and Accountability Committee).

¹⁵ U.S. CONST. amend. V.

¹⁶ U.S. CONST. amend. XIV, s. 1.

¹⁷ *Horne v. Dept. of Agriculture*, 135 S. Ct. 2419, 2425 (2015).

¹⁸ See *supra* note no. 20.

in the State Treasury and appropriated by the Legislature for the purposes for which they were received by the department.

VI. Technical Deficiencies:

The DFS notes that the bill treats state employees different from public officers and authorized persons, including volunteers, and contractors, who may also be reimbursed for their lodging cost that exceeds the \$150 limitation. Changing the term “employee” in the bill to “traveler” would include a public officer, public employee or authorized person. This would ensure that public officers, public employees, and authorized persons, including volunteers and contractors, are all required to comply with the lodging limitation.¹⁹

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 112.061 and 286.27 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 April 3, 2017:

- Removes section 2, pertaining to Maximum Cost Per Square Foot for New State-Funded Building Construction, and;
- Removes section 3, pertaining to State Agency Legislative Budget Requests.

- B. **Amendments:**

None.

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

¹⁹ *Id.*



529088

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 83 - 226.

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

And the title is amended as follows:

Delete lines 8 - 41

and insert:

amending s. 286.27, F.S.; prohibiting

By Senator Perry

8-01175A-17

20171668__

1 A bill to be entitled
 2 An act relating to the use of state funds; amending s.
 3 112.061, F.S.; providing a limitation on actual
 4 expenses of certain lodging that may be reimbursed for
 5 a state agency or judicial branch employee;
 6 authorizing an employee to expend his or her own funds
 7 on lodging expenses that exceed a specified amount;
 8 creating s. 216.0161, F.S.; providing definitions;
 9 requiring a state entity that requests state funds for
 10 the construction of a new building to comply with
 11 maximum cost per square foot requirements;
 12 establishing maximum cost per square foot guidelines
 13 for new state-funded construction; requiring the
 14 Department of Management Services to annually review
 15 the maximum cost per square foot guidelines and
 16 recommend adjustments, based on a specified federal
 17 index, to the Executive Office of the Governor and the
 18 appropriations committees of the Legislature for
 19 review and consideration for inclusion in the
 20 legislative budget instructions; specifying the
 21 formula to be used in deriving the cost per square
 22 foot of a proposed new building; prohibiting the cost
 23 per square foot from exceeding the prescribed maximum
 24 cost per square foot; requiring the department to
 25 review certain plans, calculate and certify certain
 26 costs, and provide specified information concerning
 27 construction of a new building at the request of a
 28 state entity; prohibiting a state entity from
 29 requesting state funds for new building construction

Page 1 of 9

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

8-01175A-17

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30 which exceed specified amounts without the
 31 department's certification; requiring a state entity
 32 head to certify that each legislative budget request
 33 complies with the requirements of specified
 34 provisions; prohibiting a state entity from spending
 35 or contracting to spend state funds for new building
 36 construction if certain costs exceed authorized cost
 37 per square foot amounts; providing penalties; amending
 38 s. 216.023, F.S.; requiring legislative budget
 39 requests for fixed capital outlay for new building
 40 construction to adhere to maximum cost per square foot
 41 requirements; amending s. 286.27, F.S.; prohibiting
 42 the use of state funds to purchase alcoholic beverages
 43 and to purchase food or beverages for certain state
 44 agency appreciation or recognition events; providing
 45 an effective date.

46
 47 Be It Enacted by the Legislature of the State of Florida:

48
 49 Section 1. Present paragraph (c) of subsection (6) of
 50 section 112.061, Florida Statutes, is redesignated as paragraph
 51 (d), paragraph (a) of subsection (6) of that section is amended,
 52 and a new paragraph (c) is added to that subsection, to read:
 53 112.061 Per diem and travel expenses of public officers,
 54 employees, and authorized persons.—

55 (6) RATES OF PER DIEM AND SUBSISTENCE ALLOWANCE.—For
 56 purposes of reimbursement rates and methods of calculation, per
 57 diem and subsistence allowances are provided as follows:

58 (a) All travelers shall be allowed for subsistence when

Page 2 of 9

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

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traveling to a convention or conference or when traveling within or outside the state in order to conduct bona fide state business, which convention, conference, or business serves a direct and lawful public purpose with relation to the public agency served by the person attending such meeting or conducting such business, either of the following for each day of such travel at the option of the traveler:

1. Eighty dollars per diem; or
2. If actual expenses exceed \$80, the amounts permitted in paragraph (b) for subsistence, plus actual expenses for lodging at a single-occupancy rate, except as provided in paragraph (c), to be substantiated by paid bills therefor.

When lodging or meals are provided at a state institution, the traveler shall be reimbursed only for the actual expenses of such lodging or meals, not to exceed the maximums ~~maximum~~ provided for in this subsection.

(c) Actual expenses for lodging associated with the attendance of an employee of a state agency or the judicial branch at a meeting, conference, or convention organized or sponsored in whole or in part by a state agency or the judicial branch may not exceed \$150 per day. However, an employee may expend his or her own funds for any lodging expenses that exceed \$150 per day.

Section 2. Section 216.0161, Florida Statutes, is created to read:

216.0161 Maximum cost per square foot for new state-funded building construction.-

(1) As used in this section, the term:

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(a) "Art" means the artwork for a new state-funded building as set forth in s. 255.043.

(b) "Building" means an office building, a courthouse, an administrative building, or a university or college classroom building or auditorium building. The term does not include a nursing, medical, laboratory, science, technology, correctional, residential, or food service facility or a facility with less than 10,000 total square feet.

(c) "Core costs" means the costs associated with providing infrastructure for the core areas of each floor of a building, including potable domestic water risers, separate sanitary and storm drain systems, sanitary vents, electrical power distribution panels, circuit breakers, electrical closets, a designated connection point to the central fire alarm system, distribution backboards within wire closets, and connections to horizontal extensions within a tenant's usable area.

(d) "Department" means the Department of Management Services.

(e) "DRI" means large projects that require a development-of-regional-impact review and permit as set forth in s. 380.06.

(f) "Furniture, fixtures, and equipment" means the movable furniture, fixtures, and other equipment that have no permanent connection to the structure of a building.

(g) "Maximum cost per square foot" means the maximum cost per square foot as determined in subsection (3) or in the legislative budget instructions for the construction of a new building.

(h) "Permitting costs" means the costs or fees required to obtain relevant permission to undertake a new building

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construction project, including, but not limited to, environmental permits, building permits, State Fire Marshal reviews, utility connection fees, impact fees, and the department's project management fees.

(i) "Professional service fees" means the fees charged by construction design professionals, including engineers, who are utilized in planning and designing an energy-efficient and sustainable building that meets the goals identified in s. 255.252.

