

<b>Tab 1</b>	<b>CS/CS/SB 196</b> by <b>GO, TR, Hutson</b> ; (Similar to CS/H 0267) Public Records/State-funded Infrastructure Bank						
<b>Tab 2</b>	<b>CS/SB 494</b> by <b>JU, Hukill</b> ; (Identical to H 0747) Digital Assets						
254758	A	S	RCS	RC, Montford	Delete L.171 - 502:	01/20	06:55 PM
<b>Tab 3</b>	<b>SB 666</b> by <b>Legg</b> ; (Identical to H 0505) Voter Identification						
<b>Tab 4</b>	<b>CS/SB 860</b> by <b>CF, Detert</b> ; (Similar to H 0657) Foster Families						
<b>Tab 5</b>	<b>SB 7002</b> by <b>CA</b> ; (Identical to H 7037) OGSR/Audit Report and Certain Records/Local Government						
<b>Tab 6</b>	<b>CS/SB 7004</b> by <b>GO, CA</b> ; (Identical to H 7033) OGSR/Emergency Notification Information						
<b>Tab 7</b>	<b>SB 7020</b> by <b>HP</b> ; OGSR/Florida Health Choices Program/Florida Health Choices, Inc.						
<b>Tab 8</b>	<b>CS/SB 7024</b> by <b>GO, HP</b> ; (Similar to H 7041) OGSR/Information Held by the Florida Center for Brain Tumor Research						
<b>Tab 9</b>	<b>CS/SB 334</b> by <b>JU, Montford</b> ; (Similar to CS/CS/CS/H 0091) Severe Injuries Caused by Dogs						
<b>Tab 10</b>	<b>SB 812</b> by <b>Diaz de la Portilla</b> ; (Identical to H 0699) Reciprocal Insurers						
<b>Tab 11</b>	<b>SB 972</b> by <b>Lee</b> ; (Identical to H 0967) Family Law						
<b>Tab 12</b>	<b>CS/SB 1042</b> by <b>JU, Simmons</b> ; (Similar to CS/H 0503) Judgments						
<b>Tab 13</b>	<b>SB 7032</b> by <b>BI</b> ; (Identical to H 7035) OGSR/Office of Financial Regulation						
<b>Tab 14</b>	<b>SB 1038</b> by <b>Simmons</b> ; (Identical to H 7049) Florida Statutes						
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<b>Tab 15</b>	<b>SB 1040</b> by <b>Simmons</b> ; (Identical to H 7047) Florida Statutes						
<b>Tab 16</b>	<b>SB 1032</b> by <b>Simmons</b> ; (Similar to H 7051) Florida Statutes						
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**RULES**  
**Senator Simmons, Chair**  
**Senator Soto, Vice Chair**

**MEETING DATE:** Wednesday, January 20, 2016  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** *Toni Jennings Committee Room*, 110 Senate Office Building

**MEMBERS:** Senator Simmons, Chair; Senator Soto, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Gaetz, Galvano, Gibson, Joyner, Latvala, Lee, Montford, Negron, and Richter

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>CS/CS/SB 196</b> Governmental Oversight and Accountability / Transportation / Hutson (Similar CS/H 267)	Public Records/State-funded Infrastructure Bank; Providing an exemption from public records requirements for financial information of a private entity applicant which the Department of Transportation requires as part of an application process for loans or credit enhancements from the state-funded infrastructure bank; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  TR 11/04/2015 Fav/CS GO 12/01/2015 Not Considered GO 01/11/2016 Fav/CS RC 01/20/2016 Favorable	Favorable Yeas 11 Nays 2
2	<b>CS/SB 494</b> Judiciary / Hukill (Identical H 747)	Digital Assets; Citing this act as the "Florida Fiduciary Access to Digital Assets Act"; authorizing a user to use an online tool to allow a custodian to disclose or to prohibit a custodian from disclosing digital assets under certain circumstances; providing procedures for the disclosure of digital assets; authorizing the court to grant a guardian the right to access a ward's digital assets under certain circumstances; imposing fiduciary duties, etc.  JU 11/17/2015 Fav/CS FP 01/14/2016 Favorable RC 01/20/2016 Fav/CS	Fav/CS Yeas 12 Nays 0
3	<b>SB 666</b> Legg (Identical H 505)	Voter Identification; Expanding the list of acceptable forms of identification for certain voter registration applicants to include veteran health identification cards and licenses to carry a concealed weapon or firearm, etc.  EE 12/01/2015 Favorable MS 01/11/2016 Favorable RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0
4	<b>CS/SB 860</b> Children, Families, and Elder Affairs / Detert (Similar H 657)	Foster Families; Designating the second week of February of each year as "Foster Family Appreciation Week", etc.  CF 01/14/2016 Fav/CS RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, January 20, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	<b>SB 7002</b> Community Affairs (Identical H 7037)	OGSR/Audit Report and Certain Records/Local Government; Amending a provision which provides a public records exemption for the audit report of an internal auditor and certain records relating to investigations in the custody of an inspector general of a local government; removing the scheduled repeal of the exemption, etc.  GO 01/11/2016 Favorable RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0
6	<b>CS/SB 7004</b> Governmental Oversight and Accountability / Community Affairs (Identical H 7033)	OGSR/Emergency Notification Information; Amending a provision which provides an exemption from public records requirements for information furnished by a person to an agency for the purpose of being provided an emergency notification by the agency; removing the scheduled repeal of the exemption, etc.  GO 01/11/2016 Fav/CS RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0
7	<b>SB 7020</b> Health Policy	OGSR/Florida Health Choices Program/Florida Health Choices, Inc.; Amending provisions relating to an exemption from public records requirements for personal identifying information of an enrollee or participant in the Florida Health Choices Program, for client and customer lists of a buyer's representative held by the Florida Health Choices, Inc., and for proprietary confidential business information held by the corporation, and relating to a penalty for unlawful disclosure of confidential and exempt information; saving the exemption from repeal under the Open Government Sunset Review Act, etc.  GO 01/11/2016 Favorable RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0
8	<b>CS/SB 7024</b> Governmental Oversight and Accountability / Health Policy (Similar H 7041)	OGSR/Information Held by the Florida Center for Brain Tumor Research; Amending provisions which provide an exemption from public records requirements for information held by the Florida Center for Brain Tumor Research; removing the scheduled repeal of the exemption, etc.  GO 01/11/2016 Fav/CS RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, January 20, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	<b>CS/SB 334</b> Judiciary / Montford (Similar CS/CS/CS/H 91)	Severe Injuries Caused by Dogs; Providing for discretionary quarantine or impoundment of dogs that cause severe injuries to humans; specifying responsibility for payment of boarding and other costs; revising a requirement for automatic euthanasia for certain dogs that cause severe injury to humans; authorizing local governments to adopt certain ordinances pertaining to dogs that have bitten or attacked persons or domestic animals, etc.  JU 12/01/2015 Fav/CS CA 01/11/2016 Favorable RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0
10	<b>SB 812</b> Diaz de la Portilla (Identical H 699)	Reciprocal Insurers; Authorizing domestic reciprocal insurers to pay a portion of unassigned funds to their subscribers, etc.  BI 12/01/2015 Favorable CM 01/11/2016 Favorable RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0
11	<b>SB 972</b> Lee (Identical H 967, Compare S 250)	Family Law; Citing this act as the “Collaborative Law Process Act”; providing that a collaborative law process begins when the parties enter into a collaborative law participation agreement; prohibiting a tribunal from ordering a party to participate in a collaborative law process over the party’s objection; providing for confidentiality of communications made during the collaborative law process, etc.  JU 01/12/2016 Favorable RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0
12	<b>CS/SB 1042</b> Judiciary / Simmons (Similar CS/H 503)	Judgments; Providing that an execution is valid and effective during the life of the order on which it is issued; specifying that persons to whom a Notice to Appear has been issued may obtain possession of property levied on by complying with certain procedures; specifying that a jury, if not waived, should be empaneled as soon as possible after service of a Notice to Appear, etc.  JU 01/12/2016 Fav/CS RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Rules

Wednesday, January 20, 2016, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	<b>SB 7032</b> Banking and Insurance (Identical H 7035)	OGSR/Office of Financial Regulation; Amending provisions relating to an exemption from public records requirements for confidential information received by the Office of Financial Regulation from certain state or federal agencies and information received or developed by the office in a joint or multiagency examination or investigation; removing the scheduled repeal of the exemption, etc.  GO 01/11/2016 Favorable RC 01/20/2016 Favorable	Favorable Yeas 13 Nays 0
14	<b>SB 1038</b> Simmons (Identical H 7049)	Florida Statutes; Reenacting, amending, and repealing provisions that have expired, have become obsolete, have had their effect, have served their purpose, or have been impliedly repealed or superseded; correcting grammatical, typographical, and like errors, etc.  RC 01/14/2016 Not Considered RC 01/20/2016 Fav/CS	Fav/CS Yeas 12 Nays 0
15	<b>SB 1040</b> Simmons (Identical H 7047)	Florida Statutes; Repealing and amending provisions which have become inoperative by noncurrent repeal or expiration and, pursuant to s. 11.242(5)(b) and (i), F.S., may be omitted from the 2016 Florida Statutes only through a reviser's bill duly enacted by the Legislature, etc.  RC 01/14/2016 Not Considered RC 01/20/2016 Favorable	Favorable Yeas 12 Nays 0
16	<b>SB 1032</b> Simmons (Similar H 7051)	Florida Statutes; Amending provisions to conform to the directive of the Legislature in section 9 of chapter 2012-116, Laws of Florida, codified as section 11.242(5)(j), Florida Statutes, to prepare a reviser's bill to omit all statutes and laws, or parts thereof, which grant duplicative, redundant, or unused rulemaking authority, etc.  RC 01/14/2016 Not Considered RC 01/20/2016 Fav/CS	Fav/CS Yeas 12 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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 196

INTRODUCER: Governmental Oversight and Accountability Committee, Transportation Committee and Senator Hutson

SUBJECT: Public Records/State-funded Infrastructure Bank

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Price</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Price</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 196 creates a new exemption from the public records inspection and access requirements of Art. I, s. 24(a) of the State Constitution and s. 119.07(1), F.S., for financial information held by the Florida Department of Transportation (FDOT). Specifically, the bill exempts the financial information of a private entity submitted to FDOT as part of the application process for a loan or credit enhancement from the State-funded Infrastructure Bank (SIB). The exemption does not apply to records of a private applicant in default of a SIB loan.

The bill provides for repeal of the exemption on October 2, 2021, unless reviewed and reenacted 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, a two-thirds vote of the members present and voting in each house of the Legislature is required for final passage.

The bill goes into effect July 1, 2016.

## 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.<sup>1</sup> 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.<sup>2</sup>

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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 “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.”

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> 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’ may be released at the discretion of the records custodian.<sup>14</sup>

### **Open Government Sunset Review Act**

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>15</sup> 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.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:<sup>17</sup>

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

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<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed; however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(a), F.S.



If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>18</sup> 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 otherwise provided for by law.<sup>19</sup>

### **State-funded Infrastructure Bank**

The 2000 Legislature created the SIB within the FDOT to provide loans and credit enhancements for use in constructing and improving transportation facilities.<sup>20</sup> Government units and private entities may apply to the SIB for assistance. As outstanding obligations are repaid to the SIB, those repayments are made available for future lending on other eligible SIB projects. All proceeds are invested by the State Treasurer in accordance with established investment guidelines.<sup>21</sup>

The SIB consists of two separate escrow accounts established with the Department of Financial Services, one federally-funded and one state-funded. Projects eligible for assistance from the former account include those meeting all of the requirements of Title 23, U.S.C.,<sup>22</sup> capital projects defined in s. 5302 of Title 49, U.S.C.,<sup>23</sup> and any other projects relating to surface transportation that the U.S.D.O.T. Secretary determines to be appropriate.<sup>24</sup>

For assistance from the state-funded account, a project must:

- Be on the State Highway System;
- Provide for increased mobility on the state's transportation system; or
- Provide intermodal connectivity with airports, seaports, rail facilities, and other transportation terminals for the movement of people and goods.<sup>25</sup>

Additionally, projects identified under the Transportation Regional Incentive Program are eligible for assistance from the state-funded account. The FDOT is authorized to match up to 50% of the cost for projects that, at a minimum:

- Serve national, statewide, or regional functions and function as part of an integrated regional transportation system;
- Are identified in the capital improvements element of a comprehensive plan and are in compliance with local government plan policies relative to corridor management;
- Are consistent with the Strategic Intermodal System Plan developed under s. 339.64, F.S.; and

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<sup>18</sup> FLA. CONST., art. I, s. 24(c).

<sup>19</sup> Section 119.15(7), F.S.

<sup>20</sup> Section 339.55, F.S.

<sup>21</sup> See the FDOT's website for further information describing the SIB, its history, and its capitalization: <http://www.dot.state.fl.us/officeofcomptroller/PFO/sibintro.shtm>.

<sup>22</sup> See 23 U.S.C. s. 119 (2014). Generally, projects on the National Highway System.

<sup>23</sup> Generally, public transportation projects.

<sup>24</sup> 23 U.S.C. s. 610 (2012).

<sup>25</sup> Section 339.55(2)(a), F.S.

- Have a commitment for local, regional, or private financial matching funds as a percentage of the overall project cost.<sup>26</sup>

Emergency loans for damages incurred to public-use seaports, airports, and other transit and intermodal facilities with an area that is part of an official state declaration of emergency are also authorized under specified conditions.<sup>27</sup>

Applicants for assistance from either account must submit first to the FDOT a Letter of Interest (LOI) to ensure a potential SIB project meets eligibility, financial, and production criteria. Once the FDOT determines a given LOI is acceptable, the FDOT determines an interest rate for the application based on current market conditions, financial strength of the borrower, term, and risk of the loan. Only then is an applicant invited to complete an application form.<sup>28</sup>

As examples, some of the financial information items required in an LOI are a proposed financial plan, including details of the plan of finance sufficient in detail to assist in an assessment of creditworthiness (financial statements, operating revenues, and financial projections), details of the sources and uses of all funds, and a description of revenue sources pledged to repay the SIB loan.

Examples of financial information items required in a SIB loan application include funding sources, information regarding any anticipated bond issue or other debt instrument, loan term and amount, and primary and secondary repayment sources.

### III. Effect of Proposed Changes:

Section 1 creates subsection (10) of s. 339.55, F.S., to make financial information submitted to the FDOT SIB as part of the application process for loans or credit enhancements exempt from public inspection and disclosure. The term “financial information” means any:

- Business plan;
- Pro forma statement;<sup>29</sup>
- Account balance;
- Operating income or revenue;
- Asset value; or
- Debt.

This exemption would only apply to private entities and the exemption ceases if the private entity goes into default.<sup>30</sup>

<sup>26</sup> Section 339.55(2)(b) and see s. 339.2819, F.S.

<sup>27</sup> Section 339.55(2)(c), F.S.

<sup>28</sup> See the FDOT’s website for the LOI and application forms: <http://www.dot.state.fl.us/officeofcomptroller/PFO/sib-loi%20application%20and%20awards.shtm>.

<sup>29</sup> Pro forma statements are financial statement that estimates a firms future financial position based on trends and assumptions and are used to prepare future scenarios, business plans or estimates of required cash for financing proposals. The Law Dictionary, Featuring Black’s Law Dictionary Free Online Legal Dictionary 2nd Ed. <http://thelawdictionary.org/pro-forma-statement/> (Last visited Jan. 8, 2016).

<sup>30</sup> The right of the public to inspect or copy the financial information of a government-unit applicant for a SIB loan is unchanged by the bill.

The bill provides, as required by the State Constitution, a statement of public necessity which states that disclosure of the specified information:

- Could harm a private entity by giving the private entity's competitors insights into its financial status and business plan, putting the private entity at a competitive disadvantage.
- Could create the opportunity for theft, fraud, and other illegal activity, jeopardizing the financial security of the private entity and placing it at risk for substantial financial harm.
- Could expose a private person who is required to provide his or her personal financial information to FDOT to identity theft or other criminal activity.

The bill further states:

- Private entities may be unwilling to submit an application to the SIB for a loan without the exemption, which unwillingness could limit the FDOT's opportunities for cost-effective or strategic solutions for constructing and improving transportation facilities.
- The public benefit derived from having more private entities apply for SIB assistance outweighs the public benefit derived from accessing a private entity's financial information.

The exemption is subject to the OGSR Act and will stand repealed on October 2, 2021, unless reviewed and reenacted by the Legislature.

The bill takes effect July 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

###### **Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. This bill creates a public record exemption for financial information held by FDOT as part of the application process for a loan or credit enhancement from the SIB; thus, it requires a two-thirds vote for final passage.

###### **Public Necessity Statement**

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. This bill creates a new public record exemption and includes a public necessity statement that supports the exemption. The exemption is no broader than necessary to accomplish the stated purpose of the law.

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The specified private entity financial information is exempt from public disclosure, unless the private entity goes into default.

C. Government Sector Impact:

The FDOT may experience insignificant administrative expenses in implementing the exemption, which expenses are expected to be absorbed within existing resources.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The value of providing public access to the financial information only after a private entity recipient goes into default is unclear.

**VIII. Statutes Affected:**

This bill substantially amends section 339.55 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS/CS by Governmental Oversight and Accountability on January 11, 2016:**

- Removes “financial statement” and defines financial information in order to narrow the exemption and define a key term;
- Removes the word “confidential;”
- Replaces the word “assistance” with “loan or credit enhancement” for consistency with the rest of the section; and
- Amends the public necessity statement to clarify that both businesses and individuals may submit information to FDOT for SIB assistance. The public necessity statement clarifies that an individual may be subject to identity theft or other crimes if his or her financial information is publically available.

**CS by Transportation on November 4, 2015:**

The CS makes a technical change to reference the “application process,” rather than the “application,” as relevant financial information is required in the LOI as part of the application process.

**B. Amendments:**

None.

By the Committees on Governmental Oversight and Accountability;  
and Transportation; and Senator Hutson

585-01983-16

2016196c2

1 A bill to be entitled  
2 An act relating to public records; amending s. 339.55,  
3 F.S.; providing an exemption from public records  
4 requirements for financial information of a private  
5 entity applicant which the Department of  
6 Transportation requires as part of an application  
7 process for loans or credit enhancements from the  
8 state-funded infrastructure bank; providing an  
9 exception to the exemption; defining the term  
10 "financial information"; providing for future  
11 legislative review and repeal of the exemption;  
12 providing a statement of public necessity; providing  
13 an effective date.

14  
15 Be It Enacted by the Legislature of the State of Florida:

16  
17 Section 1. Subsection (10) is added to section 339.55,  
18 Florida Statutes, to read:  
19 339.55 State-funded infrastructure bank.—  
20 (10) (a) Financial information of a private entity applicant  
21 which the department requires as part of the application process  
22 for loans or credit enhancements from the state-funded  
23 infrastructure bank is exempt from s. 119.07(1) and s. 24(a),  
24 Art. I of the State Constitution. This exemption does not apply  
25 to records of an applicant who is in default of a loan issued  
26 under this section. As used in this subsection, the term  
27 "financial information" means any business plan, pro forma  
28 statement, account balance, operating income or revenue, asset  
29 value, or debt of the applicant.  
30 (b) This subsection is subject to the Open Government  
31 Sunset Review Act in accordance with s. 119.15 and shall stand

Page 1 of 3

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

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32 repealed on October 2, 2021, unless reviewed and saved from  
33 repeal through reenactment by the Legislature.

34 Section 2. (1) The Legislature finds that it is a public  
35 necessity that financial information of a private entity that  
36 the Department of Transportation requires as part of the  
37 application process for a loan or credit enhancement from the  
38 state-funded infrastructure bank be protected from disclosure.  
39 Financial information means any business plan, pro forma  
40 statement, account balance, operating income or revenue, asset  
41 value, or debt of the applicant.

42 (2) The disclosure of such information could harm a private  
43 entity in the marketplace by giving the private entity's  
44 competitors insights into its financial status and business  
45 plan, thereby putting the private entity at a competitive  
46 disadvantage. Additionally, the disclosure of sensitive  
47 financial information regarding a private entity could create  
48 the opportunity for theft, fraud, and other illegal activity,  
49 thereby jeopardizing the financial security of the private  
50 entity and placing it at risk for substantial financial harm. If  
51 an individual is required to provide his or her personal  
52 financial information to the department as part of the  
53 application process for his or her business, the individual  
54 could be subject to identity theft and other criminal activity.  
55 Without an exemption from public records requirements under s.  
56 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
57 State Constitution, some private entities might be unwilling to  
58 submit an application to the state-funded infrastructure bank.  
59 This unwillingness to submit applications could, in turn, limit  
60 opportunities the department might otherwise have for providing

Page 2 of 3

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

585-01983-16

2016196c2

61 loans or credit enhancements to private entities who could  
62 propose cost-effective or strategic solutions for constructing  
63 and improving transportation facilities. The Legislature finds  
64 that the benefit to the public of more private entities applying  
65 for loans or credit enhancements outweighs any public benefit  
66 that may be derived from the disclosure of the financial  
67 information of a private entity. For this reason, the  
68 Legislature declares that financial information that the  
69 department requires as part of an application process for loans  
70 or credit enhancements from the state-funded infrastructure bank  
71 is exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
72 Article I of the State Constitution.

73 Section 3. This act shall take effect July 1, 2016.



The Florida Senate

## Committee Agenda Request

**To:** Senator David Simmons, Chair  
Committee on Rules

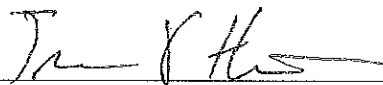
**Subject:** Committee Agenda Request

**Date:** January 12, 2016

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I respectfully request that **Senate Bill #196**, relating to Public Records/State Infrastructure Banks, be placed on the:

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

  
\_\_\_\_\_  
Senator Travis Hutson  
Florida Senate, District 6



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-20-16

Meeting Date

CS/CS/SB 196

Bill/Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Doug MANN

Job Title \_\_\_\_\_

Address 310 W. College Ave.

Phone 222-7535

Street

Tallahassee

City

FL

State

32301

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing AIF

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)

1/20/16

Meeting Date

SB196

Bill Number (if applicable)

Topic

Public Rec. / ST Fund Office Bond

Amendment Barcode (if applicable)

Name

Brian Hunter

Job Title

President

Address

307 W. Park Ave Suite 214

Phone

950/681-2176

Street

TALAHASSEE

FL

32301

Email

afcd@afcd.com

City

State

Zip

Speaking:



For



Against



Information

Waive Speaking:



In Support



Against

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

Representing

Assn. of Florida Community Developers

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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

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

S-001 (10/14/14)

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 494

INTRODUCER: Rules Committee; Judiciary Committee; and Senator Hukill

SUBJECT: Digital Assets

DATE: January 21, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Jones</u>	<u>Hrdlicka</u>	<u>FP</u>	<b>Favorable</b>
3.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<b>Fav/CS</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 494 is a state adaptation of the Revised Uniform Fiduciary Access to Digital Assets Act. This version of the model act was approved by the Uniform Law Commission in July, 2015. It addresses conflicting interests between fiduciaries, who are trying to access the digital assets of someone who has died or become incapacitated, and custodians, who possess the assets.

Digital assets are electronic records in which someone has a personal interest or right. They include electronic communications and records such as emails, text messages, online photographs, documents stored in the cloud, electronic bank statements, and other electronic communications or records.

The purpose of the bill is twofold. First, it provides fiduciaries the legal authority to manage digital assets and electronic communications in the same manner that they manage tangible assets and accounts. The bill specifies when a fiduciary may access the content of digital assets and electronic communications, and when only a catalog of the property is permitted to be accessed. Second, it provides custodians of digital assets and electronic communications the legal authority they need to interact with the fiduciaries of their users while honoring the user's privacy expectations for his or her personal communications.<sup>1</sup> A custodian is granted immunity from liability for acts or omissions done in good faith compliance with the provisions of this bill.

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<sup>1</sup> National Conference of Commissioners on Uniform State Laws, *Revised Uniform Fiduciary Access to Digital Assets Act (2015) Prefatory Note* (on file with the Senate Committee on Judiciary).

The general goal of the bill is to give Internet users the ability to plan for the management and disposition of their digital assets if they should die or become unable to manage their assets. This is accomplished by vesting fiduciaries with the authority to access, control, or copy digital assets and accounts.<sup>2</sup>

## II. Present Situation:

### Background

Digital age technology has dramatically transformed how people acquire and store information, communicate, and transact business. Before the Internet was developed, most information was circulated in tangible forms, often reduced to ink on paper. However, as people have embraced electronic devices, many paper documents have been replaced by digital files, inboxes often substitute for mailboxes, glossy photographs have given way to digital images, and the metal filing cabinet with a key lock has been displaced by a networked file server with user access security.

While the advantages of these new technologies surpass the disadvantages, they have created challenges, particularly to a person who is tasked with corralling the digital assets<sup>3</sup> of someone who has either lost capacity or died. When someone is declared incapacitated or dies in Florida, a fiduciary<sup>4</sup> is required and given legal authority to inventory the person's assets, pay the person's debts, taxes, and expenses, and preserve the person's property during the period of incapacity or transfer the person's property to the correct beneficiaries after death.<sup>5</sup>

Previously, someone's personal information was tangible and could be located by sifting through paper records or waiting for the incoming mail to divulge banking records and bills to be paid. Locating these records and managing property and social media accounts in the digital age is more complicated. Substantial amounts of valuable electronic data and digital assets are stored in cell phones, laptops, personal computers, online accounts, and other devices. How does someone in a fiduciary relationship identify and locate that person's digital assets? Once identified, who has control or ownership? How is an account accessed without a decedent's password? Does an original terms-of-service agreement control whether a successor may gain access to an account? Generally, a terms-of-service agreement, rather than state property law, controls the access to someone's digital assets, upon death or incapacity.

Efforts to resolve these legal issues have pitted the fiduciary's duty to identify and access the digital assets against the Internet service provider's duty to protect the original account holder's privacy interest. The Internet service provider is also concerned with not illegally divulging

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<sup>2</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *White Paper: Proposed Enactment of Chapter 740, Florida Statutes* (2015) (on file with the Senate Committee on Judiciary).

<sup>3</sup> Some examples of digital assets are e-mail, photos, projects, online bank accounts, personal records, digital music, entertainment, presentations, domain names, intellectual property and client lists. The assets are generally important because of their sentimental or financial value.

<sup>4</sup> A fiduciary is defined as someone who owes to another person a duty to act in good faith and trust. BLACK'S LAW DICTIONARY (9th ed. 2009).

<sup>5</sup> Digital Assets and Information Study Committee of the Real Property, Probate and Trust Law Section of The Florida Bar, *White Paper: Digital Assets Questions and Answers* (2015) (on file with the Senate Committee on Judiciary).

information that could be a violation of state and federal computer security laws. An additional barrier is presented by the conditions of the terms-of-service agreement that the original account holder agreed to when contracting with the service provider.

Mindful that few laws exist to resolve these growing conflicts, the Uniform Law Commission<sup>6</sup> drafted a model law, the Uniform Fiduciary Access to Digital Assets, which it approved in 2014. Versions of the model act were introduced in 27 state legislatures in 2015. Not one bill passed. The bills were defeated by vocal opposition from Internet-based businesses and privacy advocates. The Uniform Law Commission reconvened in 2015 to address the issue of accessing digital assets. The commission produced a revised version of the earlier act for 2016.<sup>7</sup> CS/SB 494 is a state adaptation of the Revised Uniform Fiduciary Access to Digital Access Act, often referred to as the Revised UFADAA.

## **Privacy Laws for Electronic Communications**

### ***Federal Law***

Both federal and state laws prohibit the unauthorized access of computer systems and certain types of protected data. The most relevant federal laws, passed in 1986, are the Computer Fraud and Abuse Act<sup>8</sup> and the Stored Communications Act.<sup>9</sup>

The Computer Fraud and Abuse Act<sup>10</sup> is a computer security law that imposes penalties for the unauthorized access of stored data, devices, and computer hardware.<sup>11</sup> The law is designed to protect computers in which there is a federal interest and shields them from certain threats and forms of espionage and from being corruptly used as vehicles to commit fraud.<sup>12</sup> In essence, the law makes it a crime to access a computer, online service, or online account without authorization. When this law is read in the context of accessing digital assets, the issue becomes whether a fiduciary has been given authority to access a computer by virtue of a law or whether access must be given explicitly by the owner of the computer, online service, or account.<sup>13</sup>

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<sup>6</sup> According to its website, the Uniform Law Commission was established in 1892 and is made up of lawyers who are appointed by state governments. Its purpose is to research, draft, and promote the enactment of non-partisan uniform state legislation. For more information about the Uniform Law Commission, see About the ULC at [http://www.uniformlawcommission.com/Narrative.aspx?title=About the ULC](http://www.uniformlawcommission.com/Narrative.aspx?title=About%20the%20ULC) (last visited Nov. 3, 2015). The commission began meeting in 2012 to develop the Uniform Fiduciary Access to Digital Assets Act.

<sup>7</sup> Benjamin Orzeske, *Managing a Digital Estate*, ABA Trust Letter, American Bankers Association, October 2015 (on file with the Senate Committee on Judiciary).

<sup>8</sup> 18 U.S.C. s. 1030 *et seq.*

<sup>9</sup> 18 U.S.C. s. 2701 *et seq.*

<sup>10</sup> According to the U.S. Department of Justice, the act is broad enough in scope to permit the Federal Government to prosecute someone if the person exceeds his or her authorized access by violating the access terms of a web site's terms-of-service agreement or usage policies. James D. Lamm, *Digital Passing: Your Client is Six Feet Under, But His Data is in the Cloud*, Nov. 2014, <http://www.digitalpassing.com/wordpress/wp-content/uploads/2013/02/James-Lamm-Digital-Death-1-17-2013.pdf>.

<sup>11</sup> William Bissett and David Kauffman, *Surf the Evolving Web of Laws Affecting Digital Assets*, 41 Estate Planning No. 4 (Apr. 2014), <http://www.inknowvision.com/newsletters/July2014.pdf>.

<sup>12</sup> Charles Doyle, Congressional Research Service, *Cybercrime: A Sketch of 18 U.S.C. 1030 and Related Federal Criminal Laws*, RS20830 (Oct. 15, 2014).

<sup>13</sup> *Supra*, note 5.

The Stored Communications Act, which is part of the Electronic Communications Privacy Act,<sup>14</sup> establishes privacy rights and prohibits certain electronic communication services or remote computing services from knowingly divulging the contents of certain electronic communications and files.<sup>15</sup> Under the terms of the act, providers of communications services to the public may not be compelled to disclose data and information stored online. The providers are prohibited from voluntarily divulging the contents of stored communications unless an exception applies under s. 2702(b) of the act. Wrongful disclosures result in legal penalties. However, there is a “lawful consent” exception which permits a service provider to voluntarily disclose electronic communications if lawful consent is given.<sup>16</sup>

These privacy protections are viewed by some as being substantial barriers for family members and fiduciaries who seek to access the contents of a deceased or incapacitated user’s online accounts. The service providers see them as restrictions on their ability to disclose electronic communications to anyone, unless certain exceptions are met. The service providers’ reasoning is that, if the Stored Communications Act applies, the online account service provider is prohibited by law from disclosing the contents of the communications and files.

### ***State Law***

Two chapters in the *Florida Statutes* address computer related crimes and the security of communications and are modeled after the Stored Communications Act. Chapter 815, F.S., is the “Florida Computer Crimes Act” and ch. 934, F.S., is entitled “Security of Communications; Surveillance.” Neither chapter addresses the ability of a fiduciary to legally access, duplicate, or control digital assets.<sup>17</sup> Additionally, no other provision of Florida law specifically addresses digital access by fiduciaries.

### **Terms-of-Service Agreements**

Terms-of-service agreements, the conditions controlling the relationship between the account holder and the service provider, are not uniform among Internet service providers. While some Internet service providers publish explicit policies detailing what will occur to digital assets when an individual dies, other providers do not. Some providers’ policies state that upon the death of the account holder, the account will terminate, thereby prohibiting access to the account by anyone. Providers often publish their policies in the terms-of-service agreements, but the terms are frequently ignored as readers quickly move past the language to progress to the end of the document.

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<sup>14</sup> 18 U.S.C. s. 2510 *et seq.*

<sup>15</sup> James D. Lamm, *Digital Passing: Your Client is Six Feet Under, But His Data is in the Cloud*, Nov. 2014, <http://www.digitalpassing.com/wordpress/wp-content/uploads/2013/02/James-Lamm-Digital-Death-1-17-2013.pdf>.

<sup>16</sup> *Digital Assets and Information Study Committee of the Real Property, Probate and Trust Law Section of The Florida Bar*, *supra* note 5.