(j) "Raw building construction costs" means the costs associated with the building construction contract, including the cost of materials and the cost of labor and equipment necessary to install materials. The term includes shell costs, core costs, and tenant costs.

(k) "Shell costs" means the costs associated with the building structure, exterior envelope physical characteristics, vertical circulation, public spaces, and physical plant support spaces of a building.

(l) "State entity" means a state agency or department, the judicial branch, a state university, or a state college.

(m) "Tenant costs" means the costs associated with the design and construction for the installation of materials; HVAC, electrical, and plumbing systems; and lifesafety items to meet the tenant office layout needs that are within the shell and core of a building. The term does not include the cost of furniture, fixtures, and equipment.

(n) "Total construction cost" means the total of the raw building construction costs; permitting costs; cost to install utility services; professional service fees; and art, furniture,

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fixtures, and equipment costs. The term does not include the cost for the real property, parking areas, and parking structures.

(2) A state entity that requests state funds to construct or contract for the construction of a new building must comply with the maximum cost per square foot requirements. The state entity shall apply the maximum cost per square foot amount using the region that is in closest proximity to the region in which the new building will be constructed, taking into consideration whether the building is part of a DRI.

(3) (a) For the 2017-2018 fiscal year, the maximum cost per square foot shall be:

Region	Cost per sq. ft. w/o	Cost per sq. ft. w/
	DRI	DRI
Fort Myers	\$365.98	\$491.37
Jacksonville	\$397.16	\$494.84
Miami	\$564.55	\$794.82
Tallahassee	\$395.13	\$493.06
Tampa	\$411.59	\$584.25

(b) Beginning July 1, 2018, and annually thereafter, the department shall review the maximum cost per square foot and recommend adjustments, based on the percentage change in the

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average of the Producer Price Index Data for New Office Building Construction published by the United States Department of Labor, to the Executive Office of the Governor and the appropriations committees of the Legislature for review and consideration for inclusion in the legislative budget instructions pursuant to s. 216.023(3).

(4) To determine the cost per square foot of a proposed new building, the estimated total construction cost plus 10 percent must be divided by the total square footage of the proposed new building. For purposes of this subsection, the total square footage of the proposed new building does not include the real property, parking areas, and parking structures. The value derived from this calculation may not exceed the maximum cost per square foot.

(5) At the request of a state entity that seeks state funds to construct or contract for the construction of a new building, the department shall:

(a) Review the building construction plans and calculate the estimated cost per square foot.

(b) After completing its review, certify the estimated cost per square foot and specify whether the cost per square foot is equal to or less than the maximum cost per square foot.

(c) Provide recommendations for reducing the estimated cost per square foot if such cost exceeds the maximum cost per square foot.

(6) A state entity may not request state funds for new building construction if the estimated cost per square foot exceeds the maximum cost per square foot, unless the department has certified that the total estimated cost per square foot will

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exceed the maximum cost per square foot by no more than 10 percent and the additional cost is attributable to:

(a) Necessary security-related costs;

(b) Building material costs needed due to site limitations for construction on a specific site; or

(c) Extraordinary permitting costs.

(7) A state entity head shall certify that each legislative budget request submitted under s. 216.023 for new building construction complies with this section. If the cost per square foot of a new building exceeds the maximum cost per square foot, the state entity head shall identify in writing the specific additional costs that exceed the maximum cost per square foot as provided in subsection (6).

(8) A state entity may not spend or enter into a contract to spend state funds for new building construction if the cost per square foot of a new building exceeds the maximum cost per square foot authorized under subsection (6), unless specifically authorized by law. A contract in violation of this section is void. A person who willfully spends or enters into a contract to spend state funds that exceed the maximum cost per square foot, except as provided in subsection (7) or unless specifically authorized by law, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 3. Subsection (11) is added to section 216.023, Florida Statutes, to read:

216.023 Legislative budget requests to be furnished to Legislature by agencies.—

(11) A legislative budget request for fixed capital outlay for new building construction must adhere to the maximum cost

8-01175A-17

20171668__

per square foot requirements set forth in s. 216.0161.

Section 4. Section 286.27, Florida Statutes, is amended to read:

286.27 ~~Prohibited uses~~ Use of state funds ~~for greeting cards prohibited.~~ No State funds ~~may not shall~~ be expended for:

(1) The purchase, preparation, printing, or mailing of any card the sole purpose of which is to convey holiday greetings.

(2) The purchase of alcoholic beverages.

(3) The purchase of food or beverages for events related to state agency employee, board member, or vendor appreciation or recognition.

Section 5. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: March 14, 2017

I respectfully request that **Senate Bill #1668**, relating to Use of State Funds, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

A handwritten signature in cursive script that reads "W. Keith Perry".

Senator Keith Perry
Florida Senate, District 8

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1654

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Campbell

SUBJECT: Florida Kidcare Program

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hendon	Hendon	CF	Fav/CS
2.	Peacock	Ferrin	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1654 creates the Kidcare Operational Efficiency and Health Care Improvement Workgroup to maximize the state's return on investment in the Kidcare program, a health insurance program for children in lower income households. The workgroup is housed in the Department of Health and must recommend operational efficiencies to the Governor and Legislature by December 31, 2017.

The bill is unlikely to have a fiscal impact on the state and has an effective date of July 1, 2017.

II. Present Situation:

Florida Kidcare Program

The Florida Kidcare Program (Kidcare)¹ was created in 1998 by the Florida Legislature in response to the federal enactment of the Children's Health Insurance Program (CHIP) in 1997.² CHIP provides subsidized health insurance to uninsured children who do not qualify for Medicaid but who have family incomes under 200 percent of the federal poverty level (FPL) and meet other eligibility criteria.

¹ Ch. 98-288, s. 34, Laws of Fla.

² Social Security Administration, *Title XXI - State Children's Health Insurance Program*, http://www.ssa.gov/OP_Home/ssact/title21/2100.htm (last visited March 23, 2017).

The state statutory authority for Kidcare is found under part II of ch. 409, ss. 409.810 through 409.821, F.S.³ Kidcare includes four operating components: Medicaid for children, Medikids, the Children's Medical Services Network (CMS Network), and the Florida Healthy Kids Corporation (FHKC).⁴ Coverage for the non-Medicaid components are funded through Title XXI of the federal Social Security Act. Title XIX of the Social Security Act (Medicaid), state funds, and family contributions also provide funding for the different components. Family contributions under the Title XXI component are based on family size, household incomes, and other eligibility factors. Families above the income limits for premium assistance or who are not otherwise eligible for premium assistance are offered the opportunity to participate in Kidcare at a non-subsidized rate (full pay). Currently, the income limit for premium assistance is 200 percent of the FPL.