<sup>17</sup> *Id.*

### III. Effect of Proposed Changes:

#### General Overview

Because the Florida Statutes do not authorize fiduciary access to digital assets, the purpose of this bill is to provide fiduciaries with specific authority to access, control, or copy digital assets and accounts. The four types of fiduciaries this bill applies to are personal representatives of decedents' estates, guardians of the property of minors or incapacitated persons, agents who are acting under a power of attorney, and trustees.<sup>18</sup>

According to the Real Property, Probate and Trust Law Section of The Florida Bar, or RPPTL, this act provides the legal authority that a fiduciary needs to manage digital assets in compliance with a person's estate plan, while also ensuring that a person's private electronic communications remain private unless the person gave consent for disclosure. The bill allows a user to specify whether his or her digital assets will be preserved, distributed to heirs, or destroyed. In keeping with federal privacy laws, the bill prevents companies that store electronic communications from releasing them to fiduciaries unless the user has consented to the disclosure. Fiduciaries are required under the bill to provide proof of their authority under Florida law to the custodians of the digital assets. Custodians that comply with a fiduciary's apparent authorization request are given immunity from liability under the statutes that prohibit unauthorized access.<sup>19</sup>

The Uniform Law Commission has stated that this revised uniform act, which this bill mirrors, gives Internet users the ability to plan for the management and disposition of their assets in similar ways that they make plans for tangible property. The bill has a three-tiered system of priorities in the event of conflicting instructions. Additionally, the bill is designed as an overlay statute that works in conjunction with a state's existing laws involving probate, guardianship, trusts, and powers of attorney.<sup>20</sup>

#### Limited Application

According to RPPTL, the bill is limited in its scope and applies only to fiduciaries who are already bound to act in compliance with their fiduciary duties and powers. The bill does not extend to family members or other people who seek access to digital assets unless they are also a fiduciary. Moreover, the ability of a fiduciary to access a digital asset does not entitle the fiduciary to own the asset or make transactions with the asset.

The scope of the bill is further limited by the definition of "digital assets." The bill's only application is to an electronic record, which includes electronic communications, and does not apply to the underlying asset or liability unless the asset or liability is itself an electronic record.<sup>21</sup>

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<sup>18</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 2.

<sup>19</sup>*Id.*

<sup>20</sup> Uniform Law Commission, *The Revised Uniform Fiduciary Access to Digital Assets Act – A Summary*, 2015 (on file with the Senate Committee on Judiciary).

<sup>21</sup> Real Property, Probate, and Trust Law Section of The Florida Bar, *supra* note 2.

## **Online Tool**

One significant addition to this year's version of the bill that was not present last year is the concept of an "online tool" for directing fiduciary assets. The online tool is an electronic service provided by a custodian which allows the user, in an agreement separate and distinct from the terms-of-service agreement, to provide directions for disclosure or nondisclosure of digital assets to a third person.

### ***Purpose (Sections 1 & 2)***

Section 740.001, F.S., creates the "Florida Fiduciary Access to Digital Assets Act." According to RPPTL the goal of this legislation is to:

- Remove barriers to a fiduciary who is seeking access to electronic records;
- Respect the user's privacy and intentions; and
- Ensure that an Internet service provider's compliance with the bill's disclosure requirements do not subject it to liability for violations of federal privacy laws.<sup>22</sup>

### ***Definitions (Section 3)***

Section 740.002, F.S., defines 27 terms used in the bill. The majority of those terms are found in the Florida Probate Code and the Florida Powers of Attorney Act, while others are adapted from federal statutes or the Revised Uniform Fiduciary Access to Digital Assets Act.<sup>23</sup> Some of the most frequently used terms in this bill are listed below.

An "account" is defined as an arrangement under a terms-of-service agreement in which the custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user.

"Catalog of electronic communications" means information that identifies each person with which a user has had an electronic communication, the time and date of the communication, and the electronic address of the person. In lay terms, this is considered to be what is on the "outside of an envelope" as opposed to the contents inside the envelope.

"Content of an electronic communication" means information concerning the substance or meaning of the communication which:

- Has been sent or received by the user;
- Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and
- Is not readily accessible to the public.

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.*



In lay terms, this is generally understood to be the “inside of an envelope” or the subject line of an e-mail, the body of an e-mail or attachment, or the body of other types of electronic communications that are protected by the Stored Communications Act.<sup>24</sup>

A “custodian” is defined as a person that carries, maintains, processes, receives, or stores a digital asset of a user.

A “designated recipient” is defined as a person chosen by a user through an online tool to administer digital assets of the user.

A “digital asset” is defined as an electronic record in which a person has a right or interest. The term does not include the underlying asset or liability unless the asset or liability is itself an electronic record.

“Electronic communication” has the same meaning as that provided in 18 U.S.C. s. 2510(12). It means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic or photooptical system that affects interstate or foreign commerce. It does not include any wire or oral communication; any communication made through a tone-only paging device; any communication from a tracking device;<sup>25</sup> or electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.

“User” means a person that has an account with a custodian.

#### ***A User’s Direction for Disclosure of Digital Assets (Section 4)***

Section 740.003, F.S., which was not included in last year’s digital assets bill, establishes the user’s ability to direct disclosure of the digital assets and the order of preference for his or her direction. It is a three-tiered priority system.

The first priority is a user’s online direction for a specific account. If a company provides an online tool for a user to designate a person to receive access to his or her account upon death or incapacity, and the user takes advantage of the online tool, then the user’s designation prevails, even if it is in conflict with a contrary provision in the user’s will or trust, provided that the online tool allows the user to modify or delete a direction at all times. The user may direct the custodian to disclose or not disclose some or all of his or her digital assets to a designated recipient, even the content of electronic communications.

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<sup>24</sup> According to James Lamm, an expert in this area of law, the Stored Communications Act does not protect the content of all electronic communications, and the Stored Communications Act does not protect all records held in electronic storage by storage providers. The Stored Communications Act protects the content of an electronic communication only if the content is held in electronic storage by a service provider, the service provider holding the content provides an electronic communication service or remote computing service to the public, and access to the content is restricted in a manner so that it is not completely public. *See* Lamm, *supra* note 15.

<sup>25</sup> A tracking device is an electronic or mechanical device that permits the tracking of a person or object. 18 U.S.C. s. 3117(b).

The second priority is the user's direction contained in a valid will, trust, power of attorney, or other record, if the user has not used an online tool to give direction or the custodian has not provided an online tool. If the user makes plans for disposing of his or her digital assets, then the law gives effect to that plan and the custodian of the digital assets is required to comply with the plan.

The third priority is the terms-of-service agreement that governs the account. If the user does not provide for the disposition of his or her digital assets, whether online or in an estate plan, the terms-of-service agreement governing the account controls.

#### ***Terms-of-Service Agreement is Preserved (Section 5)***

Section 740.004, F.S., clarifies that a terms-of-service agreement is preserved and the fiduciary or designated recipient has no greater rights than the user, unless there is a conflict with a user's direction. The fiduciary is not given any new or expanded rights. The fiduciary's or designated recipient's access to digital assets may be modified or eliminated by a user, federal law, or by a terms-of-service agreement if the user has not provided direction under the previous section.

#### ***Procedure for Custodians When Disclosing Assets (Section 6)***

Section 740.005, F.S., establishes the custodian's procedure, or three options, for disclosing digital assets. When a custodian discloses a user's digital assets, the custodian has full discretion to:

- Allow the fiduciary or designated recipient full access to the user's account;
- Allow the fiduciary or designated recipient partial access to the account that is sufficient to perform the necessary tasks; or
- Provide the fiduciary or designated recipient a copy in a record of the digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if he or she were alive and had full capacity and access to the account.

A custodian:

- May charge a reasonable administrative fee for the cost of disclosing digital assets; and
- Is not required, under this act, to disclose a digital asset that the user deleted.

If a user directs, or a fiduciary requests, a custodian to disclose some, but not all of the user's digital assets under this act, the custodian is not required to disclose the assets if segregating the assets would be unduly burdensome. If the custodian believes that an undue burden exists, the custodian or the fiduciary may seek a court order to disclose:

- A subset of the user's digital assets, limited by date;
- All of the digital assets to the fiduciary or designated recipient, or to the court for a review in chambers; or
- None of the user's digital assets.

#### ***Sections 7—14***

Sections 7 – 14 establish the rights of personal representatives, guardians, agents acting pursuant to a power of attorney, and trustees. Each of the fiduciaries is subject to different rules for the content of communications that are protected by federal privacy laws and for other forms of

digital assets. In general, fiduciaries will have access to a catalog of the user's communications, the outside of the envelope, but not the content, the inside of the envelope, unless the user consented to the disclosure of the content of the communication.

***Disclosure of the Content of Electronic Communications of a Deceased User (Section 7)***

Section 740.006, F.S., establishes the rights of a personal representative of a decedent to the contents of an electronic communication of the user. Section 8, below, addresses disclosure of non-content and other digital assets of a deceased user. A personal representative may not access the contents of a decedent's electronic communications unless the user consented or a court so directs.

In order for a custodian to disclose to the personal representative the content of an electronic communication that the user sent or received, the personal representative must supply to the custodian:

- A written request for disclosure in physical or electronic form;
- A certified copy of the death certificate of the user;
- A certified copy of the letters of administration or similar specified authority;
- A copy of the user's will, trust, power of attorney, or other record evidencing the user's consent to disclosure of the content of electronic communications unless the user provided direction in an online tool; and
- If the custodian requests, the personal representative must provide specified information that will identify the user's account, evidence linking the account to the user; or a finding by the court that the user had a specific account with the custodian based upon enumerated information; that disclosure of the contents would not violate certain federal law or other applicable laws; unless the user provided direction through an online tool, that the user consented to disclosure of the content; or disclosure of the content is reasonably necessary for the administration of the estate.

***Disclosure of Other Digital Assets of a Deceased User (Section 8)***

Section 740.007, F.S., establishes the rights of a personal representative to the *other* digital assets of a deceased user. The purpose of the section is to give a personal representative default access to the "catalog" or outside of the envelope, of electronic communications and other digital assets that are not protected by federal privacy laws.

A personal representative is permitted to have access to all of a decedent's other digital assets, excluding the contents of electronic communications as discussed above in section 7, unless the deceased user prohibited disclosure or a court directs differently. The custodian must disclose to the personal representative a catalog of electronic communications sent or received by the user and the digital assets of the user, if the personal representative supplies the custodian with:

- A written request for disclosure in physical or electronic form;
- A certified copy of the death certificate of the user;
- A certified copy of the letters of administration or similar specified authority; and
- If the custodian requests, the personal representative must provide specified information that will identify the user's account, evidence linking the account to the principal; an affidavit stating that disclosure is reasonably necessary for the administration of the decedent's estate,

or an order of the court which finds that the user had a specific account with the custodian, as specified earlier, or that disclosure of the user's digital assets is reasonably necessary for the administration of the estate.

***Disclosure of Content of Electronic Communications of a Principal (Section 9)***

Section 740.008, F.S., establishes the right of an agent, who acts pursuant to a power of attorney, to the contents of electronic communications of the principal. When acting pursuant to the power of attorney, an agent is permitted access to the contents of a principal's electronic communications if that authority is expressly granted by the principal and is not in some other way restricted by the principal or a court.

The custodian is required to disclose the content if the agent supplies the custodian:

- A written request in physical or electronic form;
- An original or copy of the power of attorney in which the authority over the content is expressly granted to the agent;
- A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- If requested by the custodian, specified information assigned by the custodian to identify the principal's account or evidence linking the account to the principal.

***Disclosure of Other Digital Assets of a Principal (Section 10)***

Section 740.009, F.S., establishes the right of an agent, who acts pursuant to a power of attorney, access to the other digital assets of the principal. It establishes that the agent has default authority over the principal's digital assets, except for the content of the principal's electronic communications.

Unless otherwise ordered by a court, directed by a principal, or provided by a power of attorney, a custodian must disclose to an agent who has been granted specific authority over the digital assets or general authority to act on behalf of the principal, a catalog of electronic communications that were sent or received by the principal, and digital assets of the principal, but not the content of electronic communications.

The agent must supply the custodian with:

- A written request in physical or electronic form;
- An original or a copy of the power of attorney which grants the agent specific authority over digital assets or general authority to act on behalf of the principal;
- A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and
- If requested by the custodian, an agent must also provide certain enumerated identifying information assigned by the custodian to identify the principal's account or evidence linking the account to the principal.

***Disclosure of Digital Assets held in Trust when the Trustee is the Original User (Section 11)***

Section 740.01, F.S., establishes that a trustee who is an original account holder can access all digital assets that are held in the trust. A trustee who is an original user may access any digital

asset, which includes the catalog and the content of electronic communications, unless it is otherwise ordered by a court or provided in the trust.

***Disclosure of Content of Electronic Communications Held in Trust When a Trustee is not the Original User (Section 12)***

Section 740.02, F.S., establishes the rights of a trustee to the contents of electronic communications held in trust when the trustee is *not* the original user. Unless otherwise ordered by a court, directed by the user, or provided in a trust, the custodian must disclose to a trustee, who is not an original user, the content of an electronic communication that was sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust. The trustee must provide the custodian:

- A written request in physical or electronic form;
- A certified copy of the trust instrument or a certification of trust which includes consent to disclosure of the content to the trustee;
- A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and
- If requested by the custodian, the trustee must also provide certain identifying information assigned by the custodian to identify the trust's account or evidence linking the account to the trust.<sup>26</sup>

***Disclosure of Other Digital Assets Held in Trust When the Trustee is not the Original User (Section 13)***

Section 740.03, F.S., establishes the rights of a trustee to other digital assets held in trust when the trustee is not the original user. Unless prohibited by a court, the user, or the trust instrument, a trustee who is not the original user may access the catalog of electronic communications and any digital assets, except the content of electronic communication, in an account of the trust. The trustee must supply the custodian:

- A written request for disclosure in physical or electronic form;
- A certified copy of the trust instrument or a certification of trust;
- A certification by the trustee, under penalty of perjury, that the trust exists and that the trustee is a currently acting trustee; and
- If requested by the custodian, specified information assigned by the custodian to identify the principal's account or evidence linking the account to the trust.

***Disclosure of Digital Assets to a Guardian of a Ward (Section 14)***

Unless a ward grants consent, a guardian is not authorized to access the contents of a ward's electronic communications. A guardian is permitted, however, to access the ward's other digital assets, except for the contents of electronic communications, pursuant to letters of guardianship or a court order, unless otherwise ordered by a court or directed by the user. The guardian must provide the custodian:

- A written request for disclosure in physical or electronic form;

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<sup>26</sup> According to RPPTL, sections 12 and 13 of the bill address situations involving either an inter vivos transfer of a digital asset into a trust or the transfer, via a pour-over will of a digital asset into a trust.

- A certified copy of letters of plenary guardianship of the property or the court order giving the guardian authority over the digital assets of the ward; and
- If requested by the custodian, specified information assigned by the custodian to identify the ward's account or evidence linking the account to the ward.

A custodian of the ward's digital assets may suspend or terminate an account of the ward for good cause if requested to do so by a guardian with general authority to manage the ward's property. The request to suspend or terminate must be accompanied by a certified copy of the court order giving the guardian the authority over the ward's property.<sup>27</sup>

### ***Fiduciary Duty and Authority (Section 15)***

Section 740.05, F.S., establishes the legal duties of a fiduciary charged with managing digital assets. This includes the duties of care, loyalty, and confidentiality. Section 740.05(2), F.S., establishes the fiduciary's or designated recipient's authority to exercise control over the digital assets in conjunction with other statutes.

The fiduciary's or designated recipient's authority is:

- Subject to the terms-of-service agreement, except as directed in the online tool;
- Subject to other laws, including copyright law;
- In the case of a fiduciary, limited by the scope of the fiduciary's duties; and
- May not be used to impersonate the user.

A fiduciary who has authority over the tangible personal property of a decedent, ward, principal, or settlor has the right to access any digital asset in which those persons had or has a right or interest if the digital asset is not held by a custodian or subject to a terms-of-service agreement. For purposes of any applicable computer fraud or unauthorized computer access laws, a fiduciary who acts within the scope of the fiduciary's duties is an authorized user of the property. A fiduciary who has authority over the tangible personal property of a decedent, ward, principal, or settlor has the right to access the property and any digital assets that are stored in it and is an authorized user for the purpose of computer fraud and unauthorized computer access laws.

A custodian is authorized to disclose information in an account to a fiduciary of the user if that information is required to terminate an account used to access digital assets licensed to the user.

A fiduciary who requests a custodian to terminate a user's account must submit the request in writing, either in paper or electronic form and also supply:

- A certified copy of the death certificate of the user, if the user is deceased;
- A certified copy of the letters of administration or other specified court orders; and
- If requested by the custodian, specified information assigned by the custodian to identify the ward's account or evidence linking the account to the ward, or a court finding that the user had a specific account with the custodian, identifiable by certain enumerated information.

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<sup>27</sup> According to the RPPTL, this section requires that the guardian must be specifically authorized, not implicitly authorized, to access the ward's digital assets and electronic communications. *Supra* note 2 at 12.

***Custodian Compliance and Immunity (Section 16)***

Section 740.06, F.S., provides that a custodian has 60 days to comply with a request from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian does not comply, the fiduciary or designated recipient may apply to the court for an order directing compliance. The order directing compliance must contain a finding that compliance would not be in violation of the Stored Communications Act at 18 U.S.C. s. 2702.

A custodian may deny a request for disclosure or terminate an account if the custodian is aware of any lawful access to the account after the custodian receives the fiduciary's request. The bill does not limit a custodian's ability to require a fiduciary or designated recipient from obtaining a court order that specifies that an account belongs to the ward or principal, specifies that there is sufficient consent from the ward or principal, and contains a finding required by a law other than one found in this bill.

This section also establishes that a custodian and its officers, employees, and agents are immune from liability for acts or omissions done in good faith and in compliance with this chapter.

***Electronic Signatures in Global and National Commerce Act (Section 17)***

Section 740.07, F.S., establishes the relationship between this act and the Electronic Signatures in Global and National Commerce Act, noting where this act does and does not modify the federal law.

***Applicability (Section 18)***

Section 740.08, F.S., provides that the power granted by the act to fiduciaries, personal representatives, guardians, and trustees, applies to these people regardless of whether their authority arose, before, on, or after July 1, 2016, the effective date of the bill. Additionally, the bill does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

***Severability (Section 19)***

A standard severability provision is supplied which notes that if any provision is held invalid, the other provisions of the chapter will remain in effect.

***Effective Date (Section 20)***

The bill takes effect July 1, 2016.

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

The mandate restrictions do not apply because the bill does not affect counties and municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The federal preemption doctrine is a principle of law which holds that federal laws take precedence over state laws, and as such, states may not enact laws that are inconsistent with the federal law. Under the Electronic Communications Privacy Act, or ECPA, a service provider, with few exceptions, may not divulge the contents of a communication without the “lawful consent” of the originator, addressee, intended recipient, or the subscriber. Under the provisions of this bill, an online tool is created and controlled by the Internet service providers that is separate from the terms of service agreement. This online tool allows the account holder or user to specifically “opt in” and grant permission to the fiduciary to access his or her digital assets. This affirmative act could be deemed to trigger the “lawful consent” exception to ECPA. It could be argued that the online tool, which the account holder or user must affirmatively use to authorize consent, avoids any conflict with the ECPA and violations of the federal law.<sup>28</sup>

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

None.

**B. Private Sector Impact:**

This bill may help fiduciaries identify assets and bank accounts belonging to those who have died or become incapacitated. The custodians of digital assets, such as email service providers, however, might initially incur costs in reviewing requests for access to digital assets and then making those assets available. Custodians, however, are authorized to assess a reasonable administrative charge for the costs they incur in disclosing digital assets such that this bill should have no impact on them.

**C. Government Sector Impact:**

According to the Office of the State Courts Administrator, it cannot accurately determine the fiscal impact of the bill on the judicial branch. This is due to the unavailability of data needed to establish the increase in judicial time resulting from orders directing compliance, requests for disclosures, and determination requiring an in camera review of documents.

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<sup>28</sup> See *supra* note 5 at 3.



**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 740.001, 740.09, 740.002, 740.003, 740.004, 740.005, 740.006, 740.007, 740.008, 740.009, 740.01, 740.02, 740.03, 740.04, 740.05, 740.06, 740.07, and 740.08.

**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 Rules on January 20, 2016:**

The committee substitute adds the phrase “or designated recipient” often after the word “fiduciary” in sections 740.03, 740.004, 740.05, and 740.06, F.S. “Designated recipient” is already defined in the act and is used in other provisions of the bill. This addition is done, in part, to clarify that the designated recipient, while authorized by the user through an online tool to administer the assets of the user, is not granted, or subject to, any additional fiduciary duties simply because he or she is named to receive access to digital assets.

**CS by Judiciary on November 17, 2015:**

The definition of “ward” is amended and limited to clarify that a ward is someone for whom a guardian has already been appointed. The revised definition excludes a person for whom an application for the appointment of a guardian is pending before a court.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
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The Committee on Rules (Montford) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 171 - 502  
and insert:  
to disclose to a designated recipient or not to disclose some or  
all of the user's digital assets, including the content of  
electronic communications. If the online tool allows the user to  
modify or delete a direction at all times, a direction regarding  
disclosure using an online tool overrides a contrary direction  
by the user in a will, trust, power of attorney, or other  
record.



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12           (2) If a user has not used an online tool to give direction  
13 under subsection (1) or if the custodian has not provided an  
14 online tool, the user may allow or prohibit disclosure to a  
15 fiduciary of some or all of the user's digital assets, including  
16 the content of electronic communications sent or received by the  
17 user, in a will, trust, power of attorney, or other record.

18           (3) A user's direction under subsection (1) or subsection  
19 (2) overrides a contrary provision in a terms-of-service  
20 agreement that does not require the user to act affirmatively  
21 and distinctly from the user's assent to the terms of service.

22           Section 5. Section 740.004, Florida Statutes, is created to  
23 read:

24           740.004 Terms-of-service agreement preserved.—

25           (1) This chapter does not change or impair a right of a  
26 custodian or a user under a terms-of-service agreement to access  
27 and use the digital assets of the user.

28           (2) This chapter does not give a fiduciary or a designated  
29 recipient any new or expanded rights other than those held by  
30 the user for whom, or for whose estate or trust, the fiduciary  
31 or designated recipient acts or represents.

32           (3) A fiduciary's or designated recipient's access to  
33 digital assets may be modified or eliminated by a user, by  
34 federal law, or by a terms-of-service agreement if the user has  
35 not provided direction under s. 740.003.

36           Section 6. Section 740.005, Florida Statutes, is created to  
37 read:

38           740.005 Procedure for disclosing digital assets.—

39           (1) When disclosing the digital assets of a user under this  
40 chapter, the custodian may, at its sole discretion:



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41 (a) Grant a fiduciary or designated recipient full access  
42 to the user's account;

43 (b) Grant a fiduciary or designated recipient partial  
44 access to the user's account sufficient to perform the tasks  
45 with which the fiduciary or designated recipient is charged; or

46 (c) Provide a fiduciary or designated recipient a copy in a  
47 record of any digital asset that, on the date the custodian  
48 received the request for disclosure, the user could have  
49 accessed if the user were alive and had full capacity and access  
50 to the account.

51 (2) A custodian may assess a reasonable administrative  
52 charge for the cost of disclosing digital assets under this  
53 chapter.

54 (3) A custodian is not required to disclose under this  
55 chapter a digital asset deleted by a user.

56 (4) If a user directs or a fiduciary requests a custodian  
57 to disclose under this chapter some, but not all, of the user's  
58 digital assets to the fiduciary or a designated recipient, the  
59 custodian is not required to disclose the assets if segregation  
60 of the assets would impose an undue burden on the custodian. If  
61 the custodian believes the direction or request imposes an undue  
62 burden, the custodian or the fiduciary may seek an order from  
63 the court to disclose:

64 (a) A subset limited by date of the user's digital assets;

65 (b) All of the user's digital assets to the fiduciary or  
66 designated recipient, or to the court for review in chambers; or

67 (c) None of the user's digital assets.

68 Section 7. Section 740.006, Florida Statutes, is created to  
69 read:



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70           740.006 Disclosure of content of electronic communications  
71 of deceased user.—If a deceased user consented to or a court  
72 directs the disclosure of the content of electronic  
73 communications of the user, the custodian shall disclose to the  
74 personal representative of the estate of the user the content of  
75 an electronic communication sent or received by the user if the  
76 personal representative gives to the custodian:

77           (1) A written request for disclosure which is in physical  
78 or electronic form;

79           (2) A certified copy of the death certificate of the user;

80           (3) A certified copy of the letters of administration, the  
81 order authorizing a curator or administrator ad litem, the order  
82 of summary administration issued pursuant to chapter 735, or  
83 other court order;

84           (4) Unless the user provided direction using an online  
85 tool, a copy of the user's will, trust, power of attorney, or  
86 other record evidencing the user's consent to disclosure of the  
87 content of electronic communications; and

88           (5) If requested by the custodian:

89           (a) A number, username, address, or other unique subscriber  
90 or account identifier assigned by the custodian to identify the  
91 user's account;

92           (b) Evidence linking the account to the user; or

93           (c) A finding by the court that:

94           1. The user had a specific account with the custodian,  
95 identifiable by information specified in paragraph (a);

96           2. Disclosure of the content of electronic communications  
97 of the user would not violate 18 U.S.C. s. 2701 et seq., 47  
98 U.S.C. s. 222, or other applicable law;



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99           3. Unless the user provided direction using an online tool,  
100 the user consented to disclosure of the content of electronic  
101 communications; or

102           4. Disclosure of the content of electronic communications  
103 of the user is reasonably necessary for the administration of  
104 the estate.

105           Section 8. Section 740.007, Florida Statutes, is created to  
106 read:

107           740.007 Disclosure of other digital assets of deceased  
108 user.—Unless a user prohibited disclosure of digital assets or  
109 the court directs otherwise, a custodian shall disclose to the  
110 personal representative of the estate of a deceased user a  
111 catalog of electronic communications sent or received by the  
112 user and digital assets of the user, except the content of  
113 electronic communications, if the personal representative gives  
114 to the custodian:

115           (1) A written request for disclosure which is in physical  
116 or electronic form;

117           (2) A certified copy of the death certificate of the user;

118           (3) A certified copy of the letters of administration, the  
119 order authorizing a curator or administrator ad litem, the order  
120 of summary administration issued pursuant to chapter 735, or  
121 other court order; and

122           (4) If requested by the custodian:

123           (a) A number, username, address, or other unique subscriber  
124 or account identifier assigned by the custodian to identify the  
125 user's account;

126           (b) Evidence linking the account to the user;

127           (c) An affidavit stating that disclosure of the user's



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128 digital assets is reasonably necessary for the administration of  
129 the estate; or

130 (d) An order of the court finding that:

131 1. The user had a specific account with the custodian,  
132 identifiable by information specified in paragraph (a); or

133 2. Disclosure of the user's digital assets is reasonably  
134 necessary for the administration of the estate.

135 Section 9. Section 740.008, Florida Statutes, is created to  
136 read:

137 740.008 Disclosure of content of electronic communications  
138 of principal.—To the extent a power of attorney expressly grants  
139 an agent authority over the content of electronic communications  
140 sent or received by the principal and unless directed otherwise  
141 by the principal or the court, a custodian shall disclose to the  
142 agent the content if the agent gives to the custodian:

143 (1) A written request for disclosure which is in physical  
144 or electronic form;

145 (2) An original or copy of the power of attorney expressly  
146 granting the agent authority over the content of electronic  
147 communications of the principal;

148 (3) A certification by the agent, under penalty of perjury,  
149 that the power of attorney is in effect; and

150 (4) If requested by the custodian:

151 (a) A number, username, address, or other unique subscriber  
152 or account identifier assigned by the custodian to identify the  
153 principal's account; or

154 (b) Evidence linking the account to the principal.

155 Section 10. Section 740.009, Florida Statutes, is created  
156 to read:



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157        740.009 Disclosure of other digital assets of principal.-  
158 Unless otherwise ordered by the court, directed by the  
159 principal, or provided by a power of attorney, a custodian shall  
160 disclose to an agent with specific authority over the digital  
161 assets or with general authority to act on behalf of the  
162 principal a catalog of electronic communications sent or  
163 received by the principal, and digital assets of the principal,  
164 except the content of electronic communications, if the agent  
165 gives the custodian:

166        (1) A written request for disclosure which is in physical  
167 or electronic form;

168        (2) An original or a copy of the power of attorney which  
169 gives the agent specific authority over digital assets or  
170 general authority to act on behalf of the principal;

171        (3) A certification by the agent, under penalty of perjury,  
172 that the power of attorney is in effect; and

173        (4) If requested by the custodian:

174        (a) A number, username, address, or other unique subscriber  
175 or account identifier assigned by the custodian to identify the  
176 principal's account; or

177        (b) Evidence linking the account to the principal.

178        Section 11. Section 740.01, Florida Statutes, is created to  
179 read:

180        740.01 Disclosure of digital assets held in trust when  
181 trustee is the original user.-Unless otherwise ordered by the  
182 court or provided in a trust, a custodian shall disclose to a  
183 trustee that is an original user of an account any digital asset  
184 of the account held in trust, including a catalog of electronic  
185 communications of the trustee and the content of electronic





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186 communications.

187 Section 12. Section 740.02, Florida Statutes, is created to  
188 read:

189 740.02 Disclosure of content of electronic communications  
190 held in trust when trustee is not the original user.—Unless  
191 otherwise ordered by the court, directed by the user, or  
192 provided in a trust, a custodian shall disclose to a trustee  
193 that is not an original user of an account the content of an  
194 electronic communication sent or received by an original or  
195 successor user and carried, maintained, processed, received, or  
196 stored by the custodian in the account of the trust if the  
197 trustee gives the custodian:

198 (1) A written request for disclosure which is in physical  
199 or electronic form;

200 (2) A certified copy of the trust instrument, or a  
201 certification of trust under s. 736.1017, which includes consent  
202 to disclosure of the content of electronic communications to the  
203 trustee;

204 (3) A certification by the trustee, under penalty of  
205 perjury, that the trust exists and that the trustee is a  
206 currently acting trustee of the trust; and

207 (4) If requested by the custodian:

208 (a) A number, username, address, or other unique subscriber  
209 or account identifier assigned by the custodian to identify the  
210 trust's account; or

211 (b) Evidence linking the account to the trust.

212 Section 13. Section 740.03, Florida Statutes, is created to  
213 read:

214 740.03 Disclosure of other digital assets held in trust



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215 when trustee is not the original user.—Unless otherwise ordered  
216 by the court, directed by the user, or provided in a trust, a  
217 custodian shall disclose to a trustee that is not an original  
218 user of an account, a catalog of electronic communications sent  
219 or received by an original or successor user and stored,  
220 carried, or maintained by the custodian in an account of the  
221 trust and any digital assets in which the trust has a right or  
222 interest, other than the content of electronic communications,  
223 if the trustee gives the custodian:

224 (1) A written request for disclosure which is in physical  
225 or electronic form;

226 (2) A certified copy of the trust instrument, or a  
227 certification of trust under s. 736.1017;

228 (3) A certification by the trustee, under penalty of  
229 perjury, that the trust exists and that the trustee is a  
230 currently acting trustee of the trust; and

231 (4) If requested by the custodian:

232 (a) A number, username, address, or other unique subscriber  
233 or account identifier assigned by the custodian to identify the  
234 trust's account; or

235 (b) Evidence linking the account to the trust.

236 Section 14. Section 740.04, Florida Statutes, is created to  
237 read:

238 740.04 Disclosure of digital assets to guardian of ward.—

239 (1) After an opportunity for a hearing under chapter 744,  
240 the court may grant a guardian access to the digital assets of a  
241 ward.

242 (2) Unless otherwise ordered by the court or directed by  
243 the user, a custodian shall disclose to a guardian the catalog



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244 of electronic communications sent or received by the ward and  
245 any digital assets in which the ward has a right or interest,  
246 other than the content of electronic communications, if the  
247 guardian gives the custodian:

248 (a) A written request for disclosure which is in physical  
249 or electronic form;

250 (b) A certified copy of letters of plenary guardianship of  
251 the property or the court order that gives the guardian  
252 authority over the digital assets of the ward; and

253 (c) If requested by the custodian:

254 1. A number, username, address, or other unique subscriber  
255 or account identifier assigned by the custodian to identify the  
256 ward's account; or

257 2. Evidence linking the account to the ward.

258 (3) A guardian with general authority to manage the  
259 property of a ward may request a custodian of the digital assets  
260 of the ward to suspend or terminate an account of the ward for  
261 good cause. A request made under this section must be  
262 accompanied by a certified copy of the court order giving the  
263 guardian authority over the ward's property.

264 Section 15. Section 740.05, Florida Statutes, is created to  
265 read:

266 740.05 Fiduciary duty and authority.-

267 (1) The legal duties imposed on a fiduciary charged with  
268 managing tangible property apply to the management of digital  
269 assets, including:

270 (a) The duty of care;

271 (b) The duty of loyalty; and

272 (c) The duty of confidentiality.



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273 (2) A fiduciary's or designated recipient's authority with  
274 respect to a digital asset of a user:

275 (a) Except as otherwise provided in s. 740.003, is subject  
276 to the applicable terms-of-service agreement;

277 (b) Is subject to other applicable law, including copyright  
278 law;

279 (c) In the case of a fiduciary, is limited by the scope of  
280 the fiduciary's duties; and

281 (d) May not be used to impersonate the user.