Several state agencies and the FHKC share responsibilities for Kidcare.⁵ The AHCA, the Department of Children and Families (DCF), the Department of Health (DOH), and the FHKC have specific duties under Kidcare, as detailed in part II of ch. 409, F.S. The DCF determines eligibility for Medicaid. The FHKC receives all Kidcare applications and screens for Medicaid eligibility and determines eligibility for all Title XXI programs, referring applications to the DCF, as appropriate, for a complete Medicaid determination.

To enroll in Kidcare, families may apply online or use a paper application⁶ that determines eligibility for multiple programs, including Medicaid and CHIP, for the entire family. Applications are available in English, Spanish, and Creole. Eligibility for premium assistance is determined first through electronic data matches with available databases or, in cases where income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms.

Section 409.818(2)(b), F.S., requires the DOH to chair a state-level Florida Kidcare coordinating council to review and make recommendations concerning the implementation and operation of the program. The coordinating council includes representatives from DOH, DCF, AHCA, FHKC, the Office of Insurance Regulation of the Financial Services Commission, local government, health insurers, health maintenance organizations, health care providers, families participating in the program, and organizations representing low-income families.

III. Effect of Proposed Changes:

Section 1 creates the Kidcare Operational Efficiency and Health Care Improvement Workgroup (workgroup), a task force as defined in s. 20.03, F.S.,⁷ administratively housed in the DOH. The workgroup is established to maximize the return on investment of public funds and streamline and enhance the operational efficiencies of Kidcare to provide improved health care services to children. Members of the workgroup serve on a voluntary basis.

³ Section 409.810, F.S., provides that ss. 409.810-409.821, F.S., may be cited as the Florida Kidcare Act.

⁴ Section 409.813, F.S.

⁵ See Florida Kidcare Act.

⁶ See <https://www.healthykids.org/application/> (last visited on March 29, 2017).

⁷ Section 20.03(8), F.S., defines "committee" or "task force" as an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

The workgroup must be convened and staffed by the FHKC. The workgroup consists of the following 12 members:

- The President of the Florida Chapter of the American Academy of Pediatrics or a designee.
- The State Health Officer or a designee.
- The Secretary of Health Care Administration or a designee with a background in children's health policy.
- The assistant secretary for child welfare of the DCF or a designee.
- A representative of directors of the FHKC.
- A representative of the Florida Association of Children's Hospitals, Inc.
- A representative of the Florida Covering Kids and Families Coalition.
- A representative of the Florida Association of Health Plans.
- A representative of the Florida Children's Council with a background in children's health policy.
- A representative of the Florida Dental Association.
- The Director of Children's Medical Services or a designee.
- A parent with a child in Kidcare.

The workgroup must:

- Examine successful and innovative models to provide improved value and health care outcomes.
- Develop recommendations to streamline and unify Kidcare to provide greater operational efficiencies, including recommendations for a single benefits package, a single set of performance measures, and a single third-party administrator.
- Provide any necessary transition plans.
- Provide recommendations regarding federal waivers for children's health care to the AHCA, which must obtain specific legislative authorization before seeking, applying for, accepting, or renewing any federal waiver.

The workgroup must submit a report on its findings and recommendations for streamlining Kidcare to the Governor, President of the Senate, and Speaker of the House of Representatives by December 31, 2017.

The provisions of the bill expire on December 31, 2017.

Section 2 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 or municipalities to spend funds, reduce the counties' or municipalities' ability to raise revenue or reduce the percentage of state tax shared with counties or municipalities.

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:

None.

C. Government Sector Impact:

Any efficiencies recommended to and implemented by the DOH could reduce costs to the state.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The purpose of the workgroup created in the bill may duplicate the DOH's Kidcare coordinating council.

VIII. Statutes Affected:

This bill creates an unnumbered section of law.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Children, Families, and Elder Affairs on March 27, 2017:

The committee substitute clarifies that the workgroup is a task force as defined in s. 20.03, F.S. and is administratively housed in the DOH. The committee substitute adds a representative of the Florida Dental Association as a member of the workgroup.

B. Amendments:

None.

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

By the Committee on Children, Families, and Elder Affairs; and
Senator Campbell

586-02924-17

20171654c1

A bill to be entitled

An act relating to the Florida Kidcare program;
establishing the Kidcare Operational Efficiency and
Health Care Improvement Workgroup as a task force
administratively housed in the Department of Health to
maximize the return on investment and enhance the
operational efficiencies of the Florida Kidcare
program; providing program duties and membership;
requiring a report to the Governor and Legislature;
providing for expiration of the workgroup; providing
an effective date.

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

Section 1. Kidcare Operational Efficiency and Health Care
Improvement Workgroup.—The Kidcare Operational Efficiency and
Health Care Improvement Workgroup, a task force as defined in s.
20.03, is established to maximize the return on investment and
streamline and enhance the operational efficiencies of the
Florida Kidcare program to provide improved health care services
to children. The workgroup shall be administratively housed in
the Department of Health. Members of the workgroup shall serve
on a voluntary basis.

(1) The workgroup shall be convened and staffed by the
Florida Healthy Kids Corporation and shall consist of the
following members:

(a) The President of the Florida Chapter of the American
Academy of Pediatrics or a designee.

(b) The State Health Officer or a designee.

586-02924-17

20171654c1

(c) The Secretary of Health Care Administration or a
designee with a background in children's health policy.

(d) The assistant secretary for child welfare of the
Department of Children and Families or a designee.

(e) A representative of directors of the Florida Healthy
Kids Corporation.

(f) A representative of the Florida Association of
Children's Hospitals, Inc.

(g) A representative of the Florida Covering Kids and
Families Coalition.

(h) A representative of the Florida Association of Health
Plans.

(i) A representative of the Florida Children's Council with
a background in children's health policy.

(j) A representative of the Florida Dental Association.

(k) The Director of Children's Medical Services or a
designee.

(1) A parent with a child in the Florida Kidcare program.

(2) The workgroup shall:

(a) Examine successful and innovative models to provide
improved value and health care outcomes.

(b) Develop recommendations to streamline and unify the
program to provide greater operational efficiencies, including
recommendations for a single benefits package, a single set of
performance measures, and a single third-party administrator.

(c) Provide any necessary transition plans.

(d) Provide recommendations regarding federal waivers for
children's health care to the Agency for Health Care
Administration, which shall obtain specific legislative

586-02924-17

20171654c1

59 authorization before seeking, applying for, accepting, or
60 renewing any federal waiver.

61 (3) The workgroup shall submit a report on its findings and
62 recommendations for streamlining the Florida Kidcare program to
63 the Governor, the President of the Senate, and the Speaker of
64 the House of Representatives by December 31, 2017.

65 (4) This section expires December 31, 2017.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Finance and Tax
Appropriations Subcommittee on General Government
Children, Families, and Elder Affairs
Communications, Energy, and Public Utilities
Community Affairs

JOINT COMMITTEE:

Joint Administrative Procedures Committee

SENATOR DAPHNE CAMPBELL

38th District

March 27, 2017

The Honorable Senator Dennis Baxley
Chair, Committee on Governmental Oversight and Accountability
320 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

The Honorable Senator Daphne Campbell
District 38, Florida Senate
218 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Baxley,

Please consider this letter my formal request to have SB 1654 Kidcare Program, relating to the establishment of a taskforce to enhance the operational efficiencies and optimize the return on the investment of public funds of the Kidcare Program, placed on the agenda for the next scheduled meeting of the Committee on Governmental Oversight and Accountability.

The taskforce workgroup will 1) examine successful models to improve value and health care outcomes; 2) make recommendations to improve the program's efficiency; 3) provide any transition plans based on the recommendations; 4) recommend any federal waivers to improve the program and submit a report with findings to the legislature.

If you have any questions, please feel free to contact my office at 850-487-5038.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Campbell".

Senator Daphne Campbell
District 38, Florida Senate

REPLY TO:

- ☐ 633 N.E. 167th Street, Suite 1101, North Miami Beach, Florida 33162 (305) 493-6009
- ☐ 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

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 1310

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Artiles

SUBJECT: State Employment

DATE: April 4, 2017

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1310 eliminates the Florida State Employees Charitable Contribution Campaign (FSECC), and provides that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

The bill has an effective date of July 1, 2017.

II. Present Situation:

The FSECC is an annual charitable fundraising drive funded by state employees and maintained by the Department of Management Services (DMS) in coordination with the Department of Financial Services.¹ It is the only authorized charitable fundraising drive directed toward state employees within work areas during work hours for which the state provides a payroll

¹ Section 110.181(1)(a), F.S.

deduction.² Universities are permitted to participate in the campaign, but are also authorized to conduct their own charitable fundraising drives for employees.³

Employees' participation in the campaign is entirely voluntary, and officers and employees are required to designate a charitable organization to receive their contributions, unless the contributions are collected as part of a campaign event.⁴ Each agency is responsible for conducting campaign events to promote and generate awareness of the campaign. Prior to 2016, agencies were authorized to collect cash donations at campaign events, however, in 2016, only payroll deductions were collected as part of the campaign as a cost saving measure.⁵

Organizations' participation in the annual campaign is limited to any nonprofit charitable organization that has as its principal mission:⁶

- Public health and welfare;
- Education;
- Environmental restoration and conservation;
- Civil and human rights; or
- The relief of human suffering and poverty.

Additionally, organizations ineligible to participate in the campaign include those:⁷

- Whose fundraising and administrative expenses exceed 25 percent;
- Whose activities contain an element that is more than incidentally political in nature or are primarily political, religious, professional, or fraternal in nature;
- That discriminate on account of race, color, religion, sex, national origin, age, handicap, or political affiliation;
- Not properly registered as a charitable organization as required by law;⁸ and
- That have not received tax-exempt status under s. 501(c)(3) of the Internal Revenue Code.

Over 1,000 charities have been approved to participate in the FSECC through the application process established by the DMS's Division of Human Resources.⁹ Charitable organizations participating in the campaign must be audited annually by an independent public accountant whose examination conforms to generally accepted accounting principles.¹⁰

Current law requires the DMS to competitively procure a fiscal agent or agents to receive, account for, and distribute charitable contributions among participating charitable organizations,¹¹ and provides for the establishment of a Florida State Employees Charitable

² *Id.*

³ Section 110.181(5), F.S. See also 1001.706, F.S.

⁴ Section 110.181(1)(b), F.S.

⁵ Email from Samantha Ferrin, Department of Management Services, Deputy Director of Legislative and External Affairs (March 30, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

⁶ Section 110.181(1)(c), F.S.

⁷ Section 110.181(1)(e), F.S.

⁸ See the Solicitation of Contributions Act, ss. 496.401-496.424, F.S.

⁹ Department of Management Services, *HB 1141 Legislative Bill Analysis* (March 14, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁰ Section 110.181(1)(d), F.S.

¹¹ Section 110.181(2)(a), F.S.

Campaign Steering Committee to make recommendations relating to the administration of the campaign.¹² The committee is made up of seven members appointed by the Administration Commission¹³ and two members appointed by the Secretary of the DMS.¹⁴ The Steering Committee meets periodically, usually once or twice each year.¹⁵

DMS historically awarded the fiscal agent contract to a nonprofit charitable organization that participated in the FSECC, but in 2010, the fiscal agent selection process was opened and services were competitively procured through Solix Grant Management Solutions (Solix) for the period January 1, 2013, through December 31, 2015.¹⁶ The initial contract with Solix provided for tiered compensation, with a minimum of \$546,415 for year one of the contract and actual documented costs for years two and three.¹⁷

In 2015, the DMS entered into a new 3-year contract with Solix for the period January 1, 2016, through December 31, 2018.¹⁸ For this contract period, fixed fees were initially agreed to for \$389,297 in year one, \$399,769 in year two, and \$411,631 in year three.¹⁹ However, on April 15, 2016, the Department and Solix agreed to amended contract terms that provided for a fixed \$180,000 fee for each year of the contract.²⁰

In May of 2016, the State of Florida Auditor General published an operational audit of the FSECC, finding that during the time period covered by the initial contract with Solix the DMS did not ensure FSECC fiscal agent fees were supported by adequate documentation and did not adequately verify that employee contributions were appropriately distributed to participating charitable organizations.²¹ Prior to publication of the audit, the renewed contract with the fiscal agent had been modified to provide for a fixed fee and the DMS had implemented a procedure for verifying the distributions—therefore the need for corrective action was eliminated.²²

On December 5, 2016, the secretary of DMS notified state agencies that the campaign was being suspended because it had only raised approximately \$282,000, which was its lowest amount in the campaign's history.²³

¹² Sections 110.181(3) and (4), F.S.

¹³ See s. 14.02, F.S. The Administration Commission is composed of the Governor and Cabinet.

¹⁴ Section 110.181(4), F.S.

¹⁵ See *supra* note 5.

¹⁶ State of Florida Auditor General's Operational Audit of the Department of Management Services Florida State Employees' Charitable Campaign Report No. 2016-194. Available at http://www.myflorida.com/audgen/pages/pdf_files/2016-194.pdf. (last visited March 30, 2017).

¹⁷ Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 11/12-018. (on file with the Senate Committee on Governmental Oversight and Accountability).

¹⁸ Contract for FSECC Fiscal Agent Services Between the State of Florida Department of Management Services and Solix, Inc. Contract No.: DMS 14/14-030. Available at:

<https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01>. (last visited March 30, 2017).