282 (3) A fiduciary with authority over the tangible personal  
283 property of a decedent, ward, principal, or settlor has the  
284 right to access any digital asset in which the decedent, ward,  
285 principal, or settlor had or has a right or interest and that is  
286 not held by a custodian or subject to a terms-of-service  
287 agreement.

288 (4) A fiduciary acting within the scope of the fiduciary's  
289 duties is an authorized user of the property of the decedent,  
290 ward, principal, or settlor for the purpose of applicable  
291 computer fraud and unauthorized computer access laws, including  
292 under chapter 815.

293 (5) A fiduciary with authority over the tangible personal  
294 property of a decedent, ward, principal, or settlor:

295 (a) Has the right to access the property and any digital  
296 asset stored in it; and

297 (b) Is an authorized user for the purpose of computer fraud  
298 and unauthorized computer access laws, including under chapter  
299 815.

300 (6) A custodian may disclose information in an account to a  
301 fiduciary of the user when the information is required to



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302 terminate an account used to access digital assets licensed to  
303 the user.

304 (7) A fiduciary of a user may request a custodian to  
305 terminate the user's account. A request for termination must be  
306 in writing, in paper or electronic form, and accompanied by:

307 (a) If the user is deceased, a certified copy of the death  
308 certificate of the user;

309 (b) A certified copy of the letters of administration; the  
310 order authorizing a curator or administrator ad litem; the order  
311 of summary administration issued pursuant to chapter 735; or the  
312 court order, power of attorney, or trust giving the fiduciary  
313 authority over the account; and

314 (c) If requested by the custodian:

315 1. A number, username, address, or other unique subscriber  
316 or account identifier assigned by the custodian to identify the  
317 user's account;

318 2. Evidence linking the account to the user; or

319 3. A finding by the court that the user had a specific  
320 account with the custodian, identifiable by the information  
321 specified in subparagraph 1.

322 Section 16. Section 740.06, Florida Statutes, is created to  
323 read:

324 740.06 Custodian compliance and immunity.-

325 (1) Not later than 60 days after receipt of the information  
326 required under ss. 740.006-740.04, a custodian shall comply with  
327 a request under this chapter from a fiduciary or designated  
328 recipient to disclose digital assets or terminate an account. If  
329 the custodian fails to comply, the fiduciary or designated  
330 recipient may apply to the court for an order directing



331 compliance.  
332 (2) An order under subsection (1) directing compliance must  
333 contain a finding that compliance is not in violation of 18  
334 U.S.C. s. 2702.  
335 (3) A custodian may notify a user that a request for  
336 disclosure or to terminate an account was made under this  
337 chapter.  
338 (4) A custodian may deny a request under this chapter from  
339 a fiduciary or designated recipient for disclosure of

340  
341 ===== T I T L E A M E N D M E N T =====

342 And the title is amended as follows:  
343 Delete lines 8 - 14  
344 and insert:  
345 to a designated recipient or to prohibit a custodian  
346 from disclosing digital assets under certain  
347 circumstances; providing that a specified user's  
348 direction overrides a contrary provision in a terms-  
349 of-service agreement under certain circumstances;  
350 creating s. 740.004, F.S.; providing construction;  
351 authorizing the modification of a fiduciary's or  
352 designated recipient's access to digital assets under  
353 certain circumstances;

By the Committee on Judiciary; and Senator Hukill

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1 A bill to be entitled  
 2 An act relating to digital assets; providing a  
 3 directive to the Division of Law Revision and  
 4 Information; creating s. 740.001, F.S.; providing a  
 5 short title; creating s. 740.002, F.S.; defining  
 6 terms; creating s. 740.003, F.S.; authorizing a user  
 7 to use an online tool to allow a custodian to disclose  
 8 or to prohibit a custodian from disclosing digital  
 9 assets under certain circumstances; providing that  
 10 specified user's direction overrides a contrary  
 11 provision in a terms-of-service agreement under  
 12 certain circumstances; creating s. 740.004, F.S.;  
 13 providing construction; authorizing the modification  
 14 of a fiduciary's assets under certain circumstances;  
 15 creating s. 740.005, F.S.; providing procedures for  
 16 the disclosure of digital assets; creating s. 740.006,  
 17 F.S.; requiring a custodian to disclose the content of  
 18 electronic communications of a deceased user under  
 19 certain circumstances; creating s. 740.007, F.S.;  
 20 requiring a custodian to disclose other digital assets  
 21 of a deceased user under certain circumstances;  
 22 creating s. 740.008, F.S.; requiring a custodian to  
 23 disclose the content of electronic communications of a  
 24 principal under certain circumstances; creating s.  
 25 740.009, F.S.; requiring a custodian to disclose other  
 26 digital assets of a principal under certain  
 27 circumstances; creating s. 740.01, F.S.; requiring a  
 28 custodian to disclose to a trustee who is the original  
 29 user the digital assets held in trust under certain

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30 circumstances; creating s. 740.02, F.S.; requiring a  
 31 custodian to disclose to a trustee who is not the  
 32 original user the content of electronic communications  
 33 held in trust under certain circumstances; creating s.  
 34 740.03, F.S.; requiring a custodian to disclose to a  
 35 trustee who is not the original user other digital  
 36 assets under certain circumstances; creating s.  
 37 740.04, F.S.; authorizing the court to grant a  
 38 guardian the right to access a ward's digital assets  
 39 under certain circumstances; requiring a custodian to  
 40 disclose to a guardian a specified catalog of  
 41 electronic communications and specified digital assets  
 42 of a ward under certain circumstances; creating s.  
 43 740.05, F.S.; imposing fiduciary duties; providing for  
 44 the rights and responsibilities of certain  
 45 fiduciaries; creating s. 740.06, F.S.; requiring  
 46 compliance of a custodian; providing construction;  
 47 providing for immunity from liability for a custodian  
 48 and its officers, employees, and agents acting in good  
 49 faith in complying with their duties; creating s.  
 50 740.07, F.S.; providing construction; creating s.  
 51 740.08, F.S.; providing applicability; creating s.  
 52 740.09, F.S.; providing severability; providing an  
 53 effective date.

54  
 55 Be It Enacted by the Legislature of the State of Florida:

56  
 57 Section 1. The Division of Law Revision and Information is  
 58 directed to create chapter 740, Florida Statutes, consisting of

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59 ss. 740.001-740.09, Florida Statutes, to be entitled "Fiduciary  
 60 Access to Digital Assets."

61 Section 2. Section 740.001, Florida Statutes, is created to  
 62 read:

63 740.001 Short title.—This chapter may be cited as the  
 64 "Florida Fiduciary Access to Digital Assets Act."

65 Section 3. Section 740.002, Florida Statutes, is created to  
 66 read:

67 740.002 Definitions.—As used in this chapter, the term:

68 (1) "Account" means an arrangement under a terms-of-service  
 69 agreement in which the custodian carries, maintains, processes,  
 70 receives, or stores a digital asset of the user or provides  
 71 goods or services to the user.

72 (2) "Agent" means a person that is granted authority to act  
 73 for a principal under a durable or nondurable power of attorney,  
 74 whether denominated an agent, an attorney in fact, or otherwise.  
 75 The term includes an original agent, a co-agent, and a successor  
 76 agent.

77 (3) "Carries" means to engage in the transmission of  
 78 electronic communications.

79 (4) "Catalog of electronic communications" means  
 80 information that identifies each person with which a user has  
 81 had an electronic communication, the time and date of the  
 82 communication, and the electronic address of the person.

83 (5) "Content of an electronic communication" means  
 84 information concerning the substance or meaning of the  
 85 communication which:

86 (a) Has been sent or received by a user;

87 (b) Is in electronic storage by a custodian providing an

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88 electronic communication service to the public or is carried or  
 89 maintained by a custodian providing a remote computing service  
 90 to the public; and

91 (c) Is not readily accessible to the public.

92 (6) "Court" means a circuit court of this state.

93 (7) "Custodian" means a person that carries, maintains,  
 94 processes, receives, or stores a digital asset of a user.

95 (8) "Designated recipient" means a person chosen by a user  
 96 through an online tool to administer digital assets of the user.

97 (9) "Digital asset" means an electronic record in which an  
 98 individual has a right or interest. The term does not include an  
 99 underlying asset or liability unless the asset or liability is  
 100 itself an electronic record.

101 (10) "Electronic" means relating to technology having  
 102 electrical, digital, magnetic, wireless, optical,  
 103 electromagnetic, or similar capabilities.

104 (11) "Electronic communication" has the same meaning as  
 105 provided in 18 U.S.C. s. 2510(12).

106 (12) "Electronic communication service" means a custodian  
 107 that provides to a user the ability to send or receive an  
 108 electronic communication.

109 (13) "Fiduciary" means an original, additional, or  
 110 successor personal representative, guardian, agent, or trustee.

111 (14) "Guardian" means a person who is appointed by the  
 112 court as guardian of the property of a minor or an incapacitated  
 113 individual. The term includes an original guardian, a co-  
 114 guardian, and a successor guardian, as well as a person  
 115 appointed by the court as an emergency temporary guardian of the  
 116 property.



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117 (15) "Information" means data, text, images, videos,  
 118 sounds, codes, computer programs, software, databases, or the  
 119 like.

120 (16) "Online tool" means an electronic service provided by  
 121 a custodian which allows the user, in an agreement distinct from  
 122 the terms-of-service agreement between the custodian and user,  
 123 to provide directions for disclosure or nondisclosure of digital  
 124 assets to a third person.

125 (17) "Person" means an individual, estate, trust, business  
 126 or nonprofit entity, public corporation, government or  
 127 governmental subdivision, agency, or instrumentality, or other  
 128 legal entity.

129 (18) "Personal representative" means the fiduciary  
 130 appointed by the court to administer the estate of a deceased  
 131 individual pursuant to letters of administration or an order  
 132 appointing a curator or administrator ad litem for the estate.  
 133 The term includes an original personal representative, a  
 134 copersonal representative, and a successor personal  
 135 representative, as well as a person who is entitled to receive  
 136 and collect a deceased individual's property pursuant to an  
 137 order of summary administration issued pursuant to chapter 735.

138 (19) "Power of attorney" means a record that grants an  
 139 agent authority to act in the place of a principal pursuant to  
 140 chapter 709.

141 (20) "Principal" means an individual who grants authority  
 142 to an agent in a power of attorney.

143 (21) "Record" means information that is inscribed on a  
 144 tangible medium or that is stored in an electronic or other  
 145 medium and is retrievable in perceivable form.

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146 (22) "Remote computing service" means a custodian that  
 147 provides to a user computer processing services or the storage  
 148 of digital assets by means of an electronic communications  
 149 system as defined in 18 U.S.C. s. 2510(14).

150 (23) "Terms-of-service agreement" means an agreement that  
 151 controls the relationship between a user and a custodian.

152 (24) "Trustee" means a fiduciary that holds legal title to  
 153 property under an agreement, declaration, or trust instrument  
 154 that creates a beneficial interest in the settlor or other  
 155 persons. The term includes an original trustee, a cotrustee, and  
 156 a successor trustee.

157 (25) "User" means a person that has an account with a  
 158 custodian.

159 (26) "Ward" means an individual for whom a guardian has  
 160 been appointed.

161 (27) "Will" means an instrument admitted to probate,  
 162 including a codicil, executed by an individual in the manner  
 163 prescribed by the Florida Probate Code, which disposes of the  
 164 individual's property on or after his or her death. The term  
 165 includes an instrument that merely appoints a personal  
 166 representative or revokes or revises another will.

167 Section 4. Section 740.003, Florida Statutes, is created to  
 168 read:

169 740.003 User direction for disclosure of digital assets.—

170 (1) A user may use an online tool to direct the custodian  
 171 to disclose or not to disclose some or all of the user's digital  
 172 assets, including the content of electronic communications. If  
 173 the online tool allows the user to modify or delete a direction  
 174 at all times, a direction regarding disclosure using an online

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175 tool overrides a contrary direction by the user in a will,  
 176 trust, power of attorney, or other record.

177 (2) If a user has not used an online tool to give direction  
 178 under subsection (1) or if the custodian has not provided an  
 179 online tool, the user may allow or prohibit disclosure to a  
 180 fiduciary of some or all of the user's digital assets, including  
 181 the content of electronic communications sent or received by the  
 182 user, in a will, trust, power of attorney, or other record.

183 (3) A user's direction under subsection (1) or subsection  
 184 (2) overrides a contrary provision in a terms-of-service  
 185 agreement that does not require the user to act affirmatively  
 186 and distinctly from the user's assent to the terms of service.

187 Section 5. Section 740.004, Florida Statutes, is created to  
 188 read:

189 740.004 Terms-of-service agreement preserved.-

190 (1) This chapter does not change or impair a right of a  
 191 custodian or a user under a terms-of-service agreement to access  
 192 and use the digital assets of the user.

193 (2) This chapter does not give a fiduciary any new or  
 194 expanded rights other than those held by the user for whom, or  
 195 for whose estate or trust, the fiduciary acts or represents.

196 (3) A fiduciary's access to digital assets may be modified  
 197 or eliminated by a user, by federal law, or by a terms-of-  
 198 service agreement if the user has not provided direction under  
 199 s. 740.003.

200 Section 6. Section 740.005, Florida Statutes, is created to  
 201 read:

202 740.005 Procedure for disclosing digital assets.-

203 (1) When disclosing the digital assets of a user under this

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204 chapter, the custodian may, at its sole discretion:

205 (a) Grant a fiduciary or designated recipient full access  
 206 to the user's account;

207 (b) Grant a fiduciary or designated recipient partial  
 208 access to the user's account sufficient to perform the tasks  
 209 with which the fiduciary or designated recipient is charged; or

210 (c) Provide a fiduciary or designated recipient a copy in a  
 211 record of any digital asset that, on the date the custodian  
 212 received the request for disclosure, the user could have  
 213 accessed if the user were alive and had full capacity and access  
 214 to the account.

215 (2) A custodian may assess a reasonable administrative  
 216 charge for the cost of disclosing digital assets under this  
 217 chapter.

218 (3) A custodian is not required to disclose under this  
 219 chapter a digital asset deleted by a user.

220 (4) If a user directs or a fiduciary requests a custodian  
 221 to disclose under this chapter some, but not all, of the user's  
 222 digital assets to the fiduciary or a designated recipient, the  
 223 custodian is not required to disclose the assets if segregation  
 224 of the assets would impose an undue burden on the custodian. If  
 225 the custodian believes the direction or request imposes an undue  
 226 burden, the custodian or the fiduciary may seek an order from  
 227 the court to disclose:

228 (a) A subset limited by date of the user's digital assets;

229 (b) All of the user's digital assets to the fiduciary or  
 230 designated recipient, or to the court for review in chambers; or

231 (c) None of the user's digital assets.

232 Section 7. Section 740.006, Florida Statutes, is created to

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233 read:

234 740.006 Disclosure of content of electronic communications

235 of deceased user.-If a deceased user consented to or a court

236 directs the disclosure of the content of electronic

237 communications of the user, the custodian shall disclose to the

238 personal representative of the estate of the user the content of

239 an electronic communication sent or received by the user if the

240 personal representative gives to the custodian:

241 (1) A written request for disclosure which is in physical

242 or electronic form;

243 (2) A certified copy of the death certificate of the user;

244 (3) A certified copy of the letters of administration, the

245 order authorizing a curator or administrator ad litem, the order

246 of summary administration issued pursuant to chapter 735, or

247 other court order;

248 (4) Unless the user provided direction using an online

249 tool, a copy of the user's will, trust, power of attorney, or

250 other record evidencing the user's consent to disclosure of the

251 content of electronic communications; and

252 (5) If requested by the custodian:

253 (a) A number, username, address, or other unique subscriber

254 or account identifier assigned by the custodian to identify the

255 user's account;

256 (b) Evidence linking the account to the user; or

257 (c) A finding by the court that:

258 1. The user had a specific account with the custodian,

259 identifiable by information specified in paragraph (a);

260 2. Disclosure of the content of electronic communications

261 of the user would not violate 18 U.S.C. s. 2701 et seq., 47

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262 U.S.C. s. 222, or other applicable law;

263 3. Unless the user provided direction using an online tool,

264 the user consented to disclosure of the content of electronic

265 communications; or

266 4. Disclosure of the content of electronic communications

267 of the user is reasonably necessary for the administration of

268 the estate.

269 Section 8. Section 740.007, Florida Statutes, is created to

270 read:

271 740.007 Disclosure of other digital assets of deceased

272 user.-Unless a user prohibited disclosure of digital assets or

273 the court directs otherwise, a custodian shall disclose to the

274 personal representative of the estate of a deceased user a

275 catalog of electronic communications sent or received by the

276 user and digital assets of the user, except the content of

277 electronic communications, if the personal representative gives

278 to the custodian:

279 (1) A written request for disclosure which is in physical

280 or electronic form;

281 (2) A certified copy of the death certificate of the user;

282 (3) A certified copy of the letters of administration, the

283 order authorizing a curator or administrator ad litem, the order

284 of summary administration issued pursuant to chapter 735, or

285 other court order; and

286 (4) If requested by the custodian:

287 (a) A number, username, address, or other unique subscriber

288 or account identifier assigned by the custodian to identify the

289 user's account;

290 (b) Evidence linking the account to the user;

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291 (c) An affidavit stating that disclosure of the user's  
 292 digital assets is reasonably necessary for the administration of  
 293 the estate; or

294 (d) An order of the court finding that:

295 1. The user had a specific account with the custodian,  
 296 identifiable by information specified in paragraph (a); or  
 297 2. Disclosure of the user's digital assets is reasonably  
 298 necessary for the administration of the estate.

299 Section 9. Section 740.008, Florida Statutes, is created to  
 300 read:

301 740.008 Disclosure of content of electronic communications  
 302 of principal.—To the extent a power of attorney expressly grants  
 303 an agent authority over the content of electronic communications  
 304 sent or received by the principal and unless directed otherwise  
 305 by the principal or the court, a custodian shall disclose to the  
 306 agent the content if the agent gives to the custodian:

307 (1) A written request for disclosure which is in physical  
 308 or electronic form;

309 (2) An original or copy of the power of attorney expressly  
 310 granting the agent authority over the content of electronic  
 311 communications of the principal;

312 (3) A certification by the agent, under penalty of perjury,  
 313 that the power of attorney is in effect; and

314 (4) If requested by the custodian:

315 (a) A number, username, address, or other unique subscriber  
 316 or account identifier assigned by the custodian to identify the  
 317 principal's account; or

318 (b) Evidence linking the account to the principal.

319 Section 10. Section 740.009, Florida Statutes, is created

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320 to read:

321 740.009 Disclosure of other digital assets of principal.—  
 322 Unless otherwise ordered by the court, directed by the  
 323 principal, or provided by a power of attorney, a custodian shall  
 324 disclose to an agent with specific authority over the digital  
 325 assets or with general authority to act on behalf of the  
 326 principal a catalog of electronic communications sent or  
 327 received by the principal, and digital assets of the principal,  
 328 except the content of electronic communications, if the agent  
 329 gives the custodian:

330 (1) A written request for disclosure which is in physical  
 331 or electronic form;

332 (2) An original or a copy of the power of attorney which  
 333 gives the agent specific authority over digital assets or  
 334 general authority to act on behalf of the principal;

335 (3) A certification by the agent, under penalty of perjury,  
 336 that the power of attorney is in effect; and

337 (4) If requested by the custodian:

338 (a) A number, username, address, or other unique subscriber  
 339 or account identifier assigned by the custodian to identify the  
 340 principal's account; or

341 (b) Evidence linking the account to the principal.

342 Section 11. Section 740.01, Florida Statutes, is created to  
 343 read:

344 740.01 Disclosure of digital assets held in trust when  
 345 trustee is the original user.—Unless otherwise ordered by the  
 346 court or provided in a trust, a custodian shall disclose to a  
 347 trustee that is an original user of an account any digital asset  
 348 of the account held in trust, including a catalog of electronic

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349 communications of the trustee and the content of electronic  
 350 communications.

351 Section 12. Section 740.02, Florida Statutes, is created to  
 352 read:

353 740.02 Disclosure of content of electronic communications  
 354 held in trust when trustee is not the original user.—Unless  
 355 otherwise ordered by the court, directed by the user, or  
 356 provided in a trust, a custodian shall disclose to a trustee  
 357 that is not an original user of an account the content of an  
 358 electronic communication sent or received by an original or  
 359 successor user and carried, maintained, processed, received, or  
 360 stored by the custodian in the account of the trust if the  
 361 trustee gives the custodian:

362 (1) A written request for disclosure which is in physical  
 363 or electronic form;

364 (2) A certified copy of the trust instrument, or a  
 365 certification of trust under s. 736.1017, which includes consent  
 366 to disclosure of the content of electronic communications to the  
 367 trustee;

368 (3) A certification by the trustee, under penalty of  
 369 perjury, that the trust exists and that the trustee is a  
 370 currently acting trustee of the trust; and

371 (4) If requested by the custodian:

372 (a) A number, username, address, or other unique subscriber  
 373 or account identifier assigned by the custodian to identify the  
 374 trust's account; or

375 (b) Evidence linking the account to the trust.

376 Section 13. Section 740.03, Florida Statutes, is created to  
 377 read:

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378 740.03 Disclosure of other digital assets held in trust  
 379 when trustee is not the original user.—Unless otherwise ordered  
 380 by the court, directed by the user, or provided in a trust, a  
 381 custodian shall disclose to a trustee that is not an original  
 382 user of an account, a catalog of electronic communications sent  
 383 or received by an original or successor user and stored,  
 384 carried, or maintained by the custodian in an account of the  
 385 trust and any digital assets in which the trust has a right or  
 386 interest, other than the content of electronic communications,  
 387 if the trustee gives the custodian:

388 (1) A written request for disclosure which is in physical  
 389 or electronic form;

390 (2) A certified copy of the trust instrument, or a  
 391 certification of trust under s. 736.1017;

392 (3) A certification by the trustee, under penalty of  
 393 perjury, that the trust exists and that the trustee is a  
 394 currently acting trustee of the trust; and

395 (4) If requested by the custodian:

396 (a) A number, username, address, or other unique subscriber  
 397 or account identifier assigned by the custodian to identify the  
 398 trust's account; or

399 (b) Evidence linking the account to the trust.

400 Section 14. Section 740.04, Florida Statutes, is created to  
 401 read:

402 740.04 Disclosure of digital assets to guardian of ward.—

403 (1) After an opportunity for a hearing under chapter 744,  
 404 the court may grant a guardian access to the digital assets of a  
 405 ward.

406 (2) Unless otherwise ordered by the court or directed by

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407 the user, a custodian shall disclose to a guardian the catalog  
 408 of electronic communications sent or received by the ward and  
 409 any digital assets in which the ward has a right or interest,  
 410 other than the content of electronic communications, if the  
 411 guardian gives the custodian:

412 (a) A written request for disclosure which is in physical  
 413 or electronic form;

414 (b) A certified copy of letters of plenary guardianship of  
 415 the property or the court order that gives the guardian  
 416 authority over the digital assets of the ward; and

417 (c) If requested by the custodian:

418 1. A number, username, address, or other unique subscriber  
 419 or account identifier assigned by the custodian to identify the  
 420 ward's account; or

421 2. Evidence linking the account to the ward.

422 (3) A guardian with general authority to manage the  
 423 property of a ward may request a custodian of the digital assets  
 424 of the ward to suspend or terminate an account of the ward for  
 425 good cause. A request made under this section must be  
 426 accompanied by a certified copy of the court order giving the  
 427 guardian authority over the ward's property.

428 Section 15. Section 740.05, Florida Statutes, is created to  
 429 read:

430 740.05 Fiduciary duty and authority.-

431 (1) The legal duties imposed on a fiduciary charged with  
 432 managing tangible property apply to the management of digital  
 433 assets, including:

434 (a) The duty of care;  
 435 (b) The duty of loyalty; and

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436 (c) The duty of confidentiality.

437 (2) A fiduciary's authority with respect to a digital asset  
 438 of a user:

439 (a) Except as otherwise provided in s. 740.003, is subject  
 440 to the applicable terms-of-service agreement;

441 (b) Is subject to other applicable law, including copyright  
 442 law;

443 (c) Is limited by the scope of the fiduciary's duties; and  
 444 (d) May not be used to impersonate the user.

445 (3) A fiduciary with authority over the tangible personal  
 446 property of a decedent, ward, principal, or settlor has the  
 447 right to access any digital asset in which the decedent, ward,  
 448 principal, or settlor had or has a right or interest and that is  
 449 not held by a custodian or subject to a terms-of-service  
 450 agreement.

451 (4) A fiduciary acting within the scope of the fiduciary's  
 452 duties is an authorized user of the property of the decedent,  
 453 ward, principal, or settlor for the purpose of applicable  
 454 computer fraud and unauthorized computer access laws, including  
 455 under chapter 815.

456 (5) A fiduciary with authority over the tangible personal  
 457 property of a decedent, ward, principal, or settlor:

458 (a) Has the right to access the property and any digital  
 459 asset stored in it; and

460 (b) Is an authorized user for the purpose of computer fraud  
 461 and unauthorized computer access laws, including under chapter  
 462 815.

463 (6) A custodian may disclose information in an account to a  
 464 fiduciary of the user when the information is required to

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465 terminate an account used to access digital assets licensed to  
 466 the user.

467 (7) A fiduciary of a user may request a custodian to  
 468 terminate the user's account. A request for termination must be  
 469 in writing, in paper or electronic form, and accompanied by:

470 (a) If the user is deceased, a certified copy of the death  
 471 certificate of the user;

472 (b) A certified copy of the letters of administration; the  
 473 order authorizing a curator or administrator ad litem; the order  
 474 of summary administration issued pursuant to chapter 735; or the  
 475 court order, power of attorney, or trust giving the fiduciary  
 476 authority over the account; and

477 (c) If requested by the custodian:

478 1. A number, username, address, or other unique subscriber  
 479 or account identifier assigned by the custodian to identify the  
 480 user's account;

481 2. Evidence linking the account to the user; or

482 3. A finding by the court that the user had a specific  
 483 account with the custodian, identifiable by the information  
 484 specified in subparagraph 1.

485 Section 16. Section 740.06, Florida Statutes, is created to  
 486 read:

487 740.06 Custodian compliance and immunity.—

488 (1) Not later than 60 days after receipt of the information  
 489 required under ss. 740.006-740.04, a custodian shall comply with  
 490 a request under this chapter from a fiduciary or designated  
 491 recipient to disclose digital assets or terminate an account. If  
 492 the custodian fails to comply, the fiduciary or designated  
 493 representative may apply to the court for an order directing

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494 compliance.

495 (2) An order under subsection (1) directing compliance must  
 496 contain a finding that compliance is not in violation of 18  
 497 U.S.C. s. 2702.

498 (3) A custodian may notify a user that a request for  
 499 disclosure or to terminate an account was made under this  
 500 chapter.

501 (4) A custodian may deny a request under this chapter from  
 502 a fiduciary or designated representative for disclosure of  
 503 digital assets or to terminate an account if the custodian is  
 504 aware of any lawful access to the account following the receipt  
 505 of the fiduciary's request.

506 (5) This chapter does not limit a custodian's ability to  
 507 obtain or require a fiduciary or designated recipient requesting  
 508 disclosure or termination under this chapter to obtain a court  
 509 order that:

510 (a) Specifies that an account belongs to the ward or  
 511 principal;

512 (b) Specifies that there is sufficient consent from the  
 513 ward or principal to support the requested disclosure; and

514 (c) Contains a finding required by a law other than this  
 515 chapter.

516 (6) A custodian and its officers, employees, and agents are  
 517 immune from liability for an act or omission done in good faith  
 518 in compliance with this chapter.

519 Section 17. Section 740.07, Florida Statutes, is created to  
 520 read:

521 740.07 Relation to Electronic Signatures in Global and  
 522 National Commerce Act.—This chapter modifies, limits, and

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523 supersedes the Electronic Signatures in Global and National  
 524 Commerce Act, 15 U.S.C. ss. 7001 et seq., but does not modify,  
 525 limit, or supersede s. 101(c) of that act, 15 U.S.C. s. 7001(c),  
 526 or authorize electronic delivery of any of the notices described  
 527 in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

528 Section 18. Section 740.08, Florida Statutes, is created to  
 529 read:

530 740.08 Applicability.-

531 (1) Subject to subsection (3), this chapter applies to:

532 (a) A fiduciary acting under a will, trust, or power of  
 533 attorney executed before, on, or after July 1, 2016;

534 (b) A personal representative acting for a decedent who  
 535 died before, on, or after July 1, 2016;

536 (c) A guardian appointed through a guardianship proceeding,  
 537 whether pending in a court or commenced before, on, or after  
 538 July 1, 2016; and

539 (d) A trustee acting under a trust created before, on, or  
 540 after July 1, 2016.

541 (2) This chapter applies to a custodian if the user resides  
 542 in this state or resided in this state at the time of the user's  
 543 death.

544 (3) This chapter does not apply to a digital asset of an  
 545 employer used by an employee in the ordinary course of the  
 546 employer's business.

547 Section 19. Section 740.09, Florida Statutes, is created to  
 548 read:

549 740.09 Severability.-If any provision of this chapter or  
 550 its application to any person or circumstance is held invalid,  
 551 the invalidity does not affect other provisions or applications

590-01329-16

2016494c1

552 of this chapter which can be given effect without the invalid  
 553 provision or application, and to this end the provisions of this  
 554 chapter are severable.

555 Section 20. This act shall take effect July 1, 2016.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Finance and Tax, *Chair*  
Communications, Energy, and Public Utilities,  
*Vice Chair*  
Appropriations  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Banking and Insurance  
Fiscal Policy

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

**SENATOR DOROTHY L. HUKILL**  
8th District

January 14, 2016

The Honorable David Simmons  
402 Senate Office Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 494 – Digital Assets

Dear Chairman Simmons:

Senate Bill 494, relating Digital Assets has been referred to the Rules Committee. I am requesting your consideration on placing SB 494 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Dorothy L. Hukill".

Dorothy L. Hukill, District 8

cc: John B. Phelps, Staff Director of the Rules Committee  
Cissy DuBose, Administrative Assistant of the Rules Committee

A handwritten note in cursive script that reads "Thank you!" with a horizontal line underneath.

### REPLY TO:

- 209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 283-3818
- Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/20/16

Meeting Date

494

Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Kenneth Pratt

Job Title Senior VP of Governmental Affairs

Address 1001 Thomasville Rd Ste 201

Phone 850-509-8020

Street

Tallahassee

City

FL

State

32312

Zip

Email kpratt@floridabankers.com

Speaking:  For  Against  Information

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

Representing Florida Bankers Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/20/16

Meeting Date

SB 494

Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Zayne Smith

Job Title Associate State Director - Advocacy

Address 200 W. College Ave.

Phone 850 228-4243

Street

Tally

City

FL

State

32301

Zip

Email zsmith@aarp.org

Speaking:  For  Against  Information

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

Representing AARP

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/20/16  
Meeting Date

464  
Bill Number (if applicable)

Topic Digital Assets

Amendment Barcode (if applicable)

Name Sarah BOTHERS

Job Title attorney

Address 315 S. Calhoun St.  
Street

Phone \_\_\_\_\_

Tallahassee FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Real Prop, Probate + Trust Law - FL Bar

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.

**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 Rules

---

BILL: SB 666

INTRODUCER: Senator Legg

SUBJECT: Voter Identification

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<b>Favorable</b>
3.	<u>Carlton</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

---

**I. Summary:**

SB 666 allows two new forms of identification to be used for the purposes of voter registration and identification at the polls. Specifically, it allows a voter to use his or her Florida concealed weapon or firearm license and a Veteran Health Identification Card issued by the U.S. Department of Veterans Affairs.

**II. Present Situation:**

A voter registration applicant who has never previously voted in Florida and who has not been issued a current and valid Florida driver license, Florida ID card, or social security card is allowed to register to vote by mail.<sup>1</sup> However, he or she is required to provide a copy of a current and valid identification, or indicate that he or she is exempt. The following forms of identification are allowed in support of their applications if they contain the name and photograph of the applicant and have not expired:

- U.S. Passport;
- Debit or credit card;
- Military ID;
- Student ID;
- Retirement center ID;
- Neighborhood association ID; and
- Public assistance ID.<sup>2</sup>

---

<sup>1</sup> Section 97.0535(1), F.S.

<sup>2</sup> Section 97.0535(3)(a), F.S.

Additionally, the following forms of identification are allowed in support of their applications if they contain the name and current residence address of the applicant:

- Utility bill;
- Bank statement;
- Government check;
- Paycheck; or
- Other government document (excluding voter identification card).<sup>3</sup>

Currently, s. 101.043, F.S. requires a voter to produce identification at the polls. That section allows the following forms of identification to satisfy that requirement:

- Florida driver license;
- Florida identification card issued by the Department of Highway Safety and Motor Vehicles;
- U.S. Passport;
- Debit or credit card;
- Military ID;
- Student ID;
- Retirement center ID;
- Neighborhood association ID; and
- Public assistance ID.<sup>4</sup>

### **License to Carry Concealed Weapon or Firearm**

Recipients of a Florida concealed weapon or firearm license must be 21 years of age or older; demonstrate competency with a firearm; and, unless currently serving overseas in the United States Armed Forces, currently reside in the United States as a U.S. citizen or a lawful permanent resident alien.<sup>5</sup> Candidates for a concealed weapon or firearm license may be ineligible dependent on the provisions listed in s. 790.06, F.S.<sup>6</sup> The license is required to bear a color photograph of the licensee.<sup>7</sup>

### **Veteran Health Identification Card**

The Veteran Health Identification Card (VHIC) is issued by the U.S. Department of Veterans Affairs (USDVA) to veterans who are enrolled in the USDVA health care system for identification and check-in at USDVA appointments.<sup>8</sup> In order to receive a VHIC, the veteran must apply for enrollment in the USDVA health care system and provide a primary and

---

<sup>3</sup> Section 97.0535(3)(b), F.S.