¹⁹ *Id.*

²⁰ Amendment NO.:1 to Contract No.: DMS 14/15-030. Available at

<https://facts.fldfs.com/Search/ContractDetail.aspx?AgencyId=720000&ContractId=HRM01>. (last visited March 30, 2017).

²¹ See *supra* note 16.

²² *Id.*

²³ *State scraps Solix contract, suspends charity campaign*, Tallahassee Democrat, December 8, 2016, available at <http://www.tallahassee.com/story/news/2016/12/08/state-suspends-beleagured-fsecc/95139288/> (last visited March 30, 2017).

During its 36 year history, the FSECC raised over \$94 million.²⁴ However, over the last ten years contributions have declined sharply, as illustrated by the following table.²⁵

Campaign Year	Fiscal Agent	Charitable Contributions	Amount withheld by Fiscal Agent	Net Amount to Participating Charities	Fiscal Agent Costs as % of Contributions
2005-2006	United Way	\$ 4,963,346	\$ 691,065	\$ 4,272,281	13.9%
2006-2007	United Way	\$ 4,959,059	\$ 703,479	\$ 4,255,580	14.2%
2007-2008	United Way	\$ 4,869,270	\$ 706,683	\$ 4,162,587	14.5%
2008-2009	United Way	\$ 4,362,662	\$ 923,931	\$ 3,438,731	21.2%
2009-2010	United Way	\$ 4,171,177	\$ 850,877	\$ 3,320,300	20.4%
2010-2011	United Way	\$ 3,739,355	\$ 801,032	\$ 2,938,323	21.4%
2011-2012	United Way	\$ 2,688,902	\$ 796,616	\$ 1,892,286	29.6%
2012-2013	Solix, Inc.	\$ 1,762,030	\$ 546,415	\$ 1,215,615	31.0%
2013-2014	Solix, Inc.	\$ 982,387	\$ 470,470	\$ 511,917	47.9%
2014-2015	Solix, Inc.	\$ 869,004	\$ 453,599	\$ 415,405	52.2%
2015-2016	Solix, Inc.	\$ 546,186	\$ 180,000	\$ 366,186	33.0%
2016-2017	Solix, Inc.	\$ 282,000	\$ 180,000	\$ 102,000	63.8%

III. Effect of Proposed Changes:

Section 1 repeals s. 110.181, F.S., eliminating the FSECC.

Section 2 creates s. 110.182, F.S., providing that an organization, entity, or person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. However, it does not prohibit:

- State-approved communications by entities with whom the state has contracted to provide employee benefits or services;
- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²⁴ Department of Management Services, *Donor Frequently Asked Questions*, question 1, page 2, available at <http://www.dms.myflorida.com/content/download/128373/798921/FAQ-Donor-2016.pdf>. (last visited March 30, 2017).

²⁵ Figures provided in an email from Taylor Hatch, Department of Management Services, Senior Director of Policy and Legislative Affairs November 17, 2016 (on file with the Senate Committee on Governmental Oversight and Accountability).

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. Charitable organizations may see a decrease in contributions as a result of the bill. However, charitable giving appears to be at an all-time high.²⁶

C. Government Sector Impact:

None.²⁷

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill repeals section 110.181 of the Florida Statutes.

This bill creates section 110.182 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 April 3, 2017:

Adds exceptions to the prohibition on solicitation of state employees within work areas during work hours for:

²⁶ National Philanthropic Trust, *Charitable Giving Statistics*. Available at: <https://www.nptrust.org/index.php?/philanthropic-resources/charitable-giving-statistics>. (last visited March 30, 2017). March 30, 2017).

²⁷ Department of Management Services, *HB 1141 Legislative Bill Analysis* (March 14, 2017) (on file with the Senate Committee on Governmental Oversight and Accountability).

- Noncoercive voluntary communications between state employees in workplace areas; and
- Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

B. Amendments:

None.

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



873100

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/03/2017	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 110.181, Florida Statutes, is repealed.

Section 2. Section 110.182, Florida Statutes, is created to
read:
110.182 Solicitation of state employees prohibited.—An
organization, entity, or person may not intentionally solicit a
state employee through any means for fundraising or business



873100

purposes within work areas during work hours. This section does not prohibit the following:

(1) State-approved communications by entities with whom the state has contracted to provide employee benefits or services.

(2) Noncoercive voluntary communications between state employees in workplace areas.

(3) Activities at authorized public events occurring in non-work areas of state owned or leased facilities.

Section 3. This act shall take effect July 1, 2017.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to state employment; repealing s. 110.181, F.S., relating to Florida State Employees' Charitable Campaign; creating s. 110.182, F.S.; prohibiting an organization, entity, or person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times; providing exemptions; providing an effective date.

By Senator Artilles

40-01309A-17

20171310__

A bill to be entitled

An act relating to state employment; repealing s. 110.181, F.S., relating to Florida State Employees' Charitable Campaign; creating s. 110.182, F.S.; prohibiting an organization, an entity, or a person from intentionally soliciting state employees for fundraising or business purposes within specified areas during specified times; providing an exemption for certain state-approved communications; providing an effective date.

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

Section 1. Section 110.181, Florida Statutes, is repealed.

Section 2. Section 110.182, Florida Statutes, is created to read:

110.182 Solicitation of state employees prohibited.—An organization, an entity, or a person may not intentionally solicit a state employee through any means for fundraising or business purposes within work areas during work hours. This section does not prohibit state-approved communications by entities with whom the state has contracted to provide employee benefits or services.

Section 3. This act shall take effect July 1, 2017.



The Florida Senate

Committee Agenda Request


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

Subject: Committee Agenda Request

Date: March 15, 2017

I respectfully request that **Senate Bill #1310**, An act relating to state employment, be placed on the:

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



Senator Frank Artiles
Florida Senate, District 40

THE FLORIDA SENATE
APPEARANCE RECORD

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

4/3/17
Meeting Date

1310
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable) _____

Name Samantha Ferrin

Job Title Deputy Legislative Affairs Director

Address 4050 Esplanade Way

Phone _____

Street

Tallahassee
City

FL
State

32308
Zip

Email _____

Speaking: ☐ For ☐ Against ☐ Information

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

Representing DMS

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☒ Yes ☐ No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7024

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Title Insurance Agencies or Insurers/Office of Insurance Regulation

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Billmeier	Knudson		BI Submitted as Committee Bill
1.	Ferrin	Ferrin	GO	Favorable
2.			RC	

I. Summary:

SB 7024 continues the existing public records exemption for proprietary business information a title insurance agency or insurer provides to the Office of Insurance Regulation (OIR) by removing the October 2, 2017, repeal date.

The bill also revises the definition of “proprietary business information” to clarify that information disclosed pursuant to a statutory provision, court order, or a private agreement is not subject to the exemption.