<sup>4</sup> Section 101.043(1), F.S.

<sup>5</sup> Florida Department of Agriculture and Consumer Services, *Concealed Weapon License: Eligibility Requirements*, available at <http://www.freshfromflorida.com/Divisions-Offices/Licensing/Concealed-Weapon-License/Eligibility-Requirements> (last visited Dec. 18, 2015).

<sup>6</sup> See section 790.06, F.S.

<sup>7</sup> Section 790.06(1), F.S.

<sup>8</sup> U.S. Department of Veterans Affairs, *Health Benefits*, available at <http://www.va.gov/healthbenefits/vhic/index.asp> (last visited Dec. 18, 2015).

secondary form of identification.<sup>9</sup> Once the veteran's enrollment is verified, he or she must have their picture taken at the local USDVA medical center for inclusion on the VHIC.<sup>10</sup>

### **III. Effect of Proposed Changes:**

SB 666 allows the narrow class of voter registration applicants addressed in s. 97.0535, F.S. to provide a Veteran Health Identification Card issued by the U.S. Department of Veterans Affairs or Florida license to carry a concealed weapon or firearm as a form of identification in support of their voter registration application. The bill also authorizes those two forms of identification to be used as identification at the polls as required by s. 101.043, F.S. Finally, the bill makes conforming changes to the absentee ballot and special absentee ballot instructions.

### **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.

---

<sup>9</sup> Id.

<sup>10</sup> *Supra* note 8

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 97.0535, 101.043, 101.68, and 101.6923.

**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 Legg

17-00694A-16

2016666\_\_

1 A bill to be entitled  
 2 An act relating to voter identification; amending s.  
 3 97.0535, F.S.; expanding the list of acceptable forms  
 4 of identification for certain voter registration  
 5 applicants to include veteran health identification  
 6 cards and licenses to carry a concealed weapon or  
 7 firearm; amending s. 101.043, F.S.; expanding the list  
 8 of acceptable forms of identification at a polling  
 9 place or early voting site to include veteran health  
 10 identification cards and licenses to carry a concealed  
 11 weapon or firearm; amending ss. 101.68 and 101.6923,  
 12 F.S.; revising absentee ballot and special absentee  
 13 ballot instructions, respectively, to conform to  
 14 changes made by the act; providing an effective date.

15  
 16 Be It Enacted by the Legislature of the State of Florida:

17  
 18 Section 1. Paragraph (a) of subsection (3) of section  
 19 97.0535, Florida Statutes, is amended to read:

20 97.0535 Special requirements for certain applicants.—

21 (3)(a) The following forms of identification shall be  
 22 considered current and valid if they contain the name and  
 23 photograph of the applicant and have not expired:

- 24 1. United States passport.
- 25 2. Debit or credit card.
- 26 3. Military identification.
- 27 4. Student identification.
- 28 5. Retirement center identification.
- 29 6. Neighborhood association identification.

Page 1 of 7

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

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30 7. Public assistance identification.  
 31 8. Veteran health identification card issued by the United  
 32 States Department of Veterans Affairs.  
 33 9. A license to carry a concealed weapon or firearm issued  
 34 pursuant to s. 790.06.  
 35 Section 2. Paragraph (a) of subsection (1) of section  
 36 101.043, Florida Statutes, is amended to read:  
 37 101.043 Identification required at polls.—  
 38 (1)(a) The precinct register, as prescribed in s. 98.461,  
 39 shall be used at the polls for the purpose of identifying the  
 40 elector at the polls before allowing him or her to vote. The  
 41 clerk or inspector shall require each elector, upon entering the  
 42 polling place, to present one of the following current and valid  
 43 picture identifications:  
 44 1. Florida driver license.  
 45 2. Florida identification card issued by the Department of  
 46 Highway Safety and Motor Vehicles.  
 47 3. United States passport.  
 48 4. Debit or credit card.  
 49 5. Military identification.  
 50 6. Student identification.  
 51 7. Retirement center identification.  
 52 8. Neighborhood association identification.  
 53 9. Public assistance identification.  
 54 10. Veteran health identification card issued by the United  
 55 States Department of Veterans Affairs.  
 56 11. A license to carry a concealed weapon or firearm issued  
 57 pursuant to s. 790.06.

58 Section 3. Paragraph (d) of subsection (4) of section

Page 2 of 7

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17-00694A-16

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59 101.68, Florida Statutes, is amended to read:

60 101.68 Canvassing of absentee ballot.—

61 (4)

62 (d) Instructions must accompany the absentee ballot  
63 affidavit in substantially the following form:

64  
65 READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING THE  
66 AFFIDAVIT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE YOUR  
67 BALLOT NOT TO COUNT.

68  
69 1. In order to ensure that your absentee ballot will be  
70 counted, your affidavit should be completed and returned as soon  
71 as possible so that it can reach the supervisor of elections of  
72 the county in which your precinct is located no later than 5  
73 p.m. on the 2nd day before the election.

74 2. You must sign your name on the line above (Voter's  
75 Signature).

76 3. You must make a copy of one of the following forms of  
77 identification:

78 a. Identification that includes your name and photograph:  
79 United States passport; debit or credit card; military  
80 identification; student identification; retirement center  
81 identification; neighborhood association identification; ~~or~~  
82 public assistance identification; veteran health identification  
83 card issued by the United States Department of Veterans Affairs;  
84 or a Florida license to carry a concealed weapon or firearm; or

85 b. Identification that shows your name and current  
86 residence address: current utility bill, bank statement,  
87 government check, paycheck, or government document (excluding

Page 3 of 7

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

17-00694A-16

2016666\_\_

88 voter identification card).

89 4. Place the envelope bearing the affidavit into a mailing  
90 envelope addressed to the supervisor. Insert a copy of your  
91 identification in the mailing envelope. Mail, deliver, or have  
92 delivered the completed affidavit along with the copy of your  
93 identification to your county supervisor of elections. Be sure  
94 there is sufficient postage if mailed and that the supervisor's  
95 address is correct.

96 5. Alternatively, you may fax or e-mail your completed  
97 affidavit and a copy of your identification to the supervisor of  
98 elections. If e-mailing, please provide these documents as  
99 attachments.

100 Section 4. Subsection (2) of section 101.6923, Florida  
101 Statutes, is amended to read:

102 101.6923 Special absentee ballot instructions for certain  
103 first-time voters.—

104 (2) A voter covered by this section shall be provided with  
105 printed instructions with his or her absentee ballot in  
106 substantially the following form:

107  
108 READ THESE INSTRUCTIONS CAREFULLY BEFORE MARKING YOUR  
109 BALLOT. FAILURE TO FOLLOW THESE INSTRUCTIONS MAY CAUSE  
110 YOUR BALLOT NOT TO COUNT.

111  
112 1. In order to ensure that your absentee ballot will be  
113 counted, it should be completed and returned as soon as possible  
114 so that it can reach the supervisor of elections of the county  
115 in which your precinct is located no later than 7 p.m. on the  
116 date of the election. However, if you are an overseas voter

Page 4 of 7

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17-00694A-16 2016666\_\_

117 casting a ballot in a presidential preference primary or general  
118 election, your absentee ballot must be postmarked or dated no  
119 later than the date of the election and received by the  
120 supervisor of elections of the county in which you are  
121 registered to vote no later than 10 days after the date of the  
122 election.

123 2. Mark your ballot in secret as instructed on the ballot.  
124 You must mark your own ballot unless you are unable to do so  
125 because of blindness, disability, or inability to read or write.

126 3. Mark only the number of candidates or issue choices for  
127 a race as indicated on the ballot. If you are allowed to "Vote  
128 for One" candidate and you vote for more than one, your vote in  
129 that race will not be counted.

130 4. Place your marked ballot in the enclosed secrecy  
131 envelope and seal the envelope.

132 5. Insert the secrecy envelope into the enclosed envelope  
133 bearing the Voter's Certificate. Seal the envelope and  
134 completely fill out the Voter's Certificate on the back of the  
135 envelope.

136 a. You must sign your name on the line above (Voter's  
137 Signature).

138 b. If you are an overseas voter, you must include the date  
139 you signed the Voter's Certificate on the line above (Date) or  
140 your ballot may not be counted.

141 c. An absentee ballot will be considered illegal and will  
142 not be counted if the signature on the Voter's Certificate does  
143 not match the signature on record. The signature on file at the  
144 start of the canvass of the absentee ballots is the signature  
145 that will be used to verify your signature on the Voter's

17-00694A-16 2016666\_\_

146 Certificate. If you need to update your signature for this  
147 election, send your signature update on a voter registration  
148 application to your supervisor of elections so that it is  
149 received no later than the start of canvassing of absentee  
150 ballots, which occurs no earlier than the 15th day before  
151 election day.

152 6. Unless you meet one of the exemptions in Item 7., you  
153 must make a copy of one of the following forms of  
154 identification:

155 a. Identification which must include your name and  
156 photograph: United States passport; debit or credit card;  
157 military identification; student identification; retirement  
158 center identification; neighborhood association identification;  
159 ~~or~~ public assistance identification; veteran health  
160 identification card issued by the United States Department of  
161 Veterans Affairs; or a Florida license to carry a concealed  
162 weapon or firearm; or

163 b. Identification which shows your name and current  
164 residence address: current utility bill, bank statement,  
165 government check, paycheck, or government document (excluding  
166 voter identification card).

167 7. The identification requirements of Item 6. do not apply  
168 if you meet one of the following requirements:

169 a. You are 65 years of age or older.

170 b. You have a temporary or permanent physical disability.

171 c. You are a member of a uniformed service on active duty  
172 who, by reason of such active duty, will be absent from the  
173 county on election day.

174 d. You are a member of the Merchant Marine who, by reason

17-00694A-16

2016666\_\_

175 of service in the Merchant Marine, will be absent from the  
176 county on election day.

177 e. You are the spouse or dependent of a member referred to  
178 in paragraph c. or paragraph d. who, by reason of the active  
179 duty or service of the member, will be absent from the county on  
180 election day.

181 f. You are currently residing outside the United States.

182 8. Place the envelope bearing the Voter's Certificate into  
183 the mailing envelope addressed to the supervisor. Insert a copy  
184 of your identification in the mailing envelope. DO NOT PUT YOUR  
185 IDENTIFICATION INSIDE THE SECRECY ENVELOPE WITH THE BALLOT OR  
186 INSIDE THE ENVELOPE WHICH BEARS THE VOTER'S CERTIFICATE OR YOUR  
187 BALLOT WILL NOT COUNT.

188 9. Mail, deliver, or have delivered the completed mailing  
189 envelope. Be sure there is sufficient postage if mailed.

190 10. FELONY NOTICE. It is a felony under Florida law to  
191 accept any gift, payment, or gratuity in exchange for your vote  
192 for a candidate. It is also a felony under Florida law to vote  
193 in an election using a false identity or false address, or under  
194 any other circumstances making your ballot false or fraudulent.

195 Section 5. This act shall take effect upon becoming a law.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Education Pre-K - 12, Chair  
Ethics and Elections, Vice Chair  
Appropriations Subcommittee on Education  
Fiscal Policy  
Government Oversight and Accountability  
Higher Education

**SENATOR JOHN LEGG**  
17th District

Legg.John.web@FL.Senate.gov

January 12, 2016

The Honorable David Simmons  
Committee on Rules, Chair  
402 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399

**RE: SB 666 - Voter Identification**

Dear Chair Simmons:

SB 666: Voter Identification has been referred to your committee. I respectfully request that it be placed on the Committee on Rules Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "John Legg".

John Legg  
State Senator, District 17

cc: John Phelps, Staff Director  
Cicky DuBose, Administrative Assistant

**REPLY TO:**

- 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
- 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/20/16

Meeting Date

666

Bill Number (if applicable)

Topic VOTER IDENTIFICATION

Amendment Barcode (if applicable)

Name RON LABASKY

Job Title \_\_\_\_\_

Address 225 S. ADAMS ST.  
Street

Phone \_\_\_\_\_

TALL FL 32301  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing FLA. STATE ASSOCIATION OF SUPERVISORS OF ELECTIONS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/20/16  
Meeting Date

SB 666  
Bill Number (if applicable)

Topic Voter Identification

Amendment Barcode (if applicable)

Name Jessica Kraynak (Cray-Nack)

Job Title Legislative Analyst

Address The Capitol, Suite 2105

Phone (850) 487-1533

Tallahassee FL 32399  
City State Zip

Email KRAYNAKjz@fdva.State.FL.US

Speaking:  For  Against  Information

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

Representing The Florida Dept. of Veterans' Affairs

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.

**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 Rules

---

BILL: CS/SB 860

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Detert

SUBJECT: Foster Families

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Preston</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/SB 860 designates the second week of February of each year as “Foster Family Appreciation Week,” to recognize the enduring and invaluable contributions that foster parents provide to the children in their care and, thus, to the future of the state.

The bill has no fiscal impact on state or local government.

The bill provides an effective day of upon becoming law.

**II. Present Situation:**

Chapter 683, F.S., contains provisions relating to legal holidays and observances. There are currently 21 legal holidays designated in s. 683.01, F.S.<sup>1</sup> The chapter provides that whenever reference is made to “legal holidays” in contracts to be performed by the state, the term includes the holidays designated in s. 683.01, F.S., and such others as may be designated by law.<sup>2</sup>

Designation of a day as a legal holiday does not necessarily make that day a paid holiday for

---

<sup>1</sup> The legal holidays named in s. 683.01, F.S., are: (a) Sunday; (b) New Year’s Day; (c) Birthday of Martin Luther King, Jr.; (d) Birthday of Robert E. Lee; (e) Lincoln’s Birthday; (f) Susan B. Anthony’s Birthday; (g) Washington’s Birthday; (h) Good Friday; (i) Pascua Florida Day; (j) Confederate Memorial Day; (k) Memorial Day; (l) Birthday of Jefferson Davis; (m) Flag Day; (n) Independence Day; (o) Labor Day; (p) Columbus Day and Farmers’ Day; (q) Veterans’ Day; (r) General Election Day; (s) Thanksgiving Day; (t) Christmas Day; and (u) Shrove Tuesday, in certain counties.

<sup>2</sup> See s. 683.02, F.S.



public employees. Presently, there are nine paid holidays for state employees, all of which are listed in s. 110.117, F.S.<sup>3</sup>

Additional holidays such as Gasparilla Day and Rosh Hashanah are designated as legal holidays in certain counties or judicial circuits.<sup>4</sup>

Chapter 683, F.S., additionally designates days of special observance that are not legal holidays. These include, but are not limited to, Law Enforcement Memorial Day, Teacher's Day, Florida Alzheimer's Disease Day, Patriots' Day, Florida Missing Children's Day, and Homeless Persons' Memorial Day.<sup>5</sup> Currently, the state does not officially celebrate the contributions of foster families with a day of observance.

While Florida law does not define the terms "foster parent" or "foster family," these individuals and families play a key role in the child welfare system that provides services to children who must live away from their family of origin when that family cannot provide a safe environment or meet the special needs of the children. The role of the foster parents is to provide the foster child with a safe and healthy environment in a family home, on a temporary basis, until the child can be reunited with his/her family, be placed in another permanent setting, or moved into independent living.

### III. Effect of Proposed Changes:

**Section 1** designates the second week of February each year as "Foster Family Appreciation Week." The purpose of the week is to recognize the enduring and invaluable contributions that foster parents provide to the children in their care and, thus, to the future of the state. The Department of Children and Families, local governments, and other agencies are encouraged to sponsor events to promote awareness of the contributions made by foster families to the vitality of the state.

**Section 2** provides an effective date of upon becoming law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

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<sup>3</sup> The following holidays are paid holidays observed by all state branches and agencies: (a) New Year's Day; (b) Birthday of Martin Luther King, Jr.; (c) Memorial Day; (d) Independence Day; (e) Labor Day; (f) Veterans' Day; (g) Thanksgiving Day; (h) Friday after Thanksgiving; and (i) Christmas Day.

<sup>4</sup> See ss. 683.08, 683.09, 683.12 and 683.19, F.S.

<sup>5</sup> For a full list of special observances in the state and legal holidays in specific counties, see ss. 683.04 through 683.332, F.S.

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 creates s. 683.333 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS by Children, Families, and Elder Affairs on January 14, 2016:**

The Committee Substitute removes an unnecessary date.

B. Amendments:

None.

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

586-02128-16

2016860c1

1 A bill to be entitled  
2 An act relating to foster families; creating s.  
3 683.333, F.S.; designating the second week of February  
4 of each year as "Foster Family Appreciation Week";  
5 providing an effective date.  
6  
7 WHEREAS, the family is the very foundation of our  
8 communities, state, and country, and  
9 WHEREAS, parents serve as a child's primary source of love,  
10 attachment, identity, self-esteem, and support, and  
11 WHEREAS, foster parents open their homes and hearts to  
12 children whose families are in crisis and play a vital role in  
13 helping children heal, reconnect, grow, and flourish, and  
14 WHEREAS, foster parents are professional parents and full  
15 partners in the commitment to ensuring the well-being of  
16 children in foster care, and  
17 WHEREAS, many of the children adopted in this state have  
18 been provided a permanent home by their foster parents, and  
19 WHEREAS, foster parents play a critical role in the Quality  
20 Parenting Initiative, which places a priority on quality  
21 parenting, putting the needs of children first, advocating for  
22 children in their care, and supporting and mentoring birth  
23 families, and  
24 WHEREAS, in this state, more than 6,000 children and youth  
25 in foster care have a safe, secure, and stable family foster  
26 home, and  
27 WHEREAS, compassionate individuals, faith-based  
28 communities, and public and private organizations work to  
29 increase public awareness of the enduring and valuable  
30 contributions of foster parents and the needs of children in  
31 foster care, and

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

586-02128-16

2016860c1

32 WHEREAS, those families who are able to serve as foster  
33 parents should be wholeheartedly encouraged to do so, and  
34 WHEREAS, the Governor's Office of Adoption and Child  
35 Protection, the Legislature, the Department of Children and  
36 Families, community-based care lead agencies, the guardian ad  
37 litem program, the Florida State Foster/Adoptive Parent  
38 Association, and state and local agencies and organizations all  
39 provide support for foster families, and  
40 WHEREAS, to continue to commend and support foster families  
41 in the years ahead, the people of this state are called upon to  
42 recognize the positive impact that foster parents have on  
43 children in foster care and to consider providing a loving,  
44 supportive home for children in need by becoming foster parents,  
45 NOW, THEREFORE,  
46  
47 Be It Enacted by the Legislature of the State of Florida:  
48  
49 Section 1. Section 683.333, Florida Statutes, is created to  
50 read:  
51 683.333 Foster Family Appreciation Week.—  
52 (1) The second week of February of each year is designated  
53 as "Foster Family Appreciation Week" to recognize the enduring  
54 and invaluable contributions that foster parents provide to the  
55 children in their care and, thus, to the future of this state.  
56 (2) The Department of Children and Families, local  
57 governments, and other agencies are encouraged to sponsor events  
58 to promote awareness of the contributions made by foster  
59 families to the vitality of the state.  
60 Section 2. This act shall take effect upon becoming a law.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7002

INTRODUCER: Community Affairs Committee

SUBJECT: OGSR/Audit Report and Certain Records/Local Government

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Stearns</u>	<u>Yeatman</u>		<b>CA Submitted as Committee Bill</b>
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Cochran</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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## I. Summary:

SB 7002 eliminates the scheduled repeal of the current public records exemption for workpapers related to local government audits by an internal auditor and investigations by an inspector general. As a result, the covered records will remain confidential and exempt from disclosure until the audit or investigation is complete or no longer active.

A simple majority vote is required for passage. This bill goes into effect on October 1, 2016.

## 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.<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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 Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> 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’ may be released at the discretion of the records custodian.<sup>14</sup>

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<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

## Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act.

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.<sup>15</sup> 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.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. Specific questions are enumerated for consideration under the review.<sup>17</sup> The specified questions are:

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>18</sup> 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 otherwise provided for by law.<sup>19</sup>

## Local Government Internal Audit Reports and Inspectors General Reports

Section 119.0713(2), F.S., provides a public records exemption for workpapers related to an audit by an internal auditor and for information related to an investigation by an inspector general conducted for or on behalf of a unit of local government. According to survey responses from local governments obtained by the Senate Community Affairs Committee, such information may include notes and draft documents of the auditor, workpapers, background reports, investigatory plans, interview transcripts, and statements from witnesses and interested parties,

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<sup>15</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(a), F.S.

<sup>18</sup> FLA. CONST., art. I, s. 24(c).

<sup>19</sup> Section 119.15(7), F.S.

among other documents. The exemption provides that such information becomes open to inspection and disclosure once the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

One hundred percent of those survey responses opining on the future status of the exemption recommended it be reenacted.

This exemption expires on October 2, 2016, pursuant to the OGSR, unless saved by the Legislature through reenactment.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 119.0713, F.S., to delete the scheduled repeal of the public records exemption. As a result, the covered records will remain confidential and exempt from disclosure until the audit or investigation is complete or no longer active.

**Section 2** provides an effective date of October 1, 2016.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

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

#### **B. Public Records/Open Meetings Issues:**

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.

#### **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 119.0713 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 Community Affairs

578-00739-16

20167002\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.0713, F.S., which provides a public records exemption for the audit report of an internal auditor and certain records relating to investigations in the custody of an inspector general of a local government; removing the scheduled repeal of the exemption; making editorial changes; providing an effective date.

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

Section 1. Subsection (2) of section 119.0713, Florida Statutes, is amended to read:

119.0713 Local government agency exemptions from inspection or copying of public records.—

(2) (a) As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.

(b) The audit report of an internal auditor and the investigative report of the inspector general prepared for or on behalf of a unit of local government becomes a public record when the audit or investigation becomes final. ~~As used in this subsection, the term "unit of local government" means a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized~~

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

578-00739-16

20167002\_\_

~~or created by general or special law.~~ An audit or investigation becomes final when the audit report or investigative report is presented to the unit of local government. Audit workpapers and notes related to such audit and information received, produced, or derived from an investigation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution until the audit or investigation is complete and the audit report becomes final or when the investigation is no longer active. An investigation is active if it is continuing with a reasonable, good faith anticipation of resolution and with reasonable dispatch.

~~(b) Paragraph (a) is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2016, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2016.

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



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

**SENATOR WILTON SIMPSON**  
18th District

January 13, 2016

The Honorable David Simmons  
Senate Committee on Rules, Chair  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Simmons:

I respectfully request that Senate Bills 7002 and 7004 relating to *Open Government Sunshine Reviews of Public Records Exemptions* be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson, State Senator, 18<sup>th</sup> District

CC: John Phelps, Staff Director

### REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 7004

INTRODUCER: Governmental Oversight and Accountability Committee and Community Affairs Committee

SUBJECT: OGSR/Emergency Notification Information

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Present</u>	<u>Yeatman</u>		<b>CA Submitted as Committee Bill</b>
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
2.	<u>Present</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

CS/SB 7004 eliminates the scheduled repeal of the current public records exemption for any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency. As a result, this information will continue to be exempt from public disclosure.

The bill requires a majority vote for passage. This bill goes into effect October 1, 2016.

**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.<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> FLA. CONST., art. I, s. 24(a).

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> 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 Legislature are primarily located in s. 11.0431(2)-(3), F.S.

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> 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’ may be released at the discretion of the records custodian.<sup>14</sup>

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<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

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

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

<sup>9</sup> FLA. CONST., art. I, s. 24(c).

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

## Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act.

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.<sup>15</sup> 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.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. Specific questions are enumerated for consideration under the review.<sup>17</sup> The specified questions are:

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>18</sup> 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 otherwise provided for by law.<sup>19</sup>

## Emergency Notification Systems

The Division of Emergency Management is tasked with maintaining a comprehensive emergency management system for the state, as well as coordinating efforts with the federal government, local governments, school boards and private agencies.<sup>20</sup> The Division of Emergency Management is also responsible for establishing a communication system with the

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<sup>15</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(a), F.S.

<sup>18</sup> FLA. CONST., art. I, s. 24(c).

<sup>19</sup> Section 119.15(7), F.S.

<sup>20</sup> Section 252.35(1), F.S.

public and emergency management agencies.<sup>21</sup> The Division is currently trying to procure a statewide emergency alert and notification system.<sup>22</sup>

A centralized statewide alert system for all emergencies, however, currently does not exist. Some agencies have statewide alert programs that are related to their specialization. For example, the Florida Department of Transportation provides traffic-related emails or text messages to the public through their My Florida 511 program.<sup>23</sup> The Department of Health keeps the public health community informed of public health emergencies using the Florida Health Alert Network (HAN).<sup>24</sup>

Most local governmental entities have some type of emergency notification system for their communities. Sheriffs' offices, universities, public utilities and other entities throughout Florida have in place emergency notification systems. For example, the Sumter County Sheriff's Office uses the CodeRED Emergency Notification System. It is a high-speed telephone communication service for emergency notifications that works off of a database compiled from the phone database maintained for the Sheriff's office by the purveyors of the CodeRED system. "This system allows [the Sumter County Sheriff's Office] to telephone all or targeted areas of Sumter County in case of an emergency situation that requires immediate action (such as a boil-water notice, missing child or evacuation notices)."<sup>25</sup> Brevard County has in place a similar emergency alert notification system for natural disasters.<sup>26</sup> Florida State University has a comprehensive alert system that includes text messages, voice-mail messages, email messages, Facebook messages, indoor and outdoor sirens, a hotline and more.<sup>27</sup>

A limited public records exemption already exists for persons requesting emergency assistance through E911. The exemption applies only to the name, address, telephone number or personal information about, or information which may identify any person requesting emergency services or reporting an emergency while such information is in the custody of the public agency or public safety agency providing emergency services.<sup>28</sup>

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<sup>21</sup> Section 252.35(2)(a)6., F.S.

<sup>22</sup> "Notice of Public Meeting Request for Proposal RFP-DEM-15-16-037 Florida Statewide Emergency Alert and Notification System, <http://www.floridadisaster.org/eoc/PressReleases/FAR%20Advertisement%20RFP-DEM-15-16-037.pdf> (last visited December 16, 2015).

<sup>23</sup> <http://www.fl511.com/> (last visited November 3, 2015).

<sup>24</sup> State Emergency Responders and <http://www.servfl.com/> (last visited November 3, 2015). Florida Dep't of Health, Health Alert Network Policy, available at <http://www.servfl.com/HomepageUploads/126HAN%20Policy%202015.pdf> (last visited September 22, 2015).

<sup>25</sup> Sumter County Sheriff's Office, <http://www.sumtercountysheriff.org/publicsvc/codered.php> (last visited September 22, 2015).

<sup>26</sup> Brevard County Emergency Management Office, <http://embrevard.com/> (last visited December 16, 2015).

<sup>27</sup> Florida State University ALERT, Emergency Notification System, <http://emergency.fsu.edu/services/FSUAlert> (last visited December 16, 2015). See generally, Florida Department of Law Enforcement, State Working Group On Domestic Preparedness Ad Hoc Committee on University and College Emergency Notification Systems, <https://www.fdle.state.fl.us/Content/getdoc/c2c4f5df-1fa5-4b26-adad-4d3e23665c43/SWGUniversityCollegeEmergencyNotificationSystems.aspx>. (last visited December 16, 2015).

<sup>28</sup> Section 365.171(12), F.S.

## **OGSR Survey and Results**

In June and July of 2015, Senate and House professional staff sent out a survey to cities, counties and state agencies to ascertain if s. 119.071(5)(j), F.S., remains necessary, pursuant to the OGSR.<sup>29</sup> The surveys revealed that governmental entities sent warnings to the public on a variety of topics, including but not limited to: boil water orders, severe weather, sexual predator notification, missing persons, hazardous materials, flood warning, evacuations, terrorist activities, mass shootings, utility outages, school closures and road closures.

Most governmental entities appeared to collect only contact information from the public, such as their name, address, phone number, email address or social media user names. Some governmental entities also request additional information, such as whether a notification address is a home, or a mobile or manufactured home, whether the home is the primary or secondary residence, as well as the geolocation of the home on the property. In addition to the phone number, one governmental entity asks if the number is a telecommunications device for the deaf or a telephone typewriter, teletype device (TTD/TDY).

A majority of governmental entities stated that the public records exemption should be continued. Several governmental entities asserted that people would be less likely to sign up for warnings if they thought that their information was open to disclosure. A lack of public participation would defeat the purpose of having public warning systems and place more people in danger according to some survey responses.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 119.071, F.S., to delete the scheduled repeal of the public records exemption. As a result, the covered records will continue to be exempt from disclosure.

**Section 2** provides an effective date of October 1, 2016.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

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

#### **B. Public Records/Open Meetings Issues:**

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an 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

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<sup>29</sup> The surveys are on file with the Senate Committee on Community Affairs.

required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

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 119.071 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS by Governmental Oversight and Accountability on January 11, 2016:**

The CS removes the list of different types of information which are exempt. The list was superfluous because “any information” included all the items in the list.

B. Amendments:

None.



By the Committees on Governmental Oversight and Accountability;  
and Community Affairs

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A bill to be entitled

An act relating to a review under the Open Government  
Sunset Review Act; amending s. 119.071, F.S., which  
provides an exemption from public records requirements  
for information furnished by a person to an agency for  
the purpose of being provided an emergency  
notification by the agency; removing superfluous  
language; removing the scheduled repeal of the  
exemption; providing an effective date.

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

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

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

(5) OTHER PERSONAL INFORMATION.—

(j)~~+~~ Any information furnished by a person to an agency  
for the purpose of being provided with emergency notification by  
the agency, ~~including the person's name, address, telephone  
number, e-mail address, or other electronic communication  
address,~~ is exempt from s. 119.07(1) and s. 24(a), Art. I of the  
State Constitution. This exemption applies to information held  
by an agency before, on, or after the effective date of this  
exemption.

~~2. This paragraph is subject to the Open Government Sunset  
Review Act in accordance with s. 119.15, and shall stand  
repealed on October 2, 2016, unless reviewed and saved from  
repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2016.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Community Affairs, *Chair*  
Environmental Preservation and Conservation,  
*Vice Chair*  
Appropriations Subcommittee on General Government  
Finance and Tax  
Judiciary  
Transportation

### JOINT COMMITTEE:

Joint Legislative Auditing Committee

**SENATOR WILTON SIMPSON**  
18th District

January 13, 2016

The Honorable David Simmons  
Senate Committee on Rules, Chair  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chairman Simmons:

I respectfully request that Senate Bills 7002 and 7004 relating to *Open Government Sunshine Reviews of Public Records Exemptions* be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink, appearing to read "Wilton Simpson".

Wilton Simpson, State Senator, 18<sup>th</sup> District

CC: John Phelps, Staff Director

### REPLY TO:

- 322 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5018
- Post Office Box 938, Brooksville, Florida 34605
- Post Office Box 787, New Port Richey, Florida 34656-0787 (727) 816-1120 FAX: (888) 263-4821

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 7020

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Florida Health Choices Program/Florida Health Choices, Inc.

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Lloyd</u>	<u>Stovall</u>		<b>HP Submitted as Committee Bill</b>
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Lloyd</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 7020 eliminates the scheduled repeal of the current public records exemptions for the Florida Health Choices Program. As a result, the following information continues to be confidential and exempt from disclosure:

- Personal, identifying information of an enrollee or participant who has applied for or participates in the Florida Health Choices Program;
- Client and customer lists of a buyer's representative held by the Florida Health Choices Corporation (corporation); and
- Proprietary confidential business information of a vendor held by the corporation.

The bill also continues the retroactive application of the exemption to protect information held by the corporation prior to initial enactment of the exemption.

A simple majority vote is sufficient for 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.<sup>1</sup> 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.<sup>2</sup>

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> FLA. CONST. art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may

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<sup>3</sup> 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.

<sup>4</sup> Public records laws are found throughout the Florida Statutes.

<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

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

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

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> FLA. CONST. art. I, s. 24(c).

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian.<sup>14</sup>

### **Open Government Sunset Review Act**

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>15</sup> 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.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:<sup>17</sup>

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>18</sup> 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 otherwise provided for by law.<sup>19</sup>

### **Florida Health Choices Corporation, Inc.**

In 2008, the Legislature created the Florida Health Choices Program to address the issue of Florida’s uninsured.<sup>20</sup> The Legislature created the Florida Health Choices Corporation

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<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>15</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(a), F.S.

<sup>18</sup> FLA. CONST. art. I, s. 24(c).

<sup>19</sup> Section 119.15(7), F.S.

<sup>20</sup> See Chapter 2008-32 Laws of Fla.

(corporation) to administer the program as a private, non-profit, corporation under s. 408.910, F.S. The corporation is to operate in compliance with part III of chapter 112 (Public Officers and Employees) and chapters 119 (Public Records), 286 (Public Business), and 617 (Corporations Not for Profit), F.S.<sup>21</sup>

The corporation is led by a 15-member board of directors, three of whom are ex-officio, non-voting board members:

- The Governor, President of the Senate, and Speaker of the House of Representatives each appoints four members.
- The three non-voting ex-officio members include:
  - The Secretary of Health Care Administration (AHCA) or a designee with expertise in health care services;
  - The Secretary of the Department of Management Services or a designee with expertise in health care services; and
  - The Commissioner of the Office of Insurance Regulation or a designee with expertise in insurance regulation.

Board members may not include insurers, health insurance agents or brokers, health care providers, health maintenance organizations (HMOs), prepaid service providers, or any other entity or affiliate or subsidiary of eligible vendors. Conflict of interest provisions govern board member participation.

The program is designed as a single, centralized marketplace for the purchase of health products, including, but not limited to, health insurance plans, HMO plans, prepaid services, and flexible spending accounts. Policies sold as part of the program are exempt from regulation under the Insurance Code and laws governing HMOs. The following entities are authorized to be eligible vendors:

- Insurers authorized under ch. 624, of the Insurance Code, such as self-insurers, indemnity plans, life and health insurers, church benefit plans, disability, and multi-employer welfare arrangements, and the Florida Healthy Kids Corporation;
- HMOs authorized under part I of ch. 641, F.S., relating to Health Service Programs, including health maintenance organization contracts, limited benefit policies, and other risk bearing coverage, benefits, and products;
- Prepaid limited health service organizations and discount medical plans under ch. 636, F.S.;
- Prepaid health clinics licensed under ch. 641, part II, F.S.;
- Health care providers, including hospitals and other licensed health facilities, health care clinics, pharmacies, licensed health care professionals, and other licensed health care providers;
- Provider organizations, including service networks, group practices, and professional associations; and
- Corporate entities providing specific health services.

The corporation's Florida Health Insurance Marketplace (marketplace) currently includes individual health plans, discount plans, and limited benefit plans.

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<sup>21</sup> Section 408.910(11), F.S.

The corporation is authorized to collect premiums and other payments from employers. The law further specifies who may participate as either an employer or an individual. Employers eligible to enroll include employers that meet criteria established by the corporation and their individual employees and other individuals meeting criteria established by the corporation.<sup>22</sup>

### **Information Collected by the Florida Health Choices Program**

In the administration of the program the corporation may collect personal, identifying information about applicants and participants. Insurance agents and employers also provide personal as well as financial and business information. More specifically, this information might include a participating insurance agent's client list; an employer's business, accounting, or human resource records; or other proprietary business or personal identification information.<sup>23</sup>

### ***Exemption from the Public Records Act***

The implementing legislation for the Florida Health Choices Program in 2008 did not include a public records exemption. The exemptions were added in 2011<sup>24</sup> and applied retroactively to protect personal, identifying information of an enrollee or a participant in the program; client and customer lists of a buyer's representatives; and proprietary confidential business information<sup>25</sup> of a vendor.

Two distinct public necessity statements supported the exemptions. The first public necessity statement pertained to any information identifying an enrollee or participant in the program and provided that the information must remain confidential and exempt because the harm in releasing such personal and sensitive information outweighs any public benefit in releasing it. Further, if such information were not held confidential, the administration of the program could be significantly impaired because businesses and individuals would be less inclined to apply, participate, or enroll.<sup>26</sup>

The second public necessity statement addressed proprietary confidential business information and the harm to the marketplace that may come from the disclosure of confidential business information or a customer or client list of a program buyer's representative. Disclosure of this information may provide competitors with detailed insights into confidential business information, strategies, or methodologies that is not otherwise accessible, thereby diminishing the advantage that a program vendor or buyer's representative may have in the marketplace. This, in turn, may deter private-sector vendors or buyer's representatives from participating in

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<sup>22</sup> Section 408.910(4)(a), F.S.

<sup>23</sup> Section 408.910(14), F.S.

<sup>24</sup> Chapter 2011-197, Laws of Fla. (effective October 1, 2011).

<sup>25</sup> Proprietary confidential business information is defined in 408.910(14)(a)4., F.S. to mean information, regardless of form or characteristics, that is owned or controlled by a vendor requesting confidentiality under this section; that is intended to be and is treated by the vendor as private in that the disclosure of the information would cause harm to the business operations of the vendor; that has not been 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 that is information concerning: business plans, internal auditing controls and reports of internal auditors, reports of external auditors for privately held companies, client and customer lists, potentially patentable materials, [or] a trade secret as defined in s. 688.002, F.S.

<sup>26</sup> Chapter 2011-197, s. 2, Laws of Fla. (effective October 1, 2011).

the program thereby harming the effective administration of the program and its ability to offer affordable health care coverage.<sup>27</sup>

Exceptions permit disclosure of protected information to:

- Another governmental entity in the performance of its official duties and responsibilities;
- Any person who has the written consent of the program's applicant;
- The Florida Kidcare program for the purpose of administering its program;<sup>28</sup> and
- A participant's legal guardian.

#### ***Penalty for Unauthorized Disclosure***

A person who knowingly and willfully discloses inappropriately information that is made confidential and exempt under this law commits a misdemeanor of the second degree.<sup>29</sup>

#### **OGSR of the Public Records Exemption**

Professional staff of the Legislature met with representatives of the Florida Health Choices Program on August 12, 2015, to discuss the Program and the necessity of continuing the public records exemption. Florida Health Choices Program explained that the exemption was working appropriately and did not recommend alterations to the exemption. Professional staff recommends that the exemption be continued as is in its current form.

### **III. Effect of Proposed Changes:**

The bill removes the scheduled repeal date of October 2, 2016, for the public records exemptions in s. 408.910(14), F.S. The public records exemptions apply to personal identifying information of enrollees and participants who have applied to the corporation, client and customer lists of buyer's representatives, and proprietary confidential business information held by the corporation. This information will remain both confidential and exempt from disclosure to the public under the public records laws.

Current law pertaining to retroactive application of the exemptions, conditions for authorized release, and the penalty for improper release of the protected information are likewise continued.

The effective date of the bill is October 1, 2016.

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<sup>27</sup> Chapter 2011-197, s. 3, Laws of Fla. (effective October 1, 2011).

<sup>28</sup> Under certain circumstances in federal law, health insurance exchanges similar to the marketplace created under the FHC program, could be required to exchange information with the state Medicaid program. In Florida, the state Medicaid program also exchanges data with the Florida Kidcare program. The current exception permits the FHC program to exchange information with those programs as necessary,

<sup>29</sup> Section 408.910(14)(e), F.S.



#### IV. Constitutional Issues:

##### A. Municipality/County Mandates Restrictions:

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

##### B. Public Records/Open Meetings Issues:

The bill renews an existing public records exemption for the Florida Health Choices Corporation. Therefore, a simple majority vote of the members present in each house of the Legislature is required for passage.

##### C. Trust Funds Restrictions:

None.

##### D. Other Constitutional Issues:

This bill continues a provision that permits a public-records exemption to apply to any information identifying an applicant or participant in the Florida Health Choices Program *before, on, or after* the effective date of the exemption.

Retroactive operation is disfavored by courts and generally “statutes are prospective, and will not be construed to have retroactive operation unless the language employed in the enactment is so clear it will admit of no other construction.”<sup>30</sup> The Florida Supreme Court has articulated four issues to consider when determining whether a statute may be retroactively applied:

- Is the statute procedural or substantive?
- Was there an unambiguous legislative intent for retroactive application?
- Was [a person’s] right vested or inchoate?
- Is the application of [the statute] to these facts unconstitutionally retroactive?<sup>31</sup>

The general rule of statutory construction is that a procedural or remedial statute may operate retroactively, but that a substantive statute may not operate retroactively without clear legislative intent. Substantive laws either create or impose a new obligation or duty, or impair or destroy existing rights, and procedural laws enforce those rights or obligations.<sup>32</sup>

Additionally, the initial enactment and this reenactment make it clear that it is the Legislature’s intent to apply the law retroactively. “Where a statute expresses clear legislative intent for retroactive application, courts will apply the provision

<sup>30</sup> Norman J. Singer and J.D. Shambie Singer, *Prospective or retroactive interpretation*, 2 SUTHERLAND STATUTORY CONSTR. s. 41:4 (6th ed. 2009).

<sup>31</sup> *Weingrad v. Miles*, 2010 WL 711801, \*2 (Fla. 3d DCA 2010) (internal citations omitted).

<sup>32</sup> See *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1358 (Fla. 1994); *In re Rules of Criminal Procedure*, 272 So. 2d 65, 65 (Fla. 1972).

retroactively.”<sup>33</sup> A court will not follow this rationale, however, if applying a statute retroactively will impair vested rights, create new obligations, or impose new penalties.<sup>34</sup>

Generally, retroactive application is appropriate when the exemption is remedial in nature. In the context of public records exemption, the remedy lies in mitigating the provisions of the Florida Public Records Act.<sup>35</sup> Access to public records is not a vested right because the right to access public records is subject to divestment by the Legislature and the Public Rights Act grants public rights, not private ones.<sup>36</sup> If a public records exemption is remedial in nature, “it can and should be retroactively applied in order to serve its intended purposes.”<sup>37</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The corporation will continue to redact confidential information from any records that are disclosed to the public.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 408.910 of the Florida Statutes.

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<sup>33</sup> *Weingrad*, 2010 WL 711801 at \*3.

<sup>34</sup> *Id.* at \*4.

<sup>35</sup> *Campus Communications Inc., v. Earnhardt*, 821 So. 2d 388, 396-397 (Fla. 5th DCA 2002). The court quotes *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1029 (Fla 1986).

<sup>36</sup> *Campus Communications Inc.*, 821 So. 2d at 398.

<sup>37</sup> *City of Orlando v. Desjardins*, 493 So. 2d 1027, 1028 (Fla. 1986).

**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.

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

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By the Committee on Health Policy

588-00912-16

20167020\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 408.910, F.S., relating to an exemption from public records requirements for personal identifying information of an enrollee or participant in the Florida Health Choices Program, for client and customer lists of a buyer's representative held by the Florida Health Choices, Inc., and for proprietary confidential business information held by the corporation, and relating to a penalty for unlawful disclosure of confidential and exempt information; saving the exemption from repeal under the Open Government Sunset Review Act; providing an effective date.

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

Section 1. Subsection (14) of section 408.910, Florida Statutes, is amended to read:

408.910 Florida Health Choices Program.—

(14) EXEMPTION FROM PUBLIC RECORDS REQUIREMENTS.—

(a) *Definitions*.—For purposes of this subsection, the term:

1. "Buyer's representative" means a participating insurance agent as described in paragraph (4)(g).

2. "Enrollee" means an employer who is eligible to enroll in the program pursuant to paragraph (4)(a).

3. "Participant" means an individual who is eligible to participate in the program pursuant to paragraph (4)(b).

4. "Proprietary confidential business information" means

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

588-00912-16

20167020\_\_

information, regardless of form or characteristics, that is owned or controlled by a vendor requesting confidentiality under this section; that is intended to be and is treated by the vendor as private in that the disclosure of the information would cause harm to the business operations of the vendor; that has not been 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 that is information concerning:

a. Business plans.

b. Internal auditing controls and reports of internal auditors.

c. Reports of external auditors for privately held companies.

d. Client and customer lists.

e. Potentially patentable material.

f. A trade secret as defined in s. 688.002.

5. "Vendor" means a participating insurer or other provider of services as described in paragraph (4)(d).

(b) *Public record exemptions*.—

1. Personal identifying information of an enrollee or participant who has applied for or participates in the Florida Health Choices Program is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Client and customer lists of a buyer's representative held by the corporation are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Proprietary confidential business information held by the corporation is confidential and exempt from s. 119.07(1) and

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

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

60 (c) *Retroactive application.*—The public record exemptions  
61 provided for in paragraph (b) apply to information held by the  
62 corporation before, on, or after the effective date of this  
63 exemption.

64 (d) *Authorized release.*—

65 1. Upon request, information made confidential and exempt  
66 pursuant to this subsection shall be disclosed to:

67 a. Another governmental entity in the performance of its  
68 official duties and responsibilities.

69 b. Any person who has the written consent of the program  
70 applicant.

71 c. The Florida Kidcare program for the purpose of  
72 administering the program authorized in ss. 409.810-409.821.

73 2. Paragraph (b) does not prohibit a participant's legal  
74 guardian from obtaining confirmation of coverage, dates of  
75 coverage, the name of the participant's health plan, and the  
76 amount of premium being paid.

77 (e) *Penalty.*—A person who knowingly and willfully violates  
78 this subsection commits a misdemeanor of the second degree,  
79 punishable as provided in s. 775.082 or s. 775.083.

80 ~~(f) *Review and repeal.* This subsection is subject to the  
81 Open Government Sunset Review Act in accordance with s. 119.15,  
82 and shall stand repealed on October 2, 2016, unless reviewed and  
83 saved from repeal through reenactment by the Legislature.~~

84 Section 2. This act shall take effect October 1, 2016.

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 7024

INTRODUCER: Governmental Oversight and Accountability Committee and Health Policy Committee

SUBJECT: OGSR/Information Held by the Florida Center for Brain Tumor Research

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Looke</u>	<u>Stovall</u>		<b>HP Submitted as Committee Bill</b>
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
2.	<u>Looke</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

CS/SB 7024 eliminates the scheduled repeal of the current public records exemption for personal identifying information held by the Florida Center for Brain Tumor Research. As a result, this information continues to be confidential and exempt from public disclosure.

A simple majority vote is required for passage. The bill goes into effect on July 1, 2016.

**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.<sup>1</sup> 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.<sup>2</sup>

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

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<sup>1</sup> FLA. CONST. art. I, s. 24(a).

<sup>2</sup> FLA. CONST. art. I, s. 24(a).

<sup>3</sup> 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.

<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements.<sup>9</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>10</sup> 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.<sup>11</sup> A statutory exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> 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’ may be released at the discretion of the records custodian.<sup>14</sup>

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<sup>5</sup> Section 119.01(1), F.S.

<sup>6</sup> 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.”

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

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

<sup>9</sup> FLA. CONST. art. I, s. 24(c).

<sup>10</sup> FLA. CONST. art. I, s. 24(c).

<sup>11</sup> FLA. CONST. art. I, s. 24(c).

<sup>12</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>13</sup> 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).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

## Open Government Sunset Review Act

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject a new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>15</sup> The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:<sup>17</sup>

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>18</sup> 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 otherwise provided for by law.<sup>19</sup>

## The Florida Center for Brain Tumor Research

Section 381.853, F.S., creates the Florida Center for Brain Tumor Research (Center). The Center is established within the Evelyn F. and William L. McKnight Brain Institute of the University of Florida (Institute) and is intended to establish a coordinated effort among the state's public and private universities and hospitals and the biomedical industry to discover brain tumor cures and develop brain tumor treatment modalities. The Institute is required to develop and maintain a brain tumor registry that is an automated, electronic, and centralized database of individuals with

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<sup>15</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one Legislature cannot bind a future Legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

<sup>16</sup> Section 119.15(3), F.S.

<sup>17</sup> Section 119.15(6)(a), F.S.

<sup>18</sup> FLA. CONST. art. I, s. 24(c).

<sup>19</sup> Section 119.15(7), F.S.



brain tumors. The registry is a central repository for brain tumor biopsies from individuals throughout the state.<sup>20</sup>

Additionally, in furthering its goal of finding cures for brain tumors, the Center is required to:

- Award funds appropriated by the Legislature in a competitive grant process;
- Hold an annual brain tumor biomedical technology summit;
- Encourage clinical trials on research that holds the promise of curing brain tumors; and
- Facilitate the formation of partnerships between researchers, physicians, clinicians, and hospitals for the purpose of sharing new techniques, sharing new research findings, and coordinating the voluntary donation of brain tumor biopsies.

Section 381.853, F.S., requires that the Center be funded through private, state, and federal sources and also establishes a scientific advisory council within the Center which includes biomedical researchers, physicians, clinicians, and representatives from public universities, private universities, and hospitals.

### ***The Registry***

The Center maintains a collaborative, statewide registry of banked cancerous and non-cancerous brain tumor specimens, matched samples of DNA, plasma, serum and cerebrospinal fluid, clinical and demographic information, and quality-of-life assessments obtained from patients. Patients are asked to participate in the Center's bio-repository and registry, which has been approved by an Institutional Review Board, to provide valuable specimens and data for future research. The banked materials are made available to researchers in Florida and beyond who are investigating improved treatments and cures for brain tumors. A web-based database stores demographic, clinical and quality-of-life data, creates a registry of participants, and bar-codes and tracks the samples. This clinical database contains information available (in unidentifiable format) to researchers who study brain tumors.<sup>21</sup>

### ***Information Protected from Disclosure***

Section 381.8531, F.S., makes confidential and exempt from Florida's public records laws any personal and identifying information held by the Center which relates to donors to either the central repository for brain tumor biopsies or registrants on the brain tumor registry.

Additionally, the exemption protects any information received by the Center from an individual from another state or nation, or from the Federal Government, if that information is confidential or exempt pursuant to the laws of the state or nation from which the information is transmitted. The only exception to the confidentiality of the protected information is for persons who are engaged in bona fide research and who agree to submit a research plan to the Center, sign a

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<sup>20</sup> The individual, or the parent or guardian of the individual if the individual is a minor, may refuse to participate in the brain tumor registry by signing a form obtained from the Department of Health or from the health care practitioner or entity that provides brain tumor care or treatment which indicates that the individual does not wish to be included in the registry. The decision to not participate in the registry must be noted in the registry. Section 381.853(2), F.S.

<sup>21</sup> Florida Center for Brain Tumor Research, Annual Report for 2014-2015, Jan. 15, 2015, pp. 16-17 (on file with the Senate Committee on Health Policy.)

confidentiality agreement, maintain the confidentiality of the information received, and destroy any confidential information received after the research is completed.<sup>22</sup>

As of August 12, 2015, the Center has not received any requests for records protected under s. 381.8531, F.S., nor has the public records exemption been the subject of litigation.<sup>23</sup> The Center has received requests for information from other states but has only sent limited Health Insurance Portability and Accountability (HIPAA) compliant data sets. Although other state and federal laws may protect the information made confidential and exempt<sup>24</sup> under s. 381.8531, F.S., the Center relies on the public records exemption as it is “clearly applicable to the data contained in the [Center’s] database.”<sup>25</sup>

### III. Effect of Proposed Changes:

CS/SB 7024 saves from repeal the public records exemption in s. 381.8531, F.S., which makes confidential and exempt from s. 119.07(1), F.S., and s. 24, Art. I, of the State Constitution information held by the Florida Center for Brain Tumor Research which is:

- Personal identifying information of donors to the central repository for brain tumor biopsies;
- Personal identifying information of registrants on the brain tumor registry; or
- Any information that is received by the Center from an individual from another state or nation, or from the Federal Government, if that information is confidential or exempt pursuant to the laws of the state or nation from which the information is transmitted.

The effective date of the bill is July 1, 2016.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

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

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<sup>22</sup> This public records exemption was amended in 2011 with the following changes: added personal identifying information, provided disclosure mechanisms and a retroactivity clause. The exemption was also subject to a new OGSR, which provided the current sunset date. Ch. 2011-203, Laws of Fla.

<sup>23</sup> See survey response by Barbara Frentzen, Administrator for the Florida Center for Brain Tumor Research, August 12, 2015, (on file with the Senate Committee on Health Policy staff.)

<sup>24</sup> Examples of such laws include the Federal HIPAA Pub. L. No. 104-191; s. 456.057, F.S.; and the Federal Genetic Information Nondiscrimination Act (Pub. L. No.110-343) and s. 760.40, F.S. Survey response from the Florida Center for Brain Tumor Research at p. 4. Federal law forbidding disclosure, however, supersede Florida’s open records laws only when there is an absolute conflict between the two. Office of the Attorney General, *Government-in-the-Sunshine Manual*, 2015 Edition, p. 153. The Legislature may wish to continue this public records exemption because federal law may change or a court may find that the federal protections do not apply to some aspect of this program. For example in *Wallace v. Guzman*, 687 So. 2d, 1341, 1353 (Fla. 3d DCA 1997), a court found that federal protection of documents held by federal agencies do not apply to state agencies that hold the same documents. See also *Housing Authority of the City of Daytona Beach v. Gommillion*, 639 So. 2d 117 (Fla. 5th DCA 1994).

<sup>25</sup> Survey response from the Florida Center for Brain Tumor Research at p. 5.

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 381.8531 of the Florida Statutes.

**IX. Additional Information:**

A. Committee Substitute – Statement of Changes:

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

**CS by Governmental Oversight and Accountability on January 11, 2016:**

The CS clarifies that the information is exempt from paragraph (a) of Article I, section 24 of the Florida Constitution.

B. Amendments:

None.

By the Committees on Governmental Oversight and Accountability;  
and Health Policy

585-01985-16

20167024c1

A bill to be entitled

An act relating to a review under the Open Government  
Sunset Review Act; amending s. 381.8531, F.S., which  
provides an exemption from public records requirements  
for information held by the Florida Center for Brain  
Tumor Research; 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 381.8531, Florida Statutes, is amended  
to read:

381.8531 Florida Center for Brain Tumor Research; public  
records exemption.—

(1) The following information held by the Florida Center  
for Brain Tumor Research before, on, or after July 1, 2011, is  
confidential and exempt from s. 119.07(1) and s. 24(a) ~~s. 24~~,  
Art. I of the State Constitution:

(a) Personal identifying information of a donor to the  
central repository for brain tumor biopsies or the brain tumor  
registry.

(b) Any information received from an individual from  
another state or nation or the Federal Government that is  
otherwise confidential or exempt pursuant to the laws of that  
state or nation or pursuant to federal law.

(2) Such information may be disclosed to a person engaged  
in bona fide research if that person agrees to:

(a) Submit to the Florida Center for Brain Tumor Research a  
research plan that has been approved by an institutional review  
board and that specifies the exact nature of the information  
requested, the intended use of the information, and the reason

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that the research could not practicably be conducted without the  
information;

(b) Sign a confidentiality agreement with the Florida  
Center for Brain Tumor Research;

(c) Maintain the confidentiality of the information  
received; and

(d) To the extent permitted by law and after the research  
has concluded, destroy any confidential information obtained.

~~(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, 2016, unless reviewed and saved from repeal  
through reenactment by the Legislature.~~

Section 2. This act shall take effect July 1, 2016.

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 334

INTRODUCER: Judiciary Committee and Senator Montford

SUBJECT: Severe Injuries Caused by Dogs

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Cochran</u>	<u>Yeatman</u>	<u>CA</u>	<b>Favorable</b>
3.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 334 revises procedures for use by animal control authorities and hearing officers in investigating an attack by a dog, classifying a dog as dangerous, and ordering the destruction of a dog. The process provided in law generally consists of an investigation, an initial determination of sufficient cause at a hearing, a final determination, and an appeal to the county court.

Under current law, a dog owner may present extenuating evidence in a hearing to determine whether to classify a dog as a dangerous dog as the result of a dog bite or attack. However, current law does not allow extenuating evidence if the bite or attack resulted in a severe injury to or death of a human. The bill authorizes a hearing officer to consider evidence in determining whether to destroy a dog that has caused severe injury to, but not the death of, a human.

Under current law, while the classification process is pending the dog may be impounded. This bill authorizes animal control authorities to immediately confiscate a dog if the dog has caused severe injury to a human.

Currently, after an initial determination of sufficient cause to classify a dog as dangerous, an animal control authority must provide notice to the owner. An owner may then challenge sufficient cause or proposed requirements through a hearing. After a hearing officer has issued a final determination, the owner may appeal the finding in county court.

This bill requires an animal control authority to include in the notice of sufficient cause the requirement that an owner obtain a certificate of registration for the dangerous dog. The owner may then challenge both the finding of sufficient cause and the proposed requirements. The bill also changes the court of jurisdiction for appeals from a county to a circuit court.

## II. Present Situation:

### Financial Liability of Owners of Dogs

Under Florida law, the owner of a dog is liable for any damage done by the dog to any person, domestic animal, or livestock.<sup>1</sup> In a criminal or civil action against a person for killing or injuring a dog, satisfactory proof that the dog was killing a domestic animal or livestock is a good defense.<sup>2</sup> An owner may be a person or an entity possessing, harboring, keeping, or having control or custody of a dog or a parent of a child under the age of 18 who has a dog.<sup>3</sup> A dog owner is liable for damages if his or her dog bites a person while the person is in public, or lawfully in a private location, including the property of the owner.<sup>4</sup> Liability attaches to the owner regardless of the former viciousness of the dog or the owner's knowledge of viciousness.

Florida provides two narrow limits or exceptions to liability. The liability of an owner for negligence is reduced by the percentage that the bitten person's negligence contributed to the biting incident.<sup>5</sup> Also, if the injury takes place on the property of the owner on which the owner has prominently displayed a "Bad Dog" sign, unless the injured person is under the age of 6 or can show that damages are proximately caused by a negligent act or omission of the owner, the owner is not liable.<sup>6</sup>

### Dangerous Dogs

#### *Definition of Dangerous Dog*

Florida law imposes specific requirements on the handling of dangerous dogs. A dangerous dog is defined as a dog that:

- Has aggressively bitten, attacked, endangered or inflicted severe injury on a person on public or private property;
- Has more than one time severely injured or killed a domestic animal while the dog is off the owner's property; or
- Has, when unprovoked, chased or approached a person in public in a menacing fashion, or with an attitude of attack.<sup>7</sup>

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<sup>1</sup> Section 767.01, F.S. The term "livestock" is defined as grazing animals, such as cattle, horses, sheep, swine, goats, other hoofed animals, ostriches, emus, and rheas raised for private use or commercial purposes. Section 585.01(13), F.S.

<sup>2</sup> Section 767.03, F.S.

<sup>3</sup> Section 767.11(7), F.S.

<sup>4</sup> Section 767.04, F.S.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Section 767.11(1), F.S., requires an appropriate authority to document a dog as a dangerous dog. Section 767.11(2), F.S., further defines what is meant by "unprovoked" as that the victim whom while acting peacefully and lawfully has been bitten or chased in a menacing fashion or attacked by a dog. A severe injury is any physical injury that results in broken bones, multiple bites, or disfiguring lacerations requiring sutures or reconstructive surgery. Section 767.11(3), F.S.

### *Process for Classification of Dogs as Dangerous*

An animal control officer or employee is typically the person who would investigate an incident involving a dog. In areas unserved by an animal control authority, the sheriff assumes the duties required of an animal control officer.<sup>8</sup>

Upon receiving a report of a potentially dangerous dog, the animal control authority must investigate the incident, interview the owner, and require a sworn affidavit from any person who seeks to have a dog classified as dangerous.<sup>9</sup> A dog that is being investigated as a dangerous dog that is not impounded with the animal control authority must be humanely and safely confined by the owner in a securely fenced or enclosed area pending the outcome of the investigation.<sup>10</sup>

The animal control authority may not declare a dog as dangerous if:

- The injured person was unlawfully on the property, or if lawfully on the property was tormenting, abusing, or assaulting the dog or its owner or a family member; or
- The dog was protecting a person within the immediate vicinity of the dog from an unjustified attack or assault.<sup>11</sup>

After investigating, the animal control authority must initially determine whether sufficient cause exists to classify the dog as dangerous and provide the owner an opportunity for a hearing before making a final determination. The animal control authority must provide written notice of sufficient cause to the owner by registered mail, certified hand delivery, or service in conformity with how service of process is made.

The owner has 7 calendar days from receiving the notice to file a written request for a hearing. The hearing officer must hold the hearing as soon as possible, no more than 21 calendar days, and no sooner than 5 days after receiving the request for hearing.<sup>12</sup>

Once a dog is classified as dangerous, the animal control authority must notify the owner by registered mail, certified hand delivery, or service. The owner has the right to appeal the decision in county court within 10 business days after receipt of the classification. The owner must confine the dog in a securely fenced or enclosed area pending the outcome of the appeal.<sup>13</sup>

Within 14 days after a dog is classified as dangerous or a classification is upheld by the county court, the owner must annually obtain from animal control a certificate of registration for the dog.<sup>14</sup> The owner must immediately notify animal control if his or her dangerous dog is loose or unconfined; has bitten a person or attacked an animal; is sold, given away, or dies; or is otherwise moved to another address.<sup>15</sup>

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<sup>8</sup> Section 767.11(5) and (6), F.S.

<sup>9</sup> Section 767.12(1)(a), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> Section 767.12(1)(b), F.S.

<sup>12</sup> Section 767.12(1)(c), F.S.

<sup>13</sup> Section 767.12(1)(d), F.S.

<sup>14</sup> Section 767.12(2), F.S.

<sup>15</sup> Section 767.12(3), F.S.

Any person who violates any of the restrictions on owning a dangerous dog commits a noncriminal infraction, punishable by a fine of up to \$500.<sup>16</sup>

### **Attack by Dangerous Dog or Any Attack Resulting in Severe Injury or Death**

Procedures different from the classification process above apply if an incident giving rise to an investigation was an attack by a dog that was previously classified as a dangerous dog or if the incident was the severe injury to or death of a human. Additionally, an attack by a dog that was previously classified as dangerous or an attack that causes a severe injury to or death of a human may result in the imposition of a criminal penalty on the dog's owner. In proceedings relating to a dog that has caused a severe injury to or death of a human, the statutes suggest that the mitigating factors used in the classification process above are immaterial.

#### ***Dangerous Dog; No Severe Injury to or Death of Human***

If a dangerous dog attacks or bites a person or domestic animal without provocation, the owner is guilty of a first degree misdemeanor, punishable by up to a year in jail and up to a \$1,000 fine.<sup>17</sup> Additionally, the animal control authority must immediately confiscate the dog, place the dog in quarantine if necessary, or impound and hold the dog for 10 business days after the owner is notified in writing, and thereafter destroy the dog, unless the owner has requested a hearing during the 10 day timeframe. While the dog is boarded, the owner must pay all costs and other fees to board the dog humanely and safely.<sup>18</sup>

#### ***Dangerous Dog; Severe Injury to or Death of Human***

If a dangerous dog causes severe injury to or death of a person, the owner commits a third degree felony, punishable by up to 5 years in prison and up to a \$5,000 fine.<sup>19</sup> In addition, the animal control authority must immediately confiscate the dog and follow the same process as is required for a dangerous dog that attacks without causing a severe injury to or death of a human.

#### ***Unclassified Dog; Severe Injury to or Death of Human***

If a dog that has not been declared dangerous causes severe injury or death to a person, if the owner had prior knowledge of the dog's dangerous propensities but demonstrated reckless disregard, the owner commits a second degree misdemeanor, punishable by up to 60 days in jail and up to a \$500 fine.<sup>20</sup> In addition, the animal control authority must immediately confiscate the dog and follow the same process as is required for a dangerous dog that attacks without causing a severe injury to or death of a human.

A dog may not be destroyed while an appeal is pending.<sup>21</sup>

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<sup>16</sup> Section 767.12(7), F.S.

<sup>17</sup> Sections 767.13(1), 775.082(4)(a), and 775.083(1)(d), F.S.

<sup>18</sup> Section 767.13(1), F.S.

<sup>19</sup> Sections 767.13(3), 775.082(3)(e), and 775.083(1)(c), F.S.

<sup>20</sup> Sections 767.13(2), 775.082(3)(b), and 775.083(1)(e), F.S.

<sup>21</sup> Section 767.13(4), F.S.



### **III. Effect of Proposed Changes:**

#### **Determination of Destroying a Dog**

Current law appears to require any dog that causes a severe injury to or death of a person to be destroyed, whether previously classified as a dangerous dog or not. This bill authorizes a hearing officer or a judge to consider the nature and circumstances of the injury and the likelihood of future harm if a severe injury to a person was caused by an unclassified dog. Owners are currently afforded a similar opportunity to present extenuating circumstances in classification hearings. The bill adds that dogs classified as dangerous due to an incident that causes severe injury to a human being may be destroyed in an expeditious and humane manner, depending on the circumstances.

The bill does not limit any local government from adopting an ordinance to address the safety and welfare concerns caused by attacks on persons or domestic animals.

#### **Investigation of a Dog Causing Injury but Unclassified as Dangerous**

Under current law, the process of determining whether a dog is dangerous begins with an investigation by an animal control officer. The bill specifies additional procedures and allows an animal control authority to take additional actions if the dog has caused severe injury to a human. Upon investigation, the animal control authority may immediately confiscate, quarantine, or impound the dog. However, the dog may not be destroyed until the case is over. If the dog is taken from the owner while the case is pending, the bill requires the owner to pay boarding costs and fees to humanely and safely keep the dog. If a hearing is not timely requested regarding the classification or proposed requirements, the determination by the animal control authority as to such issue shall become final.

Under current law, a person may appeal a final determination of an animal control authority to a county court. The bill replaces the court of jurisdiction for an appeal from the county court to the circuit court.