The bill provides an effective date of October 1, 2017.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote

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

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

²² FLA. CONST. art. I, s. 24(c).

for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

Title Insurers and Title Agencies Data Submission

Section 627.782(8), F.S., requires title insurers and title agencies to submit to OIR, on or before May 31 of each year, revenue, loss, and expense data for the most recently concluded year that are determined necessary to assist in the analysis of premium rates, title search costs, and the condition of the Florida title insurance industry.

Public Record Exemption under Review

In 2012, the Legislature made proprietary business information that is provided to OIR by a title insurance agency or insurer confidential and exempt from public disclosure under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industry-wide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed. The exemption defines “proprietary business information” as information that:²⁴

- Is owned or controlled by a title insurance agency or insurer requesting confidentiality;
- Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;
- Has not been publicly disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may be released to the public; and
- Concerns business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, trade secrets as defined in s. 688.002, F.S., or financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

The 2012 public necessity statement for the exemption provides that:²⁵

The disclosure of information, such as revenue data, loss expense data, gross receipts, the amount of taxes paid, the amount of capital investment, customer identification, and the amount of employee wages paid, could injure a business in the marketplace by providing its competitors with detailed insights into the financial status and the strategic plans of the business, thereby diminishing the advantage that the business maintains over competitors that do not possess such information. Without this exemption, title insurance agencies and title insurers, whose records are generally not required to be open to the public, might refrain from providing accurate and unbiased data, thus impairing the Office of Insurance

²³ Section 119.15(7), F.S.

²⁴ Section 626.84195, F.S.

²⁵ Ch. 2012-207, Laws of Fla.

Regulation's ability to set fair and adequate title insurance rates. Proprietary business information derives actual or potential independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons who can derive economic value from its disclosure or use. The Office of Insurance Regulation, in performing its lawful duties and responsibilities, may need to obtain information from the proprietary business information. Without an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation, such information becomes a public record when received and must be divulged upon request. Divulgence of any proprietary business information under the public records law would destroy the value of that property to the proprietor, causing a financial loss not only to the proprietor but also to the residents of this state due to the loss of reliable financial data necessary for fair and adequate rate regulation. Release of proprietary business information would give business competitors an unfair advantage and weaken the position in the marketplace of the proprietor that owns or controls the proprietary business information. The harm to businesses in the marketplace and to the effective administration of the ratemaking function caused by the public disclosure of such information far outweighs the public benefits derived from its release. In addition, the confidentiality provided by this act does not preclude the reporting of statistics in the aggregate concerning the collection of data, as well as the names of the title insurance agencies and title insurers participating in the data collection. Such aggregate reported data is available to the public and is important to an assessment of the setting of title insurance premiums.

The exemption will repeal on October 2, 2017, unless reviewed and saved from repeal by the Legislature.

Staff Review of the Exemption

During the 2016 interim, committee staff consulted with OIR staff as part of the Open Government Sunset Review process. OIR staff indicated that the exemption was necessary to encourage candid participation in OIR data collection efforts and recommended reenactment of the exemption. If the exemption were to lapse, OIR staff believes that title insurers and title agencies would be hesitant to submit information to OIR for fear that their competitors would gain access to sensitive business information. OIR staff indicated that it does not collect "customer identification" and therefore would not object to that term being removed as an example of "financial information" within the exemption.

Committee staff recommends reenacting the exemption with revisions. Saving the exemption from repeal is recommended to ensure proprietary business information that could give competition an unfair advantage is kept confidential, and to ensure that OIR is given accurate and unbiased data to facilitate its regulatory functions. Additionally, it should be made clear that information disclosed pursuant to a statutory provision, court order, or a private agreement is not subject to the exemption. Finally, because "customer information" is not collected by OIR, the reference to it should be removed.

III. Effect of Proposed Changes:

The bill reenacts the public record exemption for “proprietary business information” provided to the OIR by title insurance agency or insurer.

The bill also revises the definition of “proprietary business information” to clarify that information disclosed pursuant to a statutory provision, court order, or a private agreement is not subject to the exemption.

The bill takes effect October 1, 2017.

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

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

The bill retains the existing public records exemption for the proprietary business information provided to the OIR by a title insurance agency or insurer. The bill complies with the requirements of article I, s. 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Maintaining the exemption ensures that proprietary business information is kept confidential, and keeps competitors from gaining an unfair advantage.

C. Government Sector Impact:

Maintaining the exemption ensures that OIR is given accurate and unbiased data to use during the rate setting process.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 626.84195 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By the Committee on Banking and Insurance

597-02425-17

20177024__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 626.84195, F.S., relating to an exemption from public records requirements for proprietary business information provided to the Office of Insurance Regulation by title insurance agencies or insurers; redefining the term "proprietary business information"; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Section 626.84195, Florida Statutes, is amended to read:

626.84195 Confidentiality of information supplied by title insurance agencies and insurers.—

(1) As used in this section, the term "proprietary business information" means information that:

(a) Is owned or controlled by a title insurance agency or insurer requesting confidentiality under this section;

(b) Is intended to be and is treated by the title insurance agency or insurer as private in that the disclosure of the information would cause harm to the business operations of the title insurance agency or insurer;

(c) Has not been ~~publicly~~ disclosed unless disclosed pursuant to a statutory provision, an order of a court or administrative body, or a private agreement, providing that the information may not be released to the public; and

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20177024__

(d) Concerns:

1. Business plans;

2. Internal auditing controls and reports of internal auditors;

3. Reports of external auditors for privately held companies;

4. Trade secrets, as defined in s. 688.002; or

5. Financial information, including, but not limited to, revenue data, loss expense data, gross receipts, taxes paid, capital investment, customer identification, and employee wages.

(2) Proprietary business information provided to the office by a title insurance agency or insurer is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until such information is otherwise publicly available or is no longer treated by the title insurance agency or insurer as proprietary business information. However, information provided by multiple title insurance agencies and insurers may be aggregated on an industrywide basis and disclosed to the public as long as the specific identities of the agencies or insurers are not revealed.

~~(3) This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2017, unless reviewed and saved from repeal through reenactment by the Legislature.~~

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

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 7026

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Reports of Unclaimed Property/Department of Financial Services

DATE: March 31, 2017

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Matiyow	Knudson		BI Submitted as Committee Bill
1.	Ferrin	Ferrin	GO	Favorable
2.			RC	

I. Summary:

SB 7026 continues the existing public records exemption for social security numbers and property identifiers held by the Division of Unclaimed Property at the Department of Financial Services by removing the October 2, 2017, repeal date.

The bill provides an effective date of October 1, 2017.

II. Present Situation:

Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.¹ This applies to the official business of any public body, officer or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ The Public Records Act states that

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature's records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

it is the policy of this state that all state, county and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁵

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as “exempt” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

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

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). See also *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004).