The bill takes effect upon becoming a law.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

#### **B. Public Records/Open Meetings Issues:**

None.

#### **C. Trust Funds Restrictions:**

None.

## D. Other Constitutional Issues:

**Due Process for Deprivation of Property**

At least one county court has ruled s. 767.13(2), F.S., unconstitutional based on a deprivation of property without due process.<sup>22</sup> The court noted that Florida law authorizes dog owners to establish at a classification hearing extenuating circumstances by an attack of a dog but does not afford owners of dogs who cause severe injury but have not been classified as dangerous the same opportunity.<sup>23</sup> The court specifically noted:

It truly does defy logic that the owner of a dog facing potential classification as “dangerous” may defend his or her pet by establishing that the dog had been provoked, or that the victim was unlawfully on the property, or that the dog was defending a family member, but no similar defense ... may be raised by a person trying to prevent *execution* of his or her pet.<sup>24</sup>

The court concludes that s. 767.13(2), F.S., is unconstitutional as it is arbitrary and oppressive, and therefore violative of substantive due process rights.<sup>25</sup>

This bill authorizes a court to consider mitigating circumstances in determining whether to destroy a dog, not previously classified as dangerous, which caused a severe injury to a human. The change appears to address the issue raised by the court.

**Non-Delegation Doctrine<sup>26</sup>**

A court has also found s. 767.13(2), F.S., gives an unconstitutional delegation of discretion to animal control authorities.<sup>27</sup> “The statute provides the animal control authorities with no guided authority to select the severity of consequences for a dog’s actions.”<sup>28</sup> It is well established in Florida law that authority granted to a government enforcement agency without clear, specific legislative guidance is unconstitutional.<sup>29</sup> The court held that the absence of guidance for an animal control authority’s application of ss. 767.12 or 767.13(2), F.S., results in an unconstitutional delegation of power to these authorities.<sup>30</sup>

<sup>22</sup> The Fourteenth Amendment of the U.S. Constitution provides that no person shall be deprived of life, liberty, or property without due process of law. Dogs are considered property. *Levine v. Knowles*, 197 So. 2d 329, 330 (Fla. 3d DCA 1967).

<sup>23</sup> *IN RE: “Cody,”* Case No. 1999-33984 COCI, pg. 5 (7th Cir. Volusia Cty. Ct. 2003).

<sup>24</sup> *Id.* at 5.

<sup>25</sup> *Id.* at pg. 4-5. See also, *Manatee County vs. Paul Gartenberg*, 2015-CA-003844, (Manatee Cty. Cir. Ct. 2015).

<sup>26</sup> FLA. CONST., art. II, s.3.

<sup>27</sup> *Manatee County*, at 8.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* See also, *Barrow v. Holland*, 125 So.2d 749, 752 (Fla. 1960); *Mahon v. Cnty. of Sarasota*, 177 So.2d 665, 667 (Fla. 1965); *Dickinson v. State*, 227 So.2d 36, 37 (Fla. 1969); *High Ridge Mgmt. Corp v. State*, 354 So.2d 377, 380 (Fla. 1977).

<sup>30</sup> *Manatee County*, at 9.

### **Jurisdiction of Circuit and County Court**

Article V of the State Constitution provides for the jurisdiction of courts as follows:

- County court jurisdiction is determined by the Legislature.<sup>31,32</sup>
- Jurisdiction of appeals and the direct review of administrative action resides in the circuit court when provided by the Legislature.<sup>33</sup>

The Legislature has generally granted circuit courts, rather than county courts, appellate jurisdiction over appeals from final administrative orders of local government code enforcement boards.

Therefore, changing the court having jurisdiction over an appeal of a decision by a county animal control authority to a circuit court, instead of a county court, is consistent with constitutional requirements.

### **V. Fiscal Impact Statement:**

#### **A. Tax/Fee Issues:**

None.

#### **B. Private Sector Impact:**

None.

#### **C. Government Sector Impact:**

Additional costs may result from lengthier hearings to determine whether a dog that causes a severe injury to a human should be destroyed because the bill authorizes dog owners to present mitigating evidence.

The Office of the State Courts Administrator (OSCA) does not expect additional judicial workload as a result of shifting cases from county court to circuit, or from the other provisions of the bill. OSCA notes that dangerous dog-related cases are primarily resolved by local hearing officers and not judges.

### **VI. Technical Deficiencies:**

None.

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<sup>31</sup> Article V, s. 6(b), Fla. Const., provides, in part “The county courts shall exercise the jurisdiction prescribed by general law.”

<sup>32</sup> “The county judge’s courts have no jurisdiction except that which is conferred upon them by the constitution and by statutory enactment, and such as may be incidentally necessary to the execution of these powers.” *In re Estate of Brown v. Brown*, 134 So.2d 290, 293 (Fla. 2d DCA 1961).

<sup>33</sup> Article V, s. 5(b), Fla. Const., provides, in part, “The circuit courts shall have original jurisdiction not vested in the county courts, and jurisdiction of appeals when provided by general law. They shall have the power of direct review of administrative action prescribed by general law.”

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 767.12, 767.13, 767.14, and 767.16.

This bill creates the following sections of the Florida Statutes: 767.135 and 767.136.

**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 Judiciary on December 1, 2015:**

- Changes the court of appeal having jurisdiction over a decision of an animal control authority from a county court to a circuit court;
- Authorizes an animal control authority to immediately confiscate a dog that caused a severe injury to a human;
- Prohibits animal control authorities from destroying a dog during the pendency of a case; and
- Requires an animal control authority to include in the written notice to the owner proposed requirements such as a certificate of registration.

**B. Amendments:**

None.

By the Committee on Judiciary; and Senator Montford

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A bill to be entitled

An act relating to severe injuries caused by dogs; providing a directive to the Division of Law Revision and Information; amending s. 767.12, F.S.; providing for discretionary quarantine or impoundment of dogs that cause severe injuries to humans; specifying responsibility for payment of boarding and other costs; revising the hearing and final order procedures, and related confinement requirements, for dangerous dog actions; specifying circumstances under which a dangerous dog that has caused severe injury to a human may be euthanized; deleting an exception; transferring, renumbering, and amending s. 767.13(2), F.S.; revising a requirement for automatic euthanasia for certain dogs that cause severe injury to humans; deleting a criminal penalty related to severe injury or death caused by a dog; creating s. 767.136, F.S.; re-creating an existing criminal penalty related to severe injury or death caused by a dog in a new statutory section; amending s. 767.14, F.S.; authorizing local governments to adopt certain ordinances pertaining to dogs that have bitten or attacked persons or domestic animals; amending s. 767.16, F.S.; exempting law enforcement dogs from regulation under Part II of ch. 767, F.S.; providing an effective date.

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

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Section 1. The Division of Law Revision and Information is directed to designate ss. 767.01-767.07, Florida Statutes, as part I of chapter 767, Florida Statutes, entitled "Damage by Dogs," and ss. 767.10-767.16, Florida Statutes, as part II of that chapter, entitled "Dangerous Dogs."

Section 2. Section 767.12, Florida Statutes, is amended to read:

767.12 Classification of dogs as dangerous; certification of registration; notice and hearing requirements; confinement of animal; exemption; appeals; unlawful acts.—

(1)~~(a)~~ An animal control authority shall investigate reported incidents involving any dog that may be dangerous and ~~shall~~, if possible, shall interview the owner and require a sworn affidavit from any person, including any animal control officer or enforcement officer, desiring to have a dog classified as dangerous.

(a) An animal that is the subject of a dangerous dog investigation because of severe injury to a human may be immediately confiscated by an animal control authority and placed in quarantine, if necessary, for the proper length of time, or may be impounded and held pending the outcome of the investigation and any related hearings or appeals regarding the determination of a dangerous dog classification and the assessment of any penalty under this section. If the dog is to be destroyed, the dog may not be destroyed while an appeal is pending. The owner is responsible for payment of all boarding costs and other fees as required to humanely and safely keep the animal pending any hearing or appeal.

(b) An ~~Any~~ animal that is the subject of a dangerous dog

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59 investigation ~~which, that~~ is not impounded with the animal  
 60 control authority, ~~must shall~~ be humanely and safely confined by  
 61 the owner in a securely fenced or enclosed area pending the  
 62 outcome of the investigation and resolution of any hearings or  
 63 appeals related to the dangerous dog classification and any  
 64 penalty imposed under this section. The address at which ~~of~~  
 65 ~~where~~ the animal resides shall be provided to the animal control  
 66 authority. ~~A~~ ~~no~~ dog that is the subject of a dangerous dog  
 67 investigation may not be relocated and its ~~or~~ ownership may not  
 68 be transferred pending the outcome of the ~~an~~ investigation and  
 69 ~~or~~ any hearings or appeals related to the determination of a  
 70 dangerous dog classification and any penalty imposed under this  
 71 section. If in the event that a dog is to be destroyed, the dog  
 72 may shall not be relocated and its ~~or~~ ownership may not be  
 73 transferred.

74 ~~(2)(b)~~ A dog may shall not be declared dangerous if:

75 (a) The threat, injury, or damage was sustained by a person  
 76 who, at the time, was unlawfully on the property or, who, while  
 77 lawfully on the property, was tormenting, abusing, or assaulting  
 78 the dog or its owner or a family member.

79 (b) ~~No dog may be declared dangerous if~~ The dog was  
 80 protecting or defending a human ~~being~~ within the immediate  
 81 vicinity of the dog from an unjustified attack or assault.

82 (3)(e) After the investigation, the animal control  
 83 authority shall make an initial determination as to whether  
 84 there is sufficient cause to classify the dog as dangerous and,  
 85 if sufficient cause is found, as to the proposed requirements  
 86 under subsection (5). The animal control authority shall afford  
 87 the owner an opportunity for a hearing prior to making a final

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88 determination regarding the classification or requirement. The  
 89 animal control authority shall provide written notification to  
 90 the owner of the sufficient cause finding and proposed  
 91 requirements, ~~to the owner~~, by registered mail, certified hand  
 92 delivery, or service in conformance with the provisions of  
 93 chapter 48 relating to service of process. The owner may file a  
 94 written request for a hearing regarding the dangerous dog  
 95 classification or the proposed requirements, or both, within 7  
 96 calendar days after ~~from the date of~~ receipt of the notification  
 97 of the sufficient cause finding and proposed requirements, ~~and~~,  
 98 If the owner requests a hearing, it requested, the hearing shall  
 99 be held as soon as possible, but not longer more than 21  
 100 calendar days and not no sooner than 5 days after receipt of the  
 101 request from the owner. If a hearing is not timely requested  
 102 regarding the classification or proposed requirements, the  
 103 determination by the animal control authority as to such issue  
 104 shall become final. Each applicable local governing authority  
 105 shall establish hearing procedures that conform to this  
 106 subsection paragraph.

107 ~~(4)(d)~~ ~~Once a dog is classified as a dangerous dog,~~ The  
 108 animal control authority shall provide to the owner a written  
 109 final order, ~~notification to the owner~~ by registered mail or,  
 110 certified hand delivery or service, after a dangerous dog  
 111 classification or requirement becomes final, after a hearing or  
 112 by operation of law pursuant to subsection (3), ~~and~~ The owner  
 113 ~~may file a written request for a hearing in the county court to~~  
 114 appeal the classification or requirement, or both, by filing a  
 115 written request for a hearing in the circuit court within 10  
 116 business days after receipt of the final order. The owner a

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117 ~~written determination of dangerous dog classification and must~~  
 118 ~~confine the dog in a securely fenced or enclosed area pending a~~  
 119 ~~resolution of the appeal. Each applicable local governing~~  
 120 ~~authority must establish appeal procedures that conform to this~~  
 121 ~~subsection paragraph.~~

122 (5) (a) Except as otherwise provided in paragraph (b), the  
 123 owner of a dog classified as a dangerous dog shall:

124 1. (2) Within 14 days after the issuance of the final order  
 125 classifying the dog as dangerous or the conclusion of any appeal  
 126 that affirms the final order a dog has been classified as  
 127 dangerous by the animal control authority or a dangerous dog  
 128 classification is upheld by the county court on appeal, the  
 129 owner of the dog must obtain a certificate of registration for  
 130 the dog from the animal control authority serving the area in  
 131 which he or she resides, and renew the certificate shall be  
 132 renewed annually. Animal control authorities are authorized to  
 133 issue such certificates of registration, and renewals thereof,  
 134 only to persons who are at least 18 years of age and who present  
 135 to the animal control authority sufficient evidence of:

136 a. (a) A current certificate of rabies vaccination for the  
 137 dog.

138 b. (b) A proper enclosure to confine a dangerous dog and the  
 139 posting of the premises with a clearly visible warning sign at  
 140 all entry points which ~~that~~ informs both children and adults of  
 141 the presence of a dangerous dog on the property.

142 c. (c) Permanent identification of the dog, such as a tattoo  
 143 on the inside thigh or electronic implantation.

144  
 145 The appropriate governmental unit may impose an annual fee for

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146 the issuance of certificates of registration required by this  
 147 section.

148 ~~2. (3)~~ The owner shall Immediately notify the appropriate  
 149 animal control authority when a dog that has been classified as  
 150 dangerous:

151 ~~a. (a)~~ Is loose or unconfined.

152 ~~b. (b)~~ Has bitten a human ~~being~~ or attacked another animal.

153 ~~c. (c)~~ Is sold, given away, or dies.

154 ~~d. (d)~~ Is moved to another address.

155  
 156 Prior to a dangerous dog being sold or given away, the owner  
 157 shall provide the name, address, and telephone number of the new  
 158 owner to the animal control authority. The new owner must comply  
 159 with all of the requirements of this section ~~act~~ and  
 160 implementing local ordinances, even if the animal is moved from  
 161 one local jurisdiction to another within the state. The animal  
 162 control officer must be notified by the owner of a dog  
 163 classified as dangerous that the dog is in his or her  
 164 jurisdiction.

165 ~~3. (4) Not~~ It is unlawful for the owner of a dangerous dog  
 166 ~~to~~ permit the dog to be outside a proper enclosure unless the  
 167 dog is muzzled and restrained by a substantial chain or leash  
 168 and under control of a competent person. The muzzle must be made  
 169 in a manner that will not cause injury to the dog or interfere  
 170 with its vision or respiration but will prevent it from biting a  
 171 ~~any~~ person or animal. The owner may exercise the dog in a  
 172 securely fenced or enclosed area that does not have a top,  
 173 without a muzzle or leash, if the dog remains within his or her  
 174 sight and only members of the immediate household or persons 18

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175 years of age or older are allowed in the enclosure when the dog  
176 is present. When being transported, such dogs must be safely and  
177 securely restrained within a vehicle.

178 (b) If a dog is classified as a dangerous dog as the result  
179 of an incident that causes severe injury to a human being, based  
180 upon the nature and circumstances of the injury and the  
181 likelihood of a future threat to the public safety, health, and  
182 welfare, the dog may be destroyed in an expeditious and humane  
183 manner.

184 ~~(6)(5)~~ Hunting dogs are exempt from ~~the provisions of this~~  
185 ~~section~~ and when engaged in any legal hunt or training  
186 procedure. Dogs engaged in training or exhibiting in legal  
187 sports such as obedience trials, conformation shows, field  
188 trials, hunting/retrieving trials, and herding trials are exempt  
189 from ~~the provisions of this section~~ and when engaged in any  
190 legal procedures. However, such dogs at all other times in all  
191 other respects shall be subject to this and local laws. Dogs  
192 that have been classified as dangerous may ~~shall~~ not be used for  
193 hunting purposes.

194 ~~(6) This section does not apply to dogs used by law~~  
195 ~~enforcement officials for law enforcement work.~~

196 (7) A Any person who violates ~~any provision of~~ this section  
197 ~~commits is guilty of~~ a noncriminal infraction, punishable by a  
198 fine not to exceed ~~exceeding~~ \$500.

199 Section 3. Subsection (2) of section 767.13, Florida  
200 Statutes, is transferred, renumbered as section 767.135, Florida  
201 Statutes, and amended, to read:

202 767.135 ~~767.13~~ Attack or bite by unclassified ~~dangerous~~ dog  
203 that causes death; penalties; confiscation; destruction.-

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204 ~~(2)~~ If a dog that has not been declared dangerous attacks  
205 and causes ~~the severe injury to or~~ death of a ~~any~~ human, the dog  
206 shall be immediately confiscated by an animal control authority,  
207 placed in quarantine, if necessary, for the proper length of  
208 time, or held for 10 business days after the owner is given  
209 written notification under s. 767.12, and thereafter destroyed  
210 in an expeditious and humane manner. This 10-day time period  
211 shall allow the owner to request a hearing under s. 767.12. If  
212 the owner files a written appeal under s. 767.12 or this  
213 section, the dog must be held and may not be destroyed while the  
214 appeal is pending. The owner is ~~shall be~~ responsible for payment  
215 of all boarding costs and other fees as may be required to  
216 humanely and safely keep the animal during any appeal procedure.  
217 ~~In addition, if the owner of the dog had prior knowledge of the~~  
218 ~~dog's dangerous propensities, yet demonstrated a reckless~~  
219 ~~disregard for such propensities under the circumstances, the~~  
220 ~~owner of the dog is guilty of a misdemeanor of the second~~  
221 ~~degree, punishable as provided in s. 775.082 or s. 775.083.~~

222 Section 4. Section 767.136, Florida Statutes, is created to  
223 read:

224 767.136 Attack or bite by unclassified dog that causes  
225 severe injury or death; penalties.-

226 (1) If a dog that has not been declared dangerous attacks  
227 and causes severe injury to, or the death of, a human, and the  
228 owner of the dog had knowledge of the dog's dangerous  
229 propensities but demonstrated a reckless disregard for those  
230 propensities under the circumstances, he or she commits a  
231 misdemeanor of the second degree, punishable as provided in s.  
232 775.082 or s. 775.083.



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233 (2) If the dog attacks or bites a person who is engaged in  
 234 or attempting to engage in a criminal activity at the time of  
 235 the attack, the owner of the dog is not criminally liable under  
 236 this section.

237 Section 5. Section 767.14, Florida Statutes, is amended to  
 238 read:

239 767.14 Additional local restrictions authorized. ~~Nothing in~~  
 240 This act does not shall limit any local government from adopting  
 241 an ordinance to address the safety and welfare concerns caused  
 242 by attacks on persons or domestic animals, placing further  
 243 restrictions or additional requirements on owners of ~~dangerous~~  
 244 dogs that have bitten or attacked persons or domestic animals,  
 245 or developing procedures and criteria for the implementation of  
 246 this act, provided that no such regulation is specific to breed  
 247 and that the provisions of this act are not lessened by such  
 248 additional regulations or requirements. This section does shall  
 249 not apply to any local ordinance adopted prior to October 1,  
 250 1990.

251 Section 6. Section 767.16, Florida Statutes, is amended to  
 252 read:

253 767.16 ~~Bite by a~~ Police or service dog; exemption ~~from~~  
 254 ~~quarantine.~~

255 (1) Any dog that is owned, or the service of which is  
 256 employed, by a law enforcement agency, is exempt from this part.

257 (2) ~~or~~ Any dog that is used as a service dog for blind,  
 258 hearing impaired, or disabled persons, ~~and~~ that bites another  
 259 animal or a human is exempt from any quarantine requirement  
 260 following such bite if the dog has a current rabies vaccination  
 261 that was administered by a licensed veterinarian.

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262 Section 7. This act shall take effect upon becoming a law.

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## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:  
Agriculture, *Chair*  
Appropriations Subcommittee on Education, *Vice Chair*  
Appropriations  
Banking and Insurance  
Education Pre-K - 12  
Reapportionment  
Rules

SENATOR BILL MONTFORD  
3rd District

January 12, 2016

Senator David Simmons, Chair  
Senate Rules Committee  
400 Senate Office Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chair Simmons:

I respectfully request that CS/SB 334 be scheduled for a hearing before the Senate Rules Committee. CS/SB 334 would prevent a dog from being destroyed while an appeal is pending.

Your assistance and favorable consideration of my request is greatly appreciated

Sincerely,

A handwritten signature in cursive script that reads "Bill Montford".

William "Bill" Montford  
State Senator, District 3

cc: John Phelps, Staff Director

BJM/mam

REPLY TO:

- 214 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5003
- 20 East Washington Street, Suite D, Quincy, Florida 32351 (850) 627-9100

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

334

Bill Number (if applicable)

Amendment Barcode (if applicable)

1/20/16  
Meeting Date

Topic Dangerous Dogs

Name Carl Roth

Job Title

Address 215 S. Monroe St Suite 815  
Tallahassee FL 32301  
Street City State Zip

Phone 850/591-7094

Email cr Roth@deanmead.com

Speaking:  For  Against  Information

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

Representing Manatee County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-20-16

Meeting Date

334

Bill Number (if applicable)

Topic DANGEROUS DOGS

Amendment Barcode (if applicable)

Name LAURA YOUMANS

Job Title LEGISLATIVE ADVOCATE

Address 100 N. MONROE ST

Phone 294-1838

Street

TAL

City

FL

State

32301

Zip

Email LYOUMANS@FLCOUNTIES.

COM

Speaking:  For  Against  Information

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

Representing FLORIDA ASSOCIATION OF COUNTIES

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/20/16

Meeting Date

334

Bill Number (if applicable)

Topic Severe Injuries Caused by Dogs

Amendment Barcode (if applicable)

Name Emily Buckley

Job Title Gov't Affairs Manager

Address 215 S. Monroe St

Phone 850 425 7807

Tallahassee FL 32301

Street

City

State

Zip

Email ebuckley@jonswalker.com

Speaking:  For  Against  Information

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

Representing Palm Beach County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 812

INTRODUCER: Senator Diaz de la Portilla

SUBJECT: Reciprocal Insurers

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Little</u>	<u>McKay</u>	<u>CM</u>	<b>Favorable</b>
3.	<u>Billmeier</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 812 creates an alternative process for a domestic reciprocal insurer to distribute unassigned funds, such as unused premiums, savings, and credits, to policyholders. The process created by the bill differs from current law primarily by not requiring the reciprocal insurer to create subscriber accounts to make distributions to policyholders. Distributions using this method may not exceed 50 percent of the insurer's net income from the previous calendar year and may be up to 10 percent of the insurer's surplus.

**II. Present Situation:**

A reciprocal insurance company is an unincorporated group of subscribers who exchange risk, with each member serving both as the insurer and insured.<sup>1</sup> The subscribers operate through an attorney in fact to provide reciprocal insurance among themselves.<sup>2</sup> Reciprocal insurers may transact any line of insurance other than life or title.<sup>3</sup> Reciprocal insurers are not common and primarily write motor vehicle insurance.<sup>4</sup> Two of the larger reciprocal insurance companies are Farmers Insurance and United Services Automobile Association (USAA). In Florida, authorized reciprocal insurers are governed by the provisions of ch. 629, F.S.

A domestic reciprocal insurer may be organized by 25 or more persons domiciled in Florida, provided the reciprocal is formed in accordance with the requirements of ch. 629, F.S., and is

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<sup>1</sup> Robert W. Klein, *A Regulator's Introduction to the Insurance Industry*, 5-4 (National Association of Insurance Commissioners 1999) available at [http://www.naic.org/documents/prod\\_serv\\_marketreg\\_rii\\_zb.pdf](http://www.naic.org/documents/prod_serv_marketreg_rii_zb.pdf) (last visited Jan. 5, 2016).

<sup>2</sup> Section 629.021, F.S.

<sup>3</sup> Section 629.041, F.S.

<sup>4</sup> See *supra* note 1, at 61.

approved by the Office of Insurance Regulation.<sup>5</sup> A reciprocal insurer is required to maintain surplus funds of not less than \$250,000.<sup>6</sup> The reciprocal insurer must also have a subscribers' advisory committee with powers set forth in the subscribers' agreement. These powers must include supervising the finances of the insurer, supervising the insurer's operations to assure conformity with the subscribers' agreement and power of attorney, and procuring the audit of the accounts and records of the insurer and the attorney in fact.<sup>7</sup>

Section 629.271, F.S., governs the distribution of savings from reciprocal insurers to their subscribers. Reciprocal insurers may distribute to subscribers unused premiums, savings, or credits accruing to their subscriber savings accounts. Distributions may not unfairly discriminate between classes of risks, or policies, or between subscribers, but may vary as to classes of subscribers based upon the experience of such subscriber classes.

The Internal Revenue Code provides that a reciprocal insurer may claim a deduction from taxable income for amounts that are added to subscriber savings accounts.<sup>8</sup> For an insurer to claim the deduction, the amounts in subscriber savings accounts must be immediately payable to the subscriber at the end of the taxable year if the subscriber terminates his or her account. The credits to the subscriber accounts are considered a paid or declared dividend by the subscriber.

### **III. Effect of Proposed Changes:**

SB 812 amends s. 629.271, F.S., to create an alternative process for a domestic reciprocal insurer to distribute to policyholders unassigned funds such as unused premiums, savings, and credits. The process created by the bill differs from current law primarily by not requiring the reciprocal insurer to create subscriber accounts to make distributions to policyholders. Only domestic reciprocal insurers may use the distribution process created by the bill.

The new policyholder distribution process created by the bill instead creates limits on the total amount of distributions if subscriber accounts are not used and also subjects such distributions to the Office of Insurance Regulation for approval. The distribution may not exceed 50 percent of the insurer's net income from the previous calendar year and may be up to 10 percent of the insurer's surplus. As under current law for distributions using subscriber accounts, distributions using this method may not unfairly discriminate between classes of risks, policies, or subscribers, but may vary as to classes of subscribers based upon the experience of such subscriber classes.

The effective date of the bill is July 1, 2016.

### **IV. Constitutional Issues:**

#### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>5</sup> Section 629.081, F.S.

<sup>6</sup> Section 629.071, F.S.

<sup>7</sup> Section 629.201, F.S.

<sup>8</sup> 26 U.S.C. 832(f).

**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:**

A domestic reciprocal insurer may save administrative costs by using the distribution method created by this bill rather than establishing and maintaining subscriber savings accounts. The method created by this bill will create savings for those domestic reciprocal insurers for whom the federal tax deduction for monies placed in subscriber accounts is exceeded by the administrative savings of using the procedure created by the bill.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 629.271 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.

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

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By Senator Diaz de la Portilla

40-01089-16

2016812\_\_

1                           A bill to be entitled  
2       An act relating to reciprocal insurers; amending s.  
3       629.271, F.S.; authorizing domestic reciprocal  
4       insurers to pay a portion of unassigned funds to their  
5       subscribers; providing limitations; providing an  
6       effective date.

7  
8   Be It Enacted by the Legislature of the State of Florida:

9

10       Section 1. Section 629.271, Florida Statutes, is amended to  
11       read:

12       629.271 Distribution of savings.—

13       (1) A reciprocal insurer may ~~from time to time~~ return to  
14       its subscribers any unused premiums, savings, or credits  
15       accruing to their accounts. ~~Any~~ Such distribution may ~~shall~~ not  
16       unfairly discriminate between classes of risks, or policies, or  
17       between subscribers, but ~~such distribution~~ may vary as to  
18       classes of subscribers based on ~~upon~~ the experience of the ~~such~~  
19       classes.

20       (2) In addition to the option provided in subsection (1), a  
21       domestic reciprocal insurer may, upon the prior written approval  
22       of the office, pay to its subscribers a portion of unassigned  
23       funds of up to 10 percent of surplus, with distribution limited  
24       to 50 percent of net income from the previous calendar year.  
25       Such distribution may not unfairly discriminate between classes  
26       of risks or policies, or between subscribers, but may vary as to  
27       classes of subscribers based on the experience of the classes.

28       Section 2. This act shall take effect July 1, 2016.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓  
COMMITTEES:  
Judiciary, *Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Community Affairs  
Finance and Tax  
Regulated Industries  
Rules

SENATOR MIGUEL DIAZ de la PORTILLA  
40th District

January 14, 2016

The Honorable David Simmons  
Chair of Senate Rules Committee

Via email

Dear Chair Simmons:

Please agenda SB 812, Reciprocal Insurers, at your next available opportunity.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla  
State Senator, District 40

Cc: Mr. John Phelps, Staff Director  
Miss Cissy DuBose, Administrative Assistant

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 406 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

ANDY GARDINER  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

812  
Bill Number (if applicable) \_\_\_\_\_

Topic Reciprocal Injury

Amendment Barcode (if applicable) \_\_\_\_\_

Name Sean Stafford

Job Title \_\_\_\_\_

Address 118 - E Park Ave

Phone 727-5000

City

State

Zip

32701

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Star & Shield Insurance

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 972

INTRODUCER: Senator Lee

SUBJECT: Family Law

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Brown</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SB 972 establishes the Collaborative Law Process Act as the framework for a collaborative law process to facilitate the out-of-court settlement of dissolution of marriage and paternity cases. The process is a type of alternative dispute resolution, which employs collaborative attorneys, mental health professionals, and financial specialists to help the parties reach a consensus. The terms of the process are contained in a collaborative law participation agreement between the parties.

Under the bill, issues that may be resolved through the collaborative process, include but are not limited to:

- Alimony and child support;
- Marital property distribution;
- Child custody and visitation;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

The bill also defines under what circumstances the collaborative law process begins and ends. The collaborative law process begins when the parties enter into a collaborative law participation agreement. Under the bill, parties may enter into a collaborative law participation agreement before filing a petition with the court or while an action is pending. The bill also allows for the partial resolution of issues collaboratively, with the remainder to be resolved through the traditional adversarial process.

Under the bill, collaborative law communications, which are communications made as part of the collaborative process, are generally confidential and privileged from disclosure, not subject to discovery in a subsequent court proceeding, and inadmissible as evidence. However, the bill provides exceptions to the privilege.

The effect of the bill is contingent upon the adoption of implementing rules by the Florida Supreme Court.

## II. Present Situation:

### Collaborative Law Process

The collaborative law process, a type of alternative dispute resolution, is designed to facilitate the out-of-court settlement of dissolution of marriage cases. The process employs collaborative attorneys, mental health professionals, and financial specialists to help the parties reach consensus. The parties, attorneys, and team of professionals negotiate various terms, such as the distribution of property, alimony, and child visitation and support. A collaborative law participation agreement provides the structure for how the parties will proceed.

Once the parties reach agreement on a disputed matter, they sign and file with the court the marital settlement agreement.

The purported benefits of a collaborative divorce are that the process hastens resolution of disputed issues and that the total expenses of the parties are less than the parties would incur in traditional litigation. Although a comparison of costs is not available, the International Academy of Collaborative Professionals (IACP) studied 933 cases in which the parties agreed to the collaborative process.<sup>1</sup>

The IACP found that:

- Eighty percent of all collaborative cases resolved within 1 year;
- Eighty six percent of the cases studied were resolved with a formal agreement and no court appearances; and
- The average fees for all professionals totaled \$24,185.<sup>2</sup>

Some jurisdictions disfavor the collaborative process for cases involving domestic violence, substance abuse, or severe mental illness.<sup>3</sup>

### History of Collaborative Law Movement

The collaborative law movement, starting in 1990, began to significantly expand after 2000.<sup>4</sup> Known as an interdisciplinary dispute resolution process, collaborative law envisions a collaborative team of professionals assembled to assist the divorcing couple in negotiating resolution of their issues.

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<sup>1</sup> The International Academy of Collaborative Professionals has more than 4,000 professionals as members from 24 countries. John Lande, *The Revolution in Family Law Dispute Resolution*, 24 J. AM. ACAD. MATRIM. LAW. 411, 430 (2012).

<sup>2</sup> Glen L. Rabenn, Marc R. Bertone, and Paul J. Toohey, *Collaborative Divorce – A Follow Up*, 55-APR Orange County Law 32, 36 (Apr. 2013).

<sup>3</sup> *Id.* at 36.

<sup>4</sup> John Lande and Forrest S. Mosten, *Family Lawyering: Past, Present, and Future*, 51 FAM. CT. REV. 20, 22 (Jan. 2013).

In the United States, at least 30,000 attorneys and family professionals have been trained in the collaborative process.<sup>5</sup>

### **Uniform Collaborative Law Act of 2009**

In the United States, the Uniform Law Commission established the Uniform Collaborative Law Act of 2009 (amended in 2010). According to the ULC:

Collaborative Law is a voluntary dispute-resolution process in which clients agree that, with respect to a particular matter in dispute, their named counsel will represent them solely for purposes of negotiation, and, if the matter is not settled out of court that new counsel will be retained for purposes of litigation. The parties and their lawyers work together to find an equitable resolution of a dispute, retaining experts as necessary. The process is intended to promote full and open disclosure and, as is the case in mediation, information disclosed ... is privileged against use in any subsequent litigation. ... Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethics opinions. The Uniform Collaborative Law Rules/Act (UCLR/A) is intended to create a uniform national framework for the use of Collaborative Law; one which includes important consumer protections and enforceable privilege provisions.<sup>6</sup>

Thirteen states, Alabama, Arizona, District of Columbia, Hawaii, Maryland, Michigan, Montana, Nevada, New Jersey, Ohio, Texas, Utah, and Washington have enacted the Uniform Collaborative Law Act.<sup>7</sup> Nine states, including Florida, address the collaborative process through local court rules.<sup>8</sup>

An essential component of the Uniform Collaborative Law Act (UCLA) is the mandatory disqualification of the collaborative attorneys if the parties fail to reach an agreement or intend to engage in contested litigation. Once both collaborative lawyers are disqualified from further representation, the parties must start again with new counsel. “The disqualification provision thus creates incentives for parties and Collaborative lawyers to settle.”<sup>9</sup>

At least three sections of the American Bar Association have approved the UCLA—the Section of Dispute Resolution, the Section of Individual Right & Responsibilities, and the Family Law Section.<sup>10</sup> However, in 2011 when the ULC submitted the UCLA to the American Bar Association’s House of Delegates for approval, it was rejected. The disqualification provision appears to have been the primary basis for the ABA’s decision. Those within the ABA who

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<sup>5</sup> Lande, *supra* note 1, at 430.

<sup>6</sup> Uniform Law Commission, *Uniform Collaborative Law Rules/Act Short Summary* (on file with the Senate Judiciary Committee).

<sup>7</sup> *Legislative Fact Sheet*, <http://www.uniformlaws.org/Act.aspx?title=Collaborative%20Law%20Act> (last visited Jan. 5, 2016).

<sup>8</sup> Alabama, California, Florida, Indiana, Kansas, Louisiana, Maryland, Minnesota, and Wisconsin. Email correspondence with Meghan McCann, National Conference of State Legislatures (Feb. 19, 2015). At least four judicial circuits in Florida have adopted local court rules on collaborative law. These are the 9th, 11th, 13th, and 18th judicial circuits. Other circuits may however recognize the collaborative process in the absence of issuing a formal administrative order.

<sup>9</sup> Lande, *supra* note 4 at 429.

<sup>10</sup> New Jersey Law Revision Commission, *Final Report Relating to New Jersey Family Collaborative Law Act*, 5 (Jul. 23, 2013), <http://www.lawrev.state.nj.us/ucla/njfclaFR0723131500.pdf>.

objected to the UCLA have stated that the disqualification provision unfairly enables one party to disqualify the other party's attorney simply by terminating the collaborative process or initiating litigation.<sup>11</sup>

### **Florida Court System**

In the 1990s, the court system began to move towards establishing family law divisions and support services to accommodate families in conflict. In 2001, the Florida Supreme Court adopted the Model Family Court Initiative. This action by the Court combined all family cases, including dependency, adoption, paternity, dissolution of marriage, and child custody into the jurisdiction of a specially designated family court. The Court noted the need for these cases to have a "system that provide[s] nonadversarial alternatives and flexibility of alternatives; a system that preserve[s] rather than destroy[s] family relationships; ... and a system that facilitate[s] the process chosen by the parties."<sup>12</sup> The court also noted the need to fully staff a mediation program, anticipating that mediation can resolve a high percentage of disputes.<sup>13</sup>

In 2012, the Florida Family Law Rules committee proposed to the Florida Supreme Court a new rule 12.745, to be known as the Collaborative Process Rule.<sup>14</sup> In declining to adopt the rule, the court explained:

Given the possibility of legislative action addressing the use of the collaborative law process and the fact that certain foundations, such as training or certification of attorneys for participation in the process, have not yet been laid, we conclude that the adoption of a court rule on the subject at this time would be premature.<sup>15</sup>

Although the Florida Supreme Court has not adopted rules on collaborative law, at least four judicial circuits in Florida have adopted local court rules on collaborative law through an administrative order. These are the 9th, 11th, 13th, and 18th judicial circuits. Each of the administrative orders includes the requirement that an attorney disqualify himself or herself if the collaborative process is unsuccessful. Other circuits have recognized the collaborative process in the absence of issuing a formal administrative order.

### **III. Effect of Proposed Changes:**

#### **Collaborative Law Process Act**

This bill establishes the Collaborative Law Process Act as a basic framework for the collaborative law process, for use in dissolution of marriage and paternity cases. The collaborative law process, a type of alternative dispute resolution, is designed to facilitate the out-of-court settlement of dissolution of marriage cases. The process employs collaborative

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<sup>11</sup> Andrew J. Meyer, *The Uniform Collaborative Law Act: Statutory Framework and the Struggle for Approval by the American Bar Association*, 4 Y.B. ON ARB. & MEDIATION 212, 216 (2012).

<sup>12</sup> *In re Report of Family Court Steering Committee*, 794 So. 2d 518, 523 (Fla. 2001).

<sup>13</sup> *Id.* at 520.

<sup>14</sup> *In Re: Amendments to the Florida Family Law Rules of Procedure*, 84 So. 3d 257 (March 15, 2012).

<sup>15</sup> *Id.*



attorneys, mental health professionals, and financial specialists to help the parties reach agreement.

By placing the Act in law, the bill offers another kind of alternative dispute resolution, besides mediation, to parties involved in dissolution of marriage and parentage cases. However, unlike mediation, which may be court-ordered, participation in the collaborative process is voluntary.<sup>16</sup>

The authority for the collaborative process provided in the bill is limited to issues governed by chapter 61, F.S. (Dissolution of Marriage; Support; Time-sharing) and chapter 742, F.S. (Determination of Parentage). More specifically, the following issues are proper issues for resolution through the collaborative law process:

- Marriage, divorce, dissolution, annulment, and marital property distribution;
- Child custody, visitation, parenting plan, and parenting time;
- Alimony, maintenance, child support;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

### **Beginning and End of Collaborative Process**

The bill defines the circumstances in which a collaborative law case begins and ends. The collaborative law process begins when the parties enter into a collaborative law participation agreement. The agreement governs the terms of how the process will proceed. Parties may enter into the agreement before or after petitioning a court for the dissolution of marriage or determination of parentage.

The collaborative law process concludes when issues are resolved and the parties sign the agreement. But the bill also allows for the collaborative law process to partially resolve the issues. If partially resolved, parties agree to reserve remaining issues for the judicial process.

Alternatively, a collaborative law process may terminate before any issues are resolved. The collaborative law process terminates when a party:

- Provides notice to the other parties that the process has ended;
- Begins a court proceeding without consent of the other party, or asks the court to place the proceeding on a court calendar;
- Initiates a pleading, motion, order to show cause, or requests a conference with a court; or
- Discharges a collaborative attorney or a collaborative attorney withdraws as counsel.

The bill allows the process to continue if a party hires a successor collaborative attorney to replace his or her previous attorney. The unrepresented party must hire, and identify in the agreement, a successor collaborative attorney within 30 days after providing notice that the party is unrepresented.

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<sup>16</sup> Section 61.183(1), F.S., provides, in part: “In any proceeding in which the issues of parental responsibility, primary residence, access to, visitation with, or support of a child are contested, the court may refer the parties to mediation . . . .”

In allowing parties to begin the process before or after filing a petition, partially resolve issues, and hire successor collaborative attorneys, parties can customize the process as they see fit.

### **Mandatory Disqualification**

This bill does not provide for mandatory disqualification of the collaborative attorneys if the process does not result in an agreement. Therefore, the primary incentive to encourage resolution is not in the bill. Although the bill conforms to the Uniform Collaborative Law Act in other respects, the failure to include mandatory disqualification is a significant departure from the UCLA. However, the Supreme Court could include the disqualification requirement in its implementing rules.

The bill also departs from local court rules on collaborative divorce. All circuits in which courts have adopted local rules on the collaborative process require counsel to withdraw from further representation if the process breaks down and an agreement is not reached.<sup>17</sup>

### **Confidentiality and Privilege**

The bill generally provides that collaborative law communications are confidential and privileged from disclosure. As such, communications made during the collaborative law process are not subject to discovery or admissible as evidence.

The bill identifies a number of exceptions to the privilege. The privilege does not apply to communications if:

- The parties agree to waive privilege.
- A person makes a prejudicial statement during the collaborative law process. In this instance, preclusion applies to enable the person prejudiced to respond to the statement.
- A participant makes statements available to the public under the state's public records law or made during a meeting of the process that is required to be open to the public.
- A participant makes a threat, or describes a plan to inflict bodily injury.
- A participant makes a statement that is intentionally used to plan, commit, attempt to commit, or conceal a crime.
- A person seeks to introduce the statement in a claim or complaint of professional misconduct or malpractice arising from the collaborative law process.
- A person seeks to introduce the statement to prove or disprove abuse, neglect, abandonment, or exploitation of children or adults unless the Department of Children and Families is involved.
- A court finds that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in confidentiality, and the communication is sought or offered in a felony proceeding or a proceeding involving contract disputes.

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<sup>17</sup> Order Authorizing Collaborative Process Dispute Resolution Model in the Ninth Judicial Circuit of Florida, Fla. Admin. Order No. 2008-06 (Mar. 28, 2008); *In re: Authorizing the Collaborative Process Dispute Resolution Model in the Eleventh Judicial Circuit of Florida*, Fla. Admin Order No. 07-08 (Oct. 2007); Collaborative Family Law Practice, Fla. Admin. Order No. S-2012-041 (Jul. 31, 2012); *In re: Domestic Relations—Collaborative Conflict Resolution in Dissolution of Marriage Cases*, Fla. Admin. Order No. 14-04 Amended (Feb. 23, 2014) (on file with the Senate Judiciary Committee).

Other than the discrete categories of exceptions to the privilege, the bill provides a broad level of confidentiality and protection from disclosure to collaborative law communications. Additionally, disclosure is limited to only the part of the communication needed for the purpose of the disclosure. Parties will be encouraged to communicate openly during the collaborative law process.

#### **Rule Adoption by the Florida Supreme Court**

Although the bill becomes law July 1, 2016, its provisions do not take effect until 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

This bill does not contain a mandate because the bill does not affect cities or counties.

##### **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:**

Although some family law attorneys already practice collaborative law in the state, the bill could theoretically expand the use of collaborative law as an alternative to traditional litigation in dissolution of marriage cases. To the extent that collaborative law reduces costs of litigation, parties undergoing divorce could benefit financially from electing to proceed in a collaborative manner.

##### **C. Government Sector Impact:**

The Office of the State Courts Administrator (OSCA) indicates that the bill could potentially decrease judicial workload due to fewer filings, hearings, and contested issues. Some judicial workload, however, could result from *in camera* hearings regarding privilege determinations. Due to the unavailability of data needed to quantifiably establish the impact on judicial or court workload, fiscal impact is indeterminate.<sup>18</sup>

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<sup>18</sup> Office of the State Courts Administrator, *2016 Judicial Impact Statement* (Dec. 21, 2015).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 61.55, 61.56, 61.57, and 61.58.

**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 Lee

24-00824A-16

2016972\_\_

1 A bill to be entitled  
 2 An act relating to family law; providing a short  
 3 title; providing a directive to the Division of Law  
 4 Revision and Information; providing legislative  
 5 findings; creating s. 61.55, F.S.; providing a  
 6 purpose; creating s. 61.56, F.S.; defining terms;  
 7 creating s. 61.57, F.S.; providing that a  
 8 collaborative law process begins when the parties  
 9 enter into a collaborative law participation  
 10 agreement; prohibiting a tribunal from ordering a  
 11 party to participate in a collaborative law process  
 12 over the party's objection; providing the conditions  
 13 under which a collaborative law process concludes,  
 14 terminates, or continues; creating s. 61.58, F.S.;  
 15 providing for confidentiality of communications made  
 16 during the collaborative law process; providing  
 17 exceptions; providing that specified provisions do not  
 18 take effect until 30 days after the Florida Supreme  
 19 Court adopts rules of procedure and professional  
 20 responsibility; providing a contingent effective date;  
 21 providing effective dates.

22  
 23 Be It Enacted by the Legislature of the State of Florida:

24  
 25 Section 1. This act may be cited as the "Collaborative Law  
 26 Process Act."

27 Section 2. The Division of Law Revision and Information is  
 28 directed to create part III of chapter 61, Florida Statutes,  
 29 consisting of ss. 61.55-61.58, Florida Statutes, to be entitled

Page 1 of 10

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

24-00824A-16

2016972\_\_

30 the "Collaborative Law Process Act."  
 31 Section 3. The Legislature finds and declares that the  
 32 purpose of part III of chapter 61, Florida Statutes, is to:  
 33 (1) Create a uniform system of practice for a collaborative  
 34 law process for proceedings under chapters 61 and 742, Florida  
 35 Statutes.  
 36 (2) Encourage the peaceful resolution of disputes and the  
 37 early settlement of pending litigation through voluntary  
 38 settlement procedures.  
 39 (3) Preserve the working relationship between parties to a  
 40 dispute through a nonadversarial method that reduces the  
 41 emotional and financial toll of litigation.  
 42 Section 4. Section 61.55, Florida Statutes, is created to  
 43 read:  
 44 61.55 Purpose.—The purpose of this part is to create a  
 45 uniform system of practice for the collaborative law process in  
 46 this state. It is the policy of this state to encourage the  
 47 peaceful resolution of disputes and the early resolution of  
 48 pending litigation through a voluntary settlement process. The  
 49 collaborative law process is a unique nonadversarial process  
 50 that preserves a working relationship between the parties and  
 51 reduces the emotional and financial toll of litigation.  
 52 Section 5. Section 61.56, Florida Statutes, is created to  
 53 read:  
 54 61.56 Definitions.—As used in this part, the term:  
 55 (1) "Collaborative attorney" means an attorney who  
 56 represents a party in a collaborative law process.  
 57 (2) "Collaborative law communication" means an oral or  
 58 written statement, including a statement made in a record, or

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59 nonverbal conduct that:

60 (a) Is made in the conduct of or in the course of  
 61 participating in, continuing, or reconvening for a collaborative  
 62 law process; and

63 (b) Occurs after the parties sign a collaborative law  
 64 participation agreement and before the collaborative law process  
 65 is concluded or terminated.

66 (3) "Collaborative law participation agreement" means an  
 67 agreement between persons to participate in a collaborative law  
 68 process.

69 (4) "Collaborative law process" means a process intended to  
 70 resolve a collaborative matter without intervention by a  
 71 tribunal and in which persons sign a collaborative law  
 72 participation agreement and are represented by collaborative  
 73 attorneys.

74 (5) "Collaborative matter" means a dispute, a transaction,  
 75 a claim, a problem, or an issue for resolution, including a  
 76 dispute, a claim, or an issue in a proceeding which is described  
 77 in a collaborative law participation agreement and arises under  
 78 chapter 61 or chapter 742, including, but not limited to:

79 (a) Marriage, divorce, dissolution, annulment, and marital  
 80 property distribution.

81 (b) Child custody, visitation, parenting plan, and  
 82 parenting time.

83 (c) Alimony, maintenance, and child support.

84 (d) Parental relocation with a child.

85 (e) Parentage and paternity.

86 (f) Premarital, marital, and postmarital agreements.

87 (6) "Law firm" means:

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88 (a) One or more attorneys who practice law in a  
 89 partnership, professional corporation, sole proprietorship,  
 90 limited liability company, or association; or

91 (b) One or more attorneys employed in a legal services  
 92 organization, the legal department of a corporation or other  
 93 organization, or the legal department of a governmental entity,  
 94 subdivision, agency, or instrumentality.

95 (7) "Nonparty participant" means a person, other than a  
 96 party and the party's collaborative attorney, who participates  
 97 in a collaborative law process.

98 (8) "Party" means a person who signs a collaborative law  
 99 participation agreement and whose consent is necessary to  
 100 resolve a collaborative matter.

101 (9) "Person" means an individual; a corporation; a business  
 102 trust; an estate; a trust; a partnership; a limited liability  
 103 company; an association; a joint venture; a public corporation;  
 104 a government or governmental subdivision, agency, or  
 105 instrumentality; or any other legal or commercial entity.

106 (10) "Proceeding" means a judicial, an administrative, an  
 107 arbitral, or any other adjudicative process before a tribunal,  
 108 including related prehearing and posthearing motions,  
 109 conferences, and discovery.

110 (11) "Prospective party" means a person who discusses with  
 111 a prospective collaborative attorney the possibility of signing  
 112 a collaborative law participation agreement.

113 (12) "Record" means information that is inscribed on a  
 114 tangible medium or that is stored in an electronic or other  
 115 medium and is retrievable in perceivable form.

116 (13) "Related to a collaborative matter" means involving

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117 the same parties, transaction or occurrence, nucleus of  
 118 operative fact, dispute, claim, or issue as the collaborative  
 119 matter.

120 (14) "Sign" means, with present intent to authenticate or  
 121 adopt a record, to:

122 (a) Execute or adopt a tangible symbol; or

123 (b) Attach to or logically associate with the record an  
 124 electronic symbol, sound, or process.

125 (15) "Tribunal" means a court, an arbitrator, an  
 126 administrative agency, or other body acting in an adjudicative  
 127 capacity which, after presentation of evidence or legal  
 128 argument, has jurisdiction to render a decision affecting a  
 129 party's interests in a matter.

130 Section 6. Section 61.57, Florida Statutes, is created to  
 131 read:

132 61.57 Beginning, concluding, and terminating a  
 133 collaborative law process.—

134 (1) The collaborative law process begins, regardless of  
 135 whether a legal proceeding is pending, when the parties enter  
 136 into a collaborative law participation agreement.

137 (2) A tribunal may not order a party to participate in a  
 138 collaborative law process over that party's objection.

139 (3) A collaborative law process is concluded by any of the  
 140 following:

141 (a) Resolution of a collaborative matter as evidenced by a  
 142 signed record;

143 (b) Resolution of a part of the collaborative matter,  
 144 evidenced by a signed record, in which the parties agree that  
 145 the remaining parts of the collaborative matter will not be

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146 resolved in the collaborative law process; or

147 (c) Termination of the collaborative law process.

148 (4) A collaborative law process terminates when a party:

149 (a) Gives notice to the other parties in a record that the  
 150 collaborative law process is concluded;

151 (b) Begins a proceeding related to a collaborative matter  
 152 without the consent of all parties;

153 (c) Initiates a pleading, a motion, an order to show cause,  
 154 or a request for a conference with a tribunal in a pending  
 155 proceeding related to a collaborative matter;

156 (d) Requests that the proceeding be put on the tribunal's  
 157 active calendar in a pending proceeding related to a  
 158 collaborative matter;

159 (e) Takes similar action requiring notice to be sent to the  
 160 parties in a pending proceeding related to a collaborative  
 161 matter; or

162 (f) Discharges a collaborative attorney or a collaborative  
 163 attorney withdraws from further representation of a party,  
 164 except as otherwise provided in subsection (7).

165 (5) A party's collaborative attorney shall give prompt  
 166 notice to all other parties in a record of a discharge or  
 167 withdrawal.

168 (6) A party may terminate a collaborative law process with  
 169 or without cause.

170 (7) Notwithstanding the discharge or withdrawal of a  
 171 collaborative attorney, the collaborative law process continues  
 172 if, not later than 30 days after the date that the notice of the  
 173 discharge or withdrawal of a collaborative attorney required by  
 174 subsection (5) is sent to the parties:

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175 (a) The unrepresented party engages a successor  
 176 collaborative attorney;

177 (b) The parties consent to continue the collaborative law  
 178 process by reaffirming the collaborative law participation  
 179 agreement in a signed record;

180 (c) The collaborative law participation agreement is  
 181 amended to identify the successor collaborative attorney in a  
 182 signed record; and

183 (d) The successor collaborative attorney confirms his or  
 184 her representation of a party in the collaborative law  
 185 participation agreement in a signed record.

186 (8) A collaborative law process does not conclude if, with  
 187 the consent of the parties, a party requests a tribunal to  
 188 approve a resolution of a collaborative matter or any part  
 189 thereof as evidenced by a signed record.

190 (9) A collaborative law participation agreement may provide  
 191 additional methods for concluding a collaborative law process.

192 Section 7. Section 61.58, Florida Statutes, is created to  
 193 read:

194 61.58 Confidentiality of a collaborative law  
 195 communication.—Except as provided in this section, a  
 196 collaborative law communication is confidential to the extent  
 197 agreed by the parties in a signed record or as otherwise  
 198 provided by law.

199 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW  
 200 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—

201 (a) Subject to subsections (2) and (3), a collaborative law  
 202 communication is privileged as provided under paragraph (b), is  
 203 not subject to discovery, and is not admissible into evidence.

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204 (b) In a proceeding, the following privileges apply:

205 1. A party may refuse to disclose, and may prevent another  
 206 person from disclosing, a collaborative law communication.

207 2. A nonparty participant may refuse to disclose, and may  
 208 prevent another person from disclosing, a collaborative law  
 209 communication of a nonparty participant.

210 (c) Evidence or information that is otherwise admissible or  
 211 subject to discovery does not become inadmissible or protected  
 212 from discovery solely because of its disclosure or use in a  
 213 collaborative law process.

214 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—

215 (a) A privilege under subsection (1) may be waived orally  
 216 or in a record during a proceeding if it is expressly waived by  
 217 all parties and, in the case of the privilege of a nonparty  
 218 participant, if it is expressly waived by the nonparty  
 219 participant.

220 (b) A person who makes a disclosure or representation about  
 221 a collaborative law communication that prejudices another person  
 222 in a proceeding may not assert a privilege under subsection (1).  
 223 This preclusion applies only to the extent necessary for the  
 224 person prejudiced to respond to the disclosure or  
 225 representation.

226 (3) LIMITS OF PRIVILEGE.—

227 (a) A privilege under subsection (1) does not apply to a  
 228 collaborative law communication that is:

229 1. Available to the public under chapter 119 or made during  
 230 a session of a collaborative law process that is open, or is  
 231 required by law to be open, to the public;

232 2. A threat, or statement of a plan, to inflict bodily

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233 injury or commit a crime of violence;

234 3. Intentionally used to plan a crime, commit or attempt to  
 235 commit a crime, or conceal an ongoing crime or ongoing criminal  
 236 activity; or

237 4. In an agreement resulting from the collaborative law  
 238 process, as evidenced by a record signed by all parties to the  
 239 agreement.

240 (b) The privilege under subsection (1) for a collaborative  
 241 law communication does not apply to the extent that such  
 242 collaborative law communication is:

243 1. Sought or offered to prove or disprove a claim or  
 244 complaint of professional misconduct or malpractice arising from  
 245 or relating to a collaborative law process; or

246 2. Sought or offered to prove or disprove abuse, neglect,  
 247 abandonment, or exploitation of a child or an adult unless the  
 248 Department of Children and Families is a party to or otherwise  
 249 participates in the process.

250 (c) A privilege under subsection (1) does not apply if a  
 251 tribunal finds, after a hearing in camera, that the party  
 252 seeking discovery or the proponent of the evidence has shown  
 253 that the evidence is not otherwise available, the need for the  
 254 evidence substantially outweighs the interest in protecting  
 255 confidentiality, and the collaborative law communication is  
 256 sought or offered in:

257 1. A proceeding involving a felony; or

258 2. A proceeding seeking rescission or reformation of a  
 259 contract arising out of the collaborative law process or in  
 260 which a defense is asserted to avoid liability on the contract.

261 (d) If a collaborative law communication is subject to an

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262 exception under paragraph (b) or paragraph (c), only the part of  
 263 the collaborative law communication necessary for the  
 264 application of the exception may be disclosed or admitted.

265 (e) Disclosure or admission of evidence excepted from the  
 266 privilege under paragraph (b) or paragraph (c) does not make the  
 267 evidence or any other collaborative law communication  
 268 discoverable or admissible for any other purpose.

269 (f) The privilege under subsection (1) does not apply if  
 270 the parties agree in advance in a signed record, or if a record  
 271 of a proceeding reflects agreement by the parties, that all or  
 272 part of a collaborative law process is not privileged. This  
 273 paragraph does not apply to a collaborative law communication  
 274 made by a person who did not receive actual notice of the  
 275 collaborative law participation agreement before the  
 276 communication was made.

277 Section 8. Sections 61.55-61.58, Florida Statutes, as  
 278 created by this act, shall not take effect until 30 days after  
 279 the Florida Supreme Court adopts rules of procedure and  
 280 professional responsibility consistent with this act.

281 Section 9. Except as otherwise expressly provided in this  
 282 act, this act shall take effect July 1, 2016.

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1042

INTRODUCER: Judiciary Committee and Senator Simmons

SUBJECT: Judgment Debts

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<b>Fav/CS</b>
2.	<u>Davis</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1042 revises chapter 56, F.S., titled Final Process, which regulates how a creditor may collect a judgment against a debtor. The chapter also includes a statute governing proceedings supplementary which provides a judgment creditor a mechanism to investigate and discover assets that a judgment debtor may have improperly concealed to third parties.

This bill amends chapter 56, F.S., by:

- Providing a new definitions section at the beginning of the chapter for uniform usage throughout the chapter;
- Moving the discovery provisions in current law into a single section and providing that the discovery provisions are in addition to the discovery provisions found in the rules of civil procedure;
- Establishing a procedure for bringing non-parties to the original action into proceedings supplementary by a notice to appear that describes the property at issue, notifies the third-party of the right to a jury trial, and requires the third-party to serve an answer within a time set by the court;
- Providing that a claim under the Uniform Fraudulent Transfer Act which is raised during proceedings supplementary must be initiated by a supplemental complaint and that those claims are governed by the Uniform Fraudulent Transfer Act and the rules of civil procedure; and
- Providing that a person who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to penalties imposed by the court.

## II. Present Situation:

### Chapter 56, Final Process

Chapter 56, F.S., titled “Final Process,” contains the framework for executing or enforcing the final judgment after a court determines that a creditor is entitled to recover from a debtor. Also contained in that chapter is a statute governing proceedings supplementary, which provides a judgment creditor a procedural mechanism to investigate assets of the judgment debtor that might be available to satisfy the judgment. These proceedings also permit the discovery of assets that may have been transferred improperly by a judgment debtor to third parties. Proceedings supplementary are separate and distinct from other actions under the Uniform Fraudulent Transfer Act (UFTA), codified in chapter 726, F.S. A defendant in an action under the UFTA is entitled to greater procedural protections and must be served with an actual complaint as opposed to a notice to appear in a supplementary proceeding.

Proceedings supplementary did not exist at common law. In order for a creditor to discover and execute on a judgment debtor’s assets, he or she had to institute a parallel proceeding, a creditor’s bill in chancery, to prevent the fraudulent disposal of the debtor’s property before the debt was reduced to judgment. In 1919, the Legislature passed the proceedings supplementary statute to streamline the process and avoid the step of requiring a judgment creditor to initiate the completely separate action.<sup>1</sup> In 1935, The Florida Supreme Court noted that the provisions were intended to provide the circuit court with broad discretionary powers to carry out the complete “intent and purpose of the proceedings supplementary to execution” and grant the circuit courts the authority to harness all of a defendant’s property or property rights “however fraudulently conveyed, covered up, or concealed,” even those held or possessed by third parties.<sup>2</sup> Under proceedings supplementary, a judgment creditor has the right to implead, or bring into the action, third parties in possession of property belonging to the judgment debtor, even though the third party was not involved in the original action.

One court more recently noted that proceedings supplementary afford “speedy and direct proceedings” to be held in the same court where the judgment was recovered to better afford the judgment creditor with the most complete relief possible to satisfy the judgment.<sup>3</sup> Statutory proceedings supplementary are post-judgment proceedings. They allow a creditor to effectuate a judgment lien that already exists and are not separate, independent causes of action.<sup>4</sup>

### Proceedings Supplementary Task Force

Recognizing that the proceedings supplementary section of the Florida Statutes remained virtually unchanged over the last decades, the Proceedings Supplementary Task Force was formed in 2013 by the Business Law Section of The Florida Bar to review and recommend

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<sup>1</sup> Benjamin H. Brodsky, *Caught in the Web of Florida’s Statutory Proceedings Supplementary: Procedural and Constitutional Problems Facing Impleaded Third Parties*, The Florida Bar Journal, Dec. 1012, at 28, available at [https://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/a29338fa50f7a88085257ac2007494de!OpenDocument&Highlight=0,brodsky\\*](https://www.floridabar.org/divcom/jn/jnjournal01.nsf/c0d731e03de9828d852574580042ae7a/a29338fa50f7a88085257ac2007494de!OpenDocument&Highlight=0,brodsky*).

<sup>2</sup> *State ex rel. Phoenix Tax Title Corp. v. Viney*, 120 Fla 657, 663, 163 So. 57, 163 So. 57, 60 (1935). As noted in the Brodsky article above.

<sup>3</sup> *Zureikat v. Shaibani*, 944 So. 2d 1019 (Fla. 5th DCA 2006).

<sup>4</sup> *Id.* at 1022.

changes to the statute governing proceedings supplementary and other provisions of chapter 56, F.S.<sup>5</sup> After 2 years of work, the task force has recommended the changes that constitute SB 1042. According to the Business Law Section, these changes are procedural and do not represent substantive changes to any part of chapter 56, F.S.<sup>6</sup>

### III. Effect of Proposed Changes:

The bill makes organizational changes to chapter 56, F.S., governing final process, while updating and clarifying several definitions for uniformity. The chapter currently does not contain a definitions section, but the bill provides a new section of definitions.

#### Definitions and Terms

Section 1 creates a new and separate definitions section to establish uniform definitions of terms and terms used in chapter 56, F.S. This section identifies each party involved in the proceedings supplementary according to terms currently used in case law, and promotes a better understanding of the application of chapter 56.<sup>7</sup> Relevant changes in terminology include:

- When appropriate, “judgment debtor” replaces the terms “defendant” and “defendant in execution.” Judgment debtor is defined as a person who is liable for a judgment, an order, or a decree subject to execution in chapter 56, F.S.
- The term “judgment creditor” replaces the terms “plaintiff,” and “plaintiff in execution.” A judgment creditor is defined as the holder of an unsatisfied judgment, order, or decree for the payment of money, including a transferee or surety, who has the right to control and collect the judgment.
- “Corporate judgment debtor” replaces the term “corporation.” The term is defined as a person who is a judgment debtor, not including an individual, an estate, or a trust other than a business trust.
- A “levying creditor” is defined as a judgment creditor who levies on property.
- A definition of “person” is added to include an individual, partnership, corporation, association, or one of several other entities, all of which mirror verbatim the definition of person in s. 726.102(1), F.S. dealing with fraudulent transfers.

#### Discovery in Proceedings Supplementary

Under current law, the discovery tools available to a judgment creditor in proceedings supplementary, such as requiring a judgment debtor to be examined before the court, are spread around in s. 56.29, F.S., making it confusing as to whether they are generally available or whether they are a prerequisite to proceedings supplementary.<sup>8</sup> The bill moves the discovery provisions currently in s. 56.29, F.S., to a newly created s. 56.30, F.S., which bears the catch line “Discovery in proceedings supplementary.” The new provisions in s. 56.30, F.S., provide clearly

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<sup>5</sup> Some provisions were amended in 2014.

<sup>6</sup> Business Law Section of The Florida Bar, *White Paper: Analysis of Proposed Amendments to Chapter 56* (2015) (on file with the Senate Committee on Judiciary). According to this white paper, the task force was formed after the publication of Benjamin Brodsky’s article published in *The Florida Bar Journal* and referenced in footnote 1 above.

<sup>7</sup> *Id.* at 3.

<sup>8</sup> Business Law Section of The Florida Bar, *supra* note 6, at 7.

identifiable discovery procedures for proceedings supplementary. They are the same as current law with the following additions:

- The discovery provisions in s. 56.30, F.S., are in addition to any other discovery allowed under the rules of civil procedure.
- A judgment debtor may be required to appear for examination before the court in the county of the judgment debtor's residence or principal place of business.
- A court's examination of a judgment debtor may occur before a notice to appear is issued to third parties.
- A corporate judgment debtor may send a designee having knowledge of the property subject to execution to be examined by the court.

### **Notification and Examination of Third-Parties**

As discussed earlier, proceeding supplementary permit the discovery of assets that may have been transferred or concealed by a judgment debtor in an attempt to prevent creditors from satisfying a final judgment. These efforts to conceal assets generally involve third-parties who were not involved in the initial underlying case. The current process for bringing these third-parties into the proceeding in s. 56.29(2), F.S., has caused confusion and raised due process concerns among participants.

This bill amends s. 56.29(2), F.S., to create a uniform procedure for bringing non-parties into proceedings supplementary. A judgment creditor, in its motion to initiate proceedings supplementary, must describe any property of the judgment debtor, not exempt from execution, which may be applied toward satisfaction of the judgment. After proceedings supplementary have been initiated, the court then must issue a notice to appear to third-parties informing them that property in their possession or control may be subject to execution and applied to satisfy a judgment. Service of the notice to appear makes them parties to the proceedings supplementary. The new notice to appear must be served by a process server. The notice must describe with reasonable specificity the property at issue, require the third-party to serve an answering affidavit within a specified time to be determined by the court which is not less than 7 business days, unless reduced by the court for good cause, and require the third-party to assert any defenses in the responding affidavit. The notice to appear must also inform the third-party that penalties may be imposed for failure to timely file an affidavit and that he or she has the right to a jury trial.<sup>9</sup>

### **Uniform Fraudulent Transfer Act Claims**

Current s. 56.29(5), F.S., permits judgment creditors to file claims under the Uniform Fraudulent Transfers Act<sup>10</sup> (UFTA) in proceedings supplementary. The bill moves this provision from s. 56.29(5), F.S., to the newly-created s. 56.29(9), F.S. To underscore that UFTA claims are distinct from proceedings supplementary, the bill provides that UFTA claims must be initiated by a supplemental complaint and served as provided by the rules of civil procedure. The claims under the supplemental complaint are subject to chapter 726, F.S., and the rules of civil procedure. The bill also requires the clerk of court to provide the parties with a parallel case number that the parties will use for the UFTA action.