¹³ If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

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

meetings exemptions.¹⁵ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹⁶

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹⁷ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁸
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁹ or
- It protects trade or business secrets.²⁰

The OGSR also requires specified questions to be considered during the review process.²¹ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²² If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²³

¹⁵ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

²¹ Section 119.15(6)(a), F.S. The specified questions are:

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

²² FLA. CONST. art. I, s. 24(c).

²³ Section 119.15(7), F.S.

Unclaimed Property

Unclaimed property consists of any funds or other property, tangible or intangible, which has remained unclaimed by the owner for more than 5 years after the property becomes payable or distributable.²⁴ Savings and checking accounts, money orders, travelers' checks, uncashed payroll or cashiers' checks, stocks, bonds, other securities, insurance policy payments, refunds, security and utility deposits, and contents of safe deposit boxes are potentially unclaimed property.²⁵ Holders of unclaimed property, which typically include banks and insurance companies, are required to report unclaimed property to the Department of Financial Services (DFS).²⁶ If the property remains unclaimed, all proceeds from abandoned property are deposited by DFS into the Department of Education School Trust Fund (State School Fund), except for a \$15 million balance that is retained in a separate account (the Unclaimed Property Trust Fund) for the prompt payment of verified claims.²⁷

Florida Disposition of Unclaimed Property Act

The Florida Disposition of Unclaimed Property Act²⁸ serves to protect the interest of missing owners of property while the people of the state derive a benefit from the unclaimed and abandoned property until the property is claimed, if ever. DFS administers the Act through its Division of Unclaimed Property (division).²⁹

Holders of inactive accounts (presumed unclaimed property) are required to use due diligence to locate apparent owners.³⁰ Once the allowable time period for holding unclaimed property has expired, a holder is required to file a report with DFS by May 1 each year for all property valued at \$50 or more and presumed unclaimed for the preceding calendar year.³¹ The report generally must contain the name and social security number or federal employer identification number, if known, and the last known address of the apparent owner.³²

Current law places an obligation on the state to notify owners of unclaimed property accounts valued at over \$250, in a cost-effective manner, including through attempts to directly contact the owner.³³ DFS indicates that the means used to find lost property owners include social security numbers, direct mailing, motor vehicle records, state payroll records, newspaper advertisements, and a state website³⁴ where unclaimed property can be found.³⁵

Attorneys, Florida-certified public accountants, Florida-licensed private investigators, and Florida-licensed private investigative agencies must first register with DFS in order to act as a

²⁴ Section 717.102(1), F.S.

²⁵ Sections 717.104 – 717.116, F.S.

²⁶ Section 717.117(1), F.S.

²⁷ Section 717.123, F.S.

²⁸ Section 717.001, F.S. Chapter 717, F.S., may be cited as the "Florida Disposition of Unclaimed Property Act."

²⁹ Section 20.121(2)(k), F.S.

³⁰ Section 717.117(4), F.S.

³¹ Section 717.117(3), F.S.

³² Section 717.117(1), F.S.

³³ Section 717.118(1), F.S.

³⁴ www.fltreasurehunt.org (last visited March 11, 2017).

³⁵ Section 717.118(1), F.S.

claimant's representative, acquire ownership or entitlement to unclaimed property, and receive a distribution of fees and costs from DFS.³⁶ Claimants' representatives access information from the division's website or the division itself.

Public Record Exemption under Review

Current law provides that social security numbers and property identifiers contained in reports of unclaimed property held by DFS are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.³⁷ Prior to 2012, the exemption provided an exception which allowed social security numbers to be released to certain persons registered with DFS to act as claimants' representatives. In 2012, the Legislature repealed the exception and reenacted the exemption, thus requiring all social security numbers and property identifiers to be kept confidential and exempt from public record requirements.³⁸

The 2012 public necessity statement provides that:

Social security numbers, which are used by a holder of unclaimed property to identify such property, could be used to fraudulently obtain unclaimed property. The release of social security numbers could also place owners of unclaimed property at risk of identity theft. Therefore, the protection of social security numbers is a public necessity in order to prevent the fraudulent use of such information by creating falsified or forged documents that appear to demonstrate entitlement to unclaimed property and to prevent opportunities for identity theft.³⁹

Pursuant to the Open Government Sunset Review Act, the exemption will repeal on October 2, 2017, unless reenacted by the Legislature.⁴⁰

Staff Review of the Exemption

During the 2016 interim, committee staff consulted with staff from DFS as part of the Open Government Sunset Review process. DFS staff recommended reenactment of the exemption without changes and indicated that protecting social security numbers and property identifiers is critical to preventing fraud and identity theft related to unclaimed property claims. According to DFS, protecting the social security number and property identifiers has not impaired property locators' ability to locate the property owners. The DFS provided the following information regarding the activity of registered claimant's representatives during the past 10 years.

³⁶ Section 717.1400, F.S.

³⁷ Section 717.117(8), F.S. The term "property identifier" means the descriptor used by the holder of the unclaimed property to identify it.

³⁸ Chapter 2012-227, Laws of Fla.

³⁹ *Id.*

⁴⁰ Section 717.117(8)(c), F.S.

Fiscal Year	Number of Paid Claims Filed by Registrants	Amounts Paid to Registrants (Fees and Purchase Proceeds)
2007-08	61,823	\$4,411,999
2008-09	68,204	\$4,954,184
2009-10	81,980	\$6,511,745
2010-11	71,744	\$7,288,154
2011-12 (Law Change)	75,149	\$8,190,483
2012-13	70,492	\$7,729,066
2013-14	95,796	\$10,141,842
2014-15	97,742	\$11,676,028
2015-16	94,128	\$9,252,767
2016-17 (7.5 months)	71,519	\$7,321,928

Saving the exemption from repeal is recommended to protect social security numbers and property identifiers to prevent fraud and identity theft. No other changes are necessary.

III. Effect of Proposed Changes:

The bill removes the October 2, 2017, repeal date of the existing public records exemption for social security numbers and property identifiers held by the division at DFS.

The bill provides an effective date of October 1, 2017.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 717.117 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Banking and Insurance

597-02426-17

20177026__

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 717.117, F.S., relating
4 to an exemption from public records requirements for
5 social security numbers and property identifiers,
6 contained in certain reports of unclaimed property,
7 which are held by the Department of Financial
8 Services; removing the scheduled repeal of the
9 exemption; providing an effective date.
10
11 Be It Enacted by the Legislature of the State of Florida:
12
13 Section 1. Subsection (8) of section 717.117, Florida
14 Statutes, is amended to read:
15 717.117 Report of unclaimed property.—
16 (8) (a) As used in this subsection, the term "property
17 identifier" means the descriptor used by the holder to identify
18 the unclaimed property.
19 (b) Social security numbers and property identifiers
20 contained in reports required under this section, held by the
21 department, are confidential and exempt from s. 119.07(1) and s.
22 24(a), Art. I of the State Constitution.
23 (c) This exemption applies to social security numbers and
24 property identifiers held by the department before, on, or after
25 the effective date of this exemption.
26 ~~(d) This subsection is subject to the Open Government~~
27 ~~Sunset Review Act in accordance with s. 119.15, and shall stand~~
28 ~~repealed October 2, 2017, unless reviewed and saved from repeal~~
29 ~~through reenactment by the Legislature.~~

Page 1 of 2

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

597-02426-17

20177026__

30 Section 2. This act shall take effect October 1, 2017.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Agriculture, *Vice Chair*
Appropriations Subcommittee on Health and
Human Services
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Governmental Oversight and Accountability
Transportation

JOINT COMMITTEE:

Joint Administrative Procedures Committee,
Alternating Chair

SENATOR KEVIN J. RADER
29th District

March 29, 2017

The Honorable Dennis Baxley
320 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1300

Dear Chairman Baxley:

In accordance with Senate Rule 1.21, I am writing to you to be excused from the Governmental Oversight and Accountability Committee meeting that will be held on April 3, 2017 at 4:00pm due to family matters that need my immediate attention. I sincerely apologize for any inconvenience this may cause.

Thank you for your consideration. Please feel free to contact me at 561-866-4020 if you have any questions.

Sincerely

A handwritten signature in black ink that reads "Kevin Rader".

Kevin Rader
State Senator
District 29

A handwritten signature in black ink that appears to be "Jay Ferrin".

cc: Jay Ferrin, Staff Director

REPLY TO:

- ☐ 5301 N. Federal Hwy, Suite 135, Boca Raton, Florida 33487
- ☐ 222 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: SB 401

Case No.:

Caption: Senate Committee on Governmental Oversight and Accountability

Type:

Judge:

Started: 4/3/2017 4:02:01 PM

Ends: 4/3/2017 5:12:26 PM **Length:** 01:10:26

4:02:00 PM	Meeting called to order- Roll Call
4:02:24 PM	Quorum
4:02:24 PM	Tab 11 SB 1310 ; State Employment
4:03:02 PM	Senator Artilles recognized
4:03:53 PM	Strike all amendment 873100
4:04:22 PM	Bill as amended
4:04:43 PM	Roll call
4:05:19 PM	SB 1310 favorable as a committee substitute
4:05:36 PM	Tab 6 SB 1500; Retirement of Instructional Personnel and School Administrators
4:06:24 PM	Senator Mayfield recognized
4:06:25 PM	Strike all amendment 463234
4:07:08 PM	Bill as amended
4:07:35 PM	Roll Call
4:07:38 PM	SB 1500 favorable as a committee substitute
4:07:53 PM	Tab 3 SB 1166; Honor and Remember Flag
4:08:18 PM	Senator Galvano
4:09:12 PM	Roll Call
4:09:13 PM	SB 1166 Favorable
4:09:26 PM	Tab 2 SB 862; Public Records/Voters and Voter Registration
4:09:59 PM	Senator Galvano
4:10:14 PM	Roll Call
4:10:50 PM	SB 862 Favorable
4:11:03 PM	Tab 12 SB 7024; OGSR/Title Insurance Agencies or Insureres/Office of Insurance Regulation
4:11:44 PM	Roll Call
4:12:28 PM	SB 7024 Favorable
4:12:41 PM	Tab 13 SB 7026; OGSR/Reports of Unclaimed Property/Department of Financial Services
4:13:35 PM	Roll Call
4:13:37 PM	SB 7026 Favorable
4:13:46 PM	Tab 9 SB 1668; Use of State Funds
4:14:10 PM	Senator Perry recognized
4:14:50 PM	Senator Stewart
4:15:29 PM	Amendment barcode 529088
4:15:48 PM	Roll Call
4:15:54 PM	Bill as amended
4:16:21 PM	SB 1668 Favorable as a committee subsitute
4:16:40 PM	Recording Paused
4:16:40 PM	Tab 8 CS/SB 1604; Department of Corrections
4:16:41 PM	Recording Resumed
4:17:17 PM	Senator Bracy recognized
4:18:21 PM	Amendment barcode 682850
4:18:46 PM	Amendment barcode 598206
4:19:53 PM	Late filed amendment barcode 755380 to amendment 598206
4:20:42 PM	Back on amendment 598206 as amended
4:21:09 PM	Amendment adopted
4:21:12 PM	Bill as amended
4:21:40 PM	Roll call
4:21:51 PM	CS/SB 1604 favorable as a committee substitute
4:22:00 PM	Tab 7 SB 1526; Public Records/Health Information/Department of Corrections
4:22:28 PM	Senator Bracy
4:22:47 PM	Roll Call
4:23:07 PM	SB 1526 favorable
4:23:16 PM	Tab 10 CS/SB 1654; Florida Kidcare Program

4:24:13 PM	Senator Campbell
4:24:30 PM	Roll Call
4:24:41 PM	CS/SB 1654 Favorable
4:24:52 PM	Senator Rouson
4:25:12 PM	Tab 1 CS/SB 110; Public Records & Public Meetings/Info.Technology/Postsecondary Educ. Institutions
4:25:45 PM	Senator Rouson
4:26:04 PM	Amendment barcode 427674
4:27:28 PM	Bill as amended
4:27:32 PM	Roll Call
4:28:20 PM	CS/SB 110 favorable as a committee substitute
4:28:32 PM	Recording Paused
4:42:48 PM	Recording Resumed
4:43:20 PM	Tab 4 CS/SB 429; Public Records/Victim of Alleged Sexual Harrasment/Identifying Information
4:44:20 PM	Senator Dana Young recognized
4:45:06 PM	Senator Baxley
4:45:41 PM	Senator Dana Young
4:46:00 PM	Amendment barcode 291542
4:47:05 PM	Bill as amended
4:47:26 PM	Roll Call
4:47:53 PM	CS/SB 492 favorable as a committee substitute
4:48:07 PM	Tab 5 SB 1352; Division of Administrative Hearings
4:48:13 PM	Strike all amendment barcode 667558
4:50:20 PM	Senator Rouson
4:52:12 PM	Questions by Senator Rouson
4:53:12 PM	Fred Dudley recognized
4:55:39 PM	Brian Newman recognized
4:57:46 PM	Robert S. Cohen, Division of Administrative Hearings recognized
5:00:48 PM	Senator Baxley
5:03:54 PM	Curt Kiser Recognized
5:07:48 PM	Senator Baxley
5:09:29 PM	Bill as amended
5:10:28 PM	Amy Schrader recognized
5:10:48 PM	Roll Call
5:11:13 PM	SB 1352 Favorable as a committee substitute
5:11:25 PM	Comments by Senator Rouson
5:12:05 PM	Meeting Adjourned