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<sup>9</sup> See s. 56.29(2), F.S. and note 6 *supra*.

<sup>10</sup> Chapter 726, F.S.

### **Defenses or Claims Raised Solely for Delay**

Current section 56.16, F.S., provides that a person, referred to as a claimant, other than the judgment debtor, who claims any property levied on by the judgment creditor, may file an affidavit stating the claim. Under sections 56.16 and 56.18, F.S., if the court determines that the claimant's asserted claim on the property was brought for the purpose of delay, the judgment creditor may be awarded damages not to exceed 20 percent of the value of the property claimed. Consistently, the bill amends ss. 56.16, 56.18, and 56.29, F.S., to provide that a person served with a notice to appear in proceedings supplementary and who asserts a claim or defense in proceedings supplementary for the purpose of delay may be subject to the penalties provided in ss. 56.16 and 56.18, F.S.

### **Other Effects of the Bill**

The bill amends s. 56.021, F.S., to provide that an execution may be issued upon an "order," in addition to a judgment or decree. This is a codification of existing case law<sup>11</sup> and practice.

Newly renumbered s. 56.29(6), F.S., is amended to provide that the procedures and remedies available under ss. 56.16-56.20, F.S., related to third-party claims and executions against third-parties, also apply to orders, judgments, and writs issued pursuant to the proceedings supplementary process.

The bill also makes technical and conforming corrections.

### **Effective Date**

The bill takes effect July 1, 2016.

## **IV. Constitutional Issues:**

### **A. Municipality/County Mandates Restrictions:**

None.

### **B. Public Records/Open Meetings Issues:**

None.

### **C. Trust Funds Restrictions:**

None.

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<sup>11</sup> See *Davidson v. Seegar*, 15 Fla. 671 (Fla. 1876).

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Office of the State Courts Administrator stated that the fiscal impact of this legislation cannot be accurately determined because data is unavailable to quantify the effect it will have on judicial time and workload resulting from the changes to chapter 56, F.S. The Office did note that the clarifying language in the bill might assist the courts handling proceedings supplementary and may contribute to a reduction in the expenditure of judicial time.<sup>12</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 56.011, 56.021, 56.041, 56.071, 56.09, 56.10, 56.12, 56.15, 56.16, 56.18, 56.19, 56.20, 56.22, 56.26, 56.27, 56.28, 56.29, and 56.30.

This bill creates section 56.001 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 Judiciary on January 12, 2016:**

The committee substitute adds a definition of “person” in section 1, the new definitions section for chapter 56, F.S. Language is also added in section 18, s. 56.29(9), F.S., to provide that UFTA claims initiated in a supplemental complaint must be served as provided by the rules of civil procedure and that the UFTA claims are subject to chapter 726, F.S., and the rules of civil procedure.

<sup>12</sup> Office of the State Courts Administrator, *2016 Judicial Impact Statement for SB 1042*, (Jan 11, 2016) (on file with the Senate Committee on Judiciary).

The majority of the differences between the committee substitute and the original bill are generally stylistic changes that represent the different drafting styles and rules between House and Senate Bill Drafting. The committee substitute, except for several minor grammatical differences, conforms the Senate bill to CS/HB 503.

B. Amendments:

None.

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

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By the Committee on Judiciary; and Senator Simmons

590-02069-16

20161042c1

1 A bill to be entitled  
 2 An act relating to judgments; creating s. 56.0101,  
 3 F.S.; providing definitions for purposes of ch. 56,  
 4 F.S.; amending s. 56.011, F.S.; revising terminology;  
 5 amending s. 56.021, F.S.; providing that an execution  
 6 is valid and effective during the life of the order on  
 7 which it is issued; amending ss. 56.041, 56.071,  
 8 56.09, 56.10, 56.12, and 56.15, F.S.; revising  
 9 terminology; amending s. 56.16, F.S.; specifying that  
 10 persons to whom a Notice to Appear has been issued may  
 11 obtain possession of property levied on by complying  
 12 with certain procedures; revising terminology;  
 13 amending s. 56.18, F.S.; specifying that a jury, if  
 14 not waived, should be empaneled as soon as possible  
 15 after service of a Notice to Appear; revising  
 16 terminology; amending ss. 56.19, 56.20, 56.22, 56.26,  
 17 56.27, and 56.28, F.S.; revising terminology; amending  
 18 s. 56.29, F.S.; revising terminology; providing for  
 19 the issuance of a Notice to Appear; providing  
 20 requirements for such a notice; providing for service;  
 21 providing for requirements for a responding affidavit;  
 22 deleting provisions relating to examinations  
 23 concerning property; providing for fraudulent transfer  
 24 claims; creating s. 56.30, F.S.; providing for  
 25 discovery in proceedings supplementary; providing an  
 26 effective date.

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

29  
 30 Section 1. Section 56.0101, Florida Statutes, is created to  
 31 read:

32 56.0101 Definitions.—As used in this chapter, the term:

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

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33 (1) "Claimant" means any person other than the judgment  
 34 debtor who claims any property levied on.

35 (2) "Corporate judgment debtor" means a judgment debtor  
 36 other than an individual, an estate, or a trust that is not a  
 37 business trust.

38 (3) "Judgment creditor" means the holder of an unsatisfied  
 39 judgment, order, or decree for the payment of money, including a  
 40 transferee or a surety having the right to control and collect  
 41 the judgment under s. 55.13.

42 (4) "Judgment debtor" means each person who is liable on a  
 43 judgment, an order, or a decree subject to execution under this  
 44 chapter.

45 (5) "Levying creditor" means the levying judgment creditor.

46 (6) "Person" means an individual, partnership, corporation,  
 47 association, organization, government or governmental  
 48 subdivision or agency, business trust, estate, trust, or any  
 49 other legal or commercial entity.

50 (7) "Relative" means an individual related by consanguinity  
 51 within the third degree as determined by the common law, a  
 52 spouse, or an individual related to a spouse within the third  
 53 degree as determined by the common law, and includes an  
 54 individual in an adoptive relationship within the third degree.

55 Section 2. Section 56.011, Florida Statutes, is amended to  
 56 read:

57 56.011 Executions; capias ad satisfaciendum abolished.—~~In~~  
 58 ~~no case shall~~ A capias ad satisfaciendum may not be issued upon  
 59 a judgment, nor may shall the body of any person defendant be  
 60 subject to arrest or confinement for the payment of money,  
 61 except ~~it be~~ for fines imposed by lawful authority.

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62 Section 3. Section 56.021, Florida Statutes, is amended to  
63 read:

64 56.021 Executions; issuance and return, alias, etc.—When  
65 issued, an execution is valid and effective during the life of  
66 the judgment, order, or decree on which it is issued. When fully  
67 paid, the officer executing it shall make his or her return and  
68 file it in the court which issued the execution. If the  
69 execution is lost or destroyed, the party entitled thereto may  
70 have an alias, pluries or other copies on making proof of such  
71 loss or destruction by affidavit and filing it in the court  
72 issuing the execution.

73 Section 4. Subsection (1) of section 56.041, Florida  
74 Statutes, is amended to read:

75 56.041 Executions; collection and return.—

76 (1) All executions shall be returnable when satisfied, and  
77 the officers to whom they are delivered shall collect the  
78 amounts thereof as soon as possible and shall furnish the  
79 judgment debtor ~~defendant~~ with a satisfaction of judgment. All  
80 receipts shall be endorsed on the execution.

81 Section 5. Section 56.071, Florida Statutes, is amended to  
82 read:

83 56.071 Executions on equities of redemption; discovery of  
84 value.—On motion made by the person party causing a levy to be  
85 made on an equity of redemption, the court from which the  
86 execution issued shall order the mortgagor, mortgagee, and all  
87 other persons interested in the mortgaged property levied on to  
88 appear and be examined about the amount remaining due on the  
89 mortgage, the amount that has been paid, the person party to  
90 whom that amount has been paid, and the date when that amount

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91 was paid so that the value of the equity of redemption may be  
92 ascertained before the property is sold. The court may appoint a  
93 general or special magistrate to conduct the examination. This  
94 section shall also apply to the interest of and personal  
95 property in possession of a vendee under a retained title  
96 contract or conditional sales contract.

97 Section 6. Section 56.09, Florida Statutes, is amended to  
98 read:

99 56.09 Executions against corporate judgment debtors  
100 ~~corporations~~; generally.—On any judgment against a corporate  
101 judgment debtor, the judgment creditor ~~corporation~~ plaintiff may  
102 have an execution levied on the current money as well as on the  
103 goods and chattels, lands and tenements of the corporate  
104 judgment debtor ~~said corporation~~.

105 Section 7. Section 56.10, Florida Statutes, is amended to  
106 read:

107 56.10 Executions against corporate judgment debtors  
108 ~~corporations~~; receivership.—If an execution cannot be satisfied  
109 in whole or in part for lack of property of the corporate  
110 judgment debtor ~~defendant corporation~~ subject to levy and sale,  
111 on motion of the judgment creditor the circuit court in chancery  
112 within whose circuit such corporate judgment debtor corporation  
113 is or has been doing business, or in which any of its effects  
114 are found, may sequester the property, things in action, goods  
115 and chattels of the corporate judgment debtor corporation for  
116 the purpose of enforcing the judgment, and may appoint a  
117 receiver for the corporate judgment debtor corporation. A  
118 receiver so appointed is subject to the rules prescribed by law  
119 for receivers of the property of other judgment debtors. His or

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120 her power shall extend throughout the state.

121 Section 8. Section 56.12, Florida Statutes, is amended to  
122 read:

123 56.12 Executions; levy, forthcoming bond.—If a judgment  
124 debtor ~~defendant in execution~~ wants to retake possession of any  
125 property levied on, the judgment debtor ~~he or she~~ may do so by  
126 executing a bond with surety to be approved by the officer in  
127 favor of the judgment creditor ~~plaintiff~~ in a sum double the  
128 value of the property retaken as fixed by the officer holding  
129 the execution and conditioned that the property will be  
130 forthcoming on the day of sale stated in the bond.

131 Section 9. Section 56.15, Florida Statutes, is amended to  
132 read:

133 56.15 Executions; stay of illegal writs.—If any execution  
134 issues illegally, the judgment debtor ~~defendant in execution~~ may  
135 obtain a stay by making and delivering an affidavit to the  
136 officer having the execution, stating the illegality and whether  
137 any part of the execution is due, with a bond with surety  
138 payable to the judgment creditor ~~plaintiff~~ in double the amount  
139 of the execution or the part of which a stay is sought  
140 conditioned to pay the execution or part claimed to be illegal  
141 and any damages for delay if the affidavit is not well founded.  
142 On receipt of such affidavit and bond the officer shall stay  
143 proceedings on the execution and return the bond and affidavit  
144 to the court from which the execution issued. The court shall  
145 pass on the question of illegality as soon as possible. If the  
146 execution is adjudged illegal in any part, the court shall stay  
147 it as to the part but if it is adjudged legal in whole or in  
148 part, the court shall enter judgment against the principal and

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149 surety on such bond for the amount of so much of the execution  
150 as is adjudged to be legal and execution shall issue thereon.

151 Section 10. Section 56.16, Florida Statutes, is amended to  
152 read:

153 56.16 Executions; claims of third parties to property  
154 levied on.—If any person, including a person to whom a Notice to  
155 Appear has been issued pursuant to s. 56.29(2), other than the  
156 judgment debtor ~~defendant in execution~~ claims any property  
157 levied on, he or she may obtain possession of the property by  
158 filing with the officer having the execution an affidavit by the  
159 claimant, or the claimant's ~~himself or herself, his or her~~ agent  
160 or attorney, that the property claimed belongs to the claimant  
161 ~~him or her~~ and by furnishing the officer a bond with surety to  
162 be approved by the officer in favor of the judgment creditor  
163 ~~plaintiff~~ in double the value of the goods claimed as the value  
164 is fixed by the officer and conditioned to deliver said property  
165 on demand of said officer if it is adjudged to be the property  
166 of the judgment debtor ~~defendant in execution~~ and to pay the  
167 judgment creditor ~~plaintiff~~ all damages found against the  
168 claimant ~~him or her~~ if it appears that the claim was interposed  
169 for the purpose of delay.

170 Section 11. Section 56.18, Florida Statutes, is amended to  
171 read:

172 56.18 Executions; trial of claims of third persons.—As soon  
173 as possible after the return, or after service of a Notice to  
174 Appear pursuant to s. 56.29(2), a jury, if not waived, shall be  
175 impaneled to try the right of property. If the verdict is in  
176 favor of the judgment creditor ~~plaintiff~~ and it appears that the  
177 claim brought pursuant to s. 56.16 was interposed for delay, the

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178 judgment creditor plaintiff may be awarded reasonable damages,  
 179 not exceeding 20 percent of the value of the property claimed.  
 180 If the claimant denies in writing under oath filed at least 3  
 181 days before the trial, the correctness of the appraisal of  
 182 the value of the property by the officer levying the execution,  
 183 and the verdict is in favor of the judgment creditor plaintiff,  
 184 the jury if not waived, shall fix the value of each item  
 185 thereof, or of the items covered by such denial.

186 Section 12. Section 56.19, Florida Statutes, is amended to  
 187 read:

188 56.19 Judgments upon claims of third persons.—Upon the  
 189 verdict of the jury, the court shall enter judgment deciding the  
 190 right of property, and if the verdict is for the judgment  
 191 creditor plaintiff, awarding a recovery by the judgment creditor  
 192 plaintiff from the claimant defendant and the claimant's ~~his or~~  
 193 ~~her~~ sureties, of the value (as fixed by the officer, or as fixed  
 194 by the jury if fixed by it) of such parts of the property as the  
 195 jury may have found subject to execution that were delivered to  
 196 the claimant, and awarding separately such damages as ~~the jury~~  
 197 may be have awarded under s. 56.18, and of all costs attending  
 198 the presentation and trial of the claim.

199 Section 13. Section 56.20, Florida Statutes, is amended to  
 200 read:

201 56.20 Executions on judgments against third person  
 202 claimants.—If the execution issued on the judgment is not paid,  
 203 it shall be satisfied in the usual manner unless on demand of  
 204 the officer holding it, the principal and surety in the claim  
 205 bond deliver the property released under the claim bond to the  
 206 officer and pay him or her the damages and costs awarded to the

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207 judgment creditor plaintiff. If the property is returned to the  
 208 officer but damages and costs are not paid, execution shall be  
 209 enforced for the damages and costs. If part of the property is  
 210 returned to the officer, the execution shall be enforced for the  
 211 value, fixed as aforesaid, of that not returned. All property  
 212 returned shall be sold under the original execution against the  
 213 judgment debtor ~~original defendant~~.

214 Section 14. Section 56.22, Florida Statutes, is amended to  
 215 read:

216 56.22 Execution sales; ~~time, date, and place of sale.~~—

217 (1) All sales of property under legal process shall take  
 218 place at the time, date, and place advertised in the notice of  
 219 the sheriff's sale on any day of the week except Saturday and  
 220 Sunday and shall continue from day to day until such property is  
 221 disposed of.

222 (2) Property not effectively disposed of at the initial  
 223 sheriff's sale may be readvertised, as provided in s. 56.21,  
 224 upon receipt of an additional deposit to cover costs incurred in  
 225 connection with the maintenance of the property under legal  
 226 process. ~~If in the event~~ no additional deposit is received by  
 227 the sheriff, the property may be returned to the judgment debtor  
 228 ~~defendant~~; if the judgment debtor ~~defendant~~ refuses to accept  
 229 such property, the property may be returned to a third party,  
 230 such as a lienholder, upon presentation of a proper court order  
 231 directing such return. If the property cannot be returned as  
 232 described in this subsection ~~none of the above can be~~  
 233 ~~accomplished~~, such property shall be disposed of as unclaimed or  
 234 abandoned.

235 Section 15. Section 56.26, Florida Statutes, is amended to

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236 read:

237 56.26 Executions; mandamus to force levy and sale.—When an  
 238 officer holds an unsatisfied execution and refuses to levy on  
 239 property liable thereunder and on which it is his or her duty to  
 240 levy or having levied, refuses to advertise and sell the  
 241 property levied on, the judgment creditor ~~plaintiff in execution~~  
 242 is entitled to an alternative writ of mandamus requiring the  
 243 officer to levy such execution or advertise and sell the  
 244 property levied on, or both, as the case may be.

245 Section 16. Subsection (1) and paragraph (a) of subsection  
 246 (4) of section 56.27, Florida Statutes, are amended to read:

247 56.27 Executions; payment of money collected.—

248 (1) All money received under executions shall be paid, in  
 249 the order prescribed, to the following: the sheriff, for costs;  
 250 the levying creditor in the amount of \$500 as liquidated  
 251 expenses; and the priority lienholder under s. 55.10(1) and (2),  
 252 s. 55.202, s. 55.204(3), or s. 55.208(2), as set forth in an  
 253 affidavit required by subsection (4), or the levying creditor's  
 254 ~~his or her~~ attorney, in satisfaction of the judgment lien, if  
 255 the judgment lien has not lapsed at the time of the levy. The  
 256 receipt of the attorney shall be a release of the officer paying  
 257 the money to him or her. If the name of more than one attorney  
 258 appears in the court file, the money shall be paid to the  
 259 attorney who originally commenced the action or who made the  
 260 original defense unless the file shows that another attorney has  
 261 been substituted.

262 (4) Before the date of the first publication or posting of  
 263 the notice of sale provided for under s. 56.21, at the time of  
 264 the levy request to the sheriff, the levying creditor shall

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265 deliver to the sheriff an affidavit setting forth all of the  
 266 following as to the judgment debtor:

267 (a) For a personal property levy, an attestation by the  
 268 levying creditor or the levying creditor's attorney of record  
 269 that he or she has reviewed the database or judgment lien  
 270 records established in accordance with ss. 55.201-55.209 and  
 271 that the information contained in the affidavit based on that  
 272 review is true and correct. For a real property levy in  
 273 accordance with s. 55.10(1) and (2), an attestation by the  
 274 levying creditor or the levying creditor's ~~his or her~~ attorney  
 275 of record that he or she has reviewed the records of the clerk  
 276 of the court of the county where the property is situated, or  
 277 that he or she has performed or reviewed a title search, and  
 278 that the information contained in the affidavit, including a  
 279 disclosure of all judgment liens, mortgages, financing  
 280 statements, tax warrants, and other liens against the real  
 281 property, based on that review or title search is true and  
 282 correct.

283 Section 17. Section 56.28, Florida Statutes, is amended to  
 284 read:

285 56.28 Executions; failure of officer to pay over moneys  
 286 collected.—If any officer collecting money under execution fails  
 287 or refuses to pay it over within 30 days after it has been  
 288 received by him or her, or within 10 days after demand by the  
 289 levying creditor or the levying creditor's ~~plaintiff or his or~~  
 290 ~~her~~ attorney of record made in writing and delivered during  
 291 regular business hours to the civil process bureau, the officer  
 292 is liable to pay the same and 20 percent damages, to be  
 293 recovered by motion in court.

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294 Section 18. Section 56.29, Florida Statutes, is amended to  
295 read:

296 56.29 Proceedings supplementary.—

297 (1) When any ~~judgment creditor person or entity~~ holds an  
298 unsatisfied judgment or judgment lien obtained under chapter 55,  
299 the judgment ~~creditor holder or judgment lienholder~~ may file a  
300 motion and an affidavit so stating, identifying, if applicable,  
301 the issuing court, the case number, and the unsatisfied amount  
302 of the judgment or judgment lien, including accrued costs and  
303 interest, and stating that the execution is valid and  
304 outstanding, and thereupon the judgment ~~creditor holder or~~  
305 ~~judgment lienholder~~ is entitled to these proceedings  
306 supplementary to execution.

307 (2) The judgment creditor shall, in the motion described in  
308 subsection (1) or in a supplemental affidavit, describe any  
309 property of the judgment debtor not exempt from execution in the  
310 hands of any person or any property, debt, or other obligation  
311 due to the judgment debtor which may be applied toward the  
312 satisfaction of the judgment. Upon filing of the motion and  
313 affidavits that property of the judgment debtor, or any debt, or  
314 other obligation due to the judgment debtor in the custody or  
315 control of any other person may be applied to satisfy the  
316 judgment, then the court shall issue a Notice to Appear. The  
317 Notice to Appear shall direct such person to file an affidavit,  
318 as provided in s. 56.16, with the court by a date certain, which  
319 date shall not be less than 7 business days from the date of  
320 service of the Notice to Appear, stating why the property, debt,  
321 or other obligation should not be applied to satisfy the  
322 judgment. For good cause shown, the court may shorten the time

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323 for serving an affidavit. The Notice to Appear must describe  
324 with reasonable particularity the property, debt, or other  
325 obligation that may be available to satisfy the judgment, must  
326 provide such person with the opportunity to present defenses,  
327 and must indicate that discovery as provided under the rules of  
328 civil procedure is available and that there is a right to a jury  
329 trial as provided in s. 56.18. The Notice to Appear must be  
330 served as provided for in chapter 48. A responding affidavit  
331 must raise any fact or defense opposing application of the  
332 property described in the Notice to Appear to satisfy the  
333 judgment, including legal defenses, such as lack of personal  
334 jurisdiction. Legal defenses need not be filed under oath but  
335 must be served contemporaneously with the affidavit. On such  
336 plaintiff's motion the court shall require the defendant in  
337 execution to appear before it or a general or special magistrate  
338 at a time and place specified by the order in the county of the  
339 defendant's residence to be examined concerning his or her  
340 property.

341 ~~(3) The order shall be served in a reasonable time before~~  
342 ~~the date of the examination in the manner provided for service~~  
343 ~~of summons or may be served on such defendant or his or her~~  
344 ~~attorney as provided for service of papers in the rules of civil~~  
345 ~~procedure.~~

346 ~~(4) Testimony shall be under oath, shall be comprehensive~~  
347 ~~and cover all matters and things pertaining to the business and~~  
348 ~~financial interests of defendant which may tend to show what~~  
349 ~~property he or she has and its location. Any testimony tending~~  
350 ~~directly or indirectly to aid in satisfying the execution is~~  
351 ~~admissible. A corporation must attend and answer by an officer~~

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352 who may be specified in the order. Examination of witnesses  
353 shall be as at trial and any party may call other witnesses.

354 ~~(5) The court may order any property of the judgment~~  
355 ~~debtor, not exempt from execution, in the hands of any person,~~  
356 ~~or any property, debt, or other obligation due to the judgment~~  
357 ~~debtor, to be applied toward the satisfaction of the judgment~~  
358 ~~debt. The court may entertain claims concerning the judgment~~  
359 ~~debtor's assets brought under chapter 726 and enter any order or~~  
360 ~~judgment, including a money judgment against any initial or~~  
361 ~~subsequent transferee, in connection therewith, irrespective of~~  
362 ~~whether the transferee has retained the property. Claims under~~  
363 ~~chapter 726 are subject to the provisions of chapter 726 and~~  
364 ~~applicable rules of civil procedure.~~

365 (3)(6)(a) When, within 1 year before the service of process  
366 on the judgment debtor in the original proceeding or action ~~him~~  
367 ~~or her~~, the judgment debtor ~~defendant~~ has had title to, or paid  
368 the purchase price of, any personal property to which the  
369 judgment debtor's ~~defendant's~~ spouse, any relative, or any  
370 person on confidential terms with the judgment debtor ~~defendant~~  
371 claims title and right of possession at the time of examination,  
372 the judgment debtor ~~defendant~~ has the burden of proof to  
373 establish that such transfer or gift from ~~him or her~~ was not  
374 made to delay, hinder, or defraud creditors.

375 (b) When any gift, transfer, assignment or other conveyance  
376 of personal property has been made or contrived by the judgment  
377 debtor to delay, hinder, or defraud creditors, the court shall  
378 order the gift, transfer, assignment or other conveyance to be  
379 void and direct the sheriff to take the property to satisfy the  
380 execution. This does not authorize seizure of property exempted

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381 from levy and sale under execution or property which has passed  
382 to a bona fide purchaser for value and without notice. Any  
383 person aggrieved by the levy or Notice to Appear may proceed  
384 under ss. 56.16-56.20.

385 ~~(4)(7)~~ At any time the court may refer the proceeding to a  
386 general or special magistrate who may be directed to report  
387 findings of law or fact, or both. The general or special  
388 magistrate has all the powers thereof, including the power to  
389 issue subpoena, and shall be paid the fees provided by the court  
390 law.

391 ~~(5)(8)~~ A party or a witness examined under these provisions  
392 is not excused from answering a question on the ground that the  
393 answer will tend to show him or her guilty of the commission of  
394 a fraud, or prove that he or she has been a party or privy to,  
395 or knowing of a conveyance, assignment, transfer, or other  
396 disposition of property for any purpose, or that the party or  
397 witness or another person claims to have title as against the  
398 judgment debtor ~~defendant~~ or to hold property derived from or  
399 through the judgment debtor ~~defendant~~, or to be discharged from  
400 the payment of a debt which was due to the judgment debtor  
401 ~~defendant~~ or to a person on in his or her behalf of the judgment  
402 debtor. An answer cannot be used as evidence against the person  
403 so answering in any criminal proceeding.

404 ~~(6)(9)~~ The court may order any property of the judgment  
405 debtor, not exempt from execution, or any property, debt, or  
406 other obligation due to the judgment debtor, in the hands of or  
407 under the control of any person subject to the Notice to Appear,  
408 to be levied upon and applied toward the satisfaction of the  
409 judgment debt. The court may enter any orders, judgments, or

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410 writs required to carry out the purpose of this section,  
 411 including those orders necessary or proper to subject property  
 412 or property rights of any judgment debtor to execution, and  
 413 including entry of money judgments as provided in ss. 56.16-  
 414 56.19 against any person to whom a Notice to Appear has been  
 415 directed and over whom the court obtained personal jurisdiction  
 416 ~~impleaded defendant~~ irrespective of whether such person  
 417 ~~defendant~~ has retained the property, subject to ~~ss. 56.18 and~~  
 418 ~~56.19~~ and applicable principles of equity, and in accordance  
 419 with chapters 76 and 77 and all applicable rules of civil  
 420 procedure. Sections 56.16-56.20 apply to any order issued under  
 421 this subsection.

422 (7)(10) Any person failing to obey any order issued under  
 423 this section by a judge or general or special magistrate or  
 424 failing to attend in response to a subpoena served on him or her  
 425 may be held in contempt.

426 (8)(11) Costs for proceedings supplementary shall be taxed  
 427 against the judgment debtor ~~defendant~~ as well as all other  
 428 incidental costs determined to be reasonable and just by the  
 429 court including, but not limited to, docketing the execution,  
 430 sheriff's service fees, and court reporter's fees. Reasonable  
 431 ~~attorney~~ attorney's fees may be taxed against the judgment  
 432 debtor ~~defendant~~.

433 (9) The court may entertain claims concerning the judgment  
 434 debtor's assets brought under chapter 726 and enter any order or  
 435 judgment, including a money judgment against any initial or  
 436 subsequent transferee, in connection therewith, irrespective of  
 437 whether the transferee has retained the property. Claims under  
 438 chapter 726 brought under this section shall be initiated by a

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439 supplemental complaint and served as provided by the rules of  
 440 civil procedure, and the claims under the supplemental complaint  
 441 are subject to chapter 726 and the rules of civil procedure. The  
 442 clerk of the court shall docket a supplemental proceeding under  
 443 the same case number assigned to the original complaint filed by  
 444 the judgment creditor or the case number assigned to a judgment  
 445 domesticated pursuant to s. 55.01, shall assign a separate  
 446 supplemental proceeding number, and shall assign such  
 447 supplemental proceeding to the same division and judge assigned  
 448 to the main case or domesticated judgment.

449 Section 19. Section 56.30, Florida Statutes, is created to  
 450 read:

451 56.30 Discovery in proceedings supplementary.-

452 (1) In addition to any other discovery permitted under the  
 453 rules of civil procedure, on the judgment creditor's motion the  
 454 court shall require the judgment debtor to appear before it or a  
 455 general or special magistrate at a time and place specified by  
 456 the order in the county of the judgment debtor's residence or  
 457 principal place of business to be examined concerning property  
 458 subject to execution. This examination may occur before issuance  
 459 of a Notice to Appear.

460 (2) The order shall be served in a reasonable time before  
 461 the date of the examination in the manner provided for service  
 462 of summons or may be served on the judgment debtor or the  
 463 judgment debtor's attorney of record as provided for service of  
 464 papers in the rules of civil procedure.

465 (3) Testimony shall be under oath, shall be comprehensive,  
 466 and cover all matters and things pertaining to the business and  
 467 financial interests of the judgment debtor which may tend to



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468 show what property the judgment debtor has and its location. Any  
469 testimony tending directly or indirectly to aid in satisfying  
470 the execution is admissible. A corporate judgment debtor must  
471 attend and answer by a designee with knowledge or an identified  
472 officer or manager who may be specified in the order.  
473 Examination of witnesses shall be as at trial and any party may  
474 call other witnesses to be examined concerning property that may  
475 be subject to execution.

476 Section 20. This act shall take effect July 1, 2016.

**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

1/20/16

*Meeting Date*

1042

*Bill Number (if applicable)*

Topic Judgment Debts

*Amendment Barcode (if applicable)*

Name Greg Black

Job Title Attorney

Address 119 S. Monroe Street, Suite 200

Phone 8502059000

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Tallahassee

FL

32301

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*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing The Business Law Section of the Florida Bar

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.***

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

---

BILL: SB 7032

INTRODUCER: Banking and Insurance Committee

SUBJECT: OGSR/Office of Financial Regulation

DATE: January 19, 2016

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Johnson</u>	<u>Knudson</u>		<b>BI Submitted as Committee Bill</b>
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
2.	<u>Johnson</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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## I. Summary:

SB 7032 is the result of an Open Government Sunset Review (OGSR) by the Banking and Insurance Committee professional staff of a public records exemption<sup>1</sup> that makes the following information held by the Office of Financial Regulation (OFR) before, on, or after July 1, 2011, confidential and exempt from public-records requirements:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

The bill eliminates the scheduled repeal of the public record exemption. As a result, this information will continue to be confidential and exempt from public disclosure.

The bill does not appear to have a fiscal impact on state or local governments.

A simple majority vote is required for passage.

## II. Present Situation:

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> Section 119.0712(3), F.S.

<sup>2</sup> FLA. CONST., art. I, s. 24(a).

<sup>3</sup> FLA. CONST., art. I, s. 24(a).

In addition to the Florida Constitution, the Florida Statutes provides that the public may access legislative and executive branch records.<sup>4</sup> Chapter 119, F.S., constitutes the main body of public records laws known as the Public Records Act.<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup> 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.”<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

The Legislature may create an exemption to public records requirements.<sup>10</sup> An exemption must pass by a two-thirds vote of the House and the Senate.<sup>11</sup> 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.<sup>12</sup> A statutory exemption that does not meet these criteria may be unconstitutional and may not be judicially saved.<sup>13</sup>

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<sup>4</sup> 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.

<sup>5</sup> Public records laws are found throughout the Florida Statutes.

<sup>6</sup> Section 119.01(1), F.S.

<sup>7</sup> 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.”

<sup>8</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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

<sup>10</sup> FLA. CONST., art. I, s. 24(c).

<sup>11</sup> FLA. CONST., art. I, s. 24(c).

<sup>12</sup> FLA. CONST., art. I, s. 24(c).

<sup>13</sup> *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So.2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>14</sup> 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’ may be released at the discretion of the records custodian.<sup>15</sup>

### **Open Government Sunset Review Act**

In addition to the constitutional requirements relating to the enactment of a public records exemption, the Legislature may subject the new or broadened exemption to the Open Government Sunset Review Act (OGSR).

The OGSR prescribes a legislative review process for newly created or substantially amended public records.<sup>16</sup> The OGSR provides that an exemption automatically repeals on October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>17</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

Under the OGSR the purpose and necessity of reenacting the exemption are reviewed. The Legislature must consider the following questions during its review of an exemption:<sup>18</sup>

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.<sup>19</sup> 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.

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<sup>14</sup> 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).

<sup>15</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991).

<sup>16</sup> Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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 s. 119.15(2), F.S. The OGSR process is currently being followed, however, the Legislature is not required to continue to do so. The Florida Supreme Court has found that one legislature cannot bind a future legislature. *Scott v. Williams*, 107 So. 3d 379 (Fla. 2013).

<sup>17</sup> Section 119.15(3), F.S.

<sup>18</sup> Section 119.15(6)(a), F.S.

<sup>19</sup> FLA. CONST., art. I, s. 24(c); s. 119.15(4)(b), F.S.; and s. 119.15(6)(b), F.S.

## **Office of Financial Regulation**

The Office of Financial Regulation (OFR) has regulatory oversight of state-chartered financial institutions, securities brokers, investment advisers, mortgage loan originators, money services businesses, consumer finance companies, debt collectors, and other financial service entities. The OFR has licensing authority and the authority to conduct examinations and investigations.

Other states and federal agencies also have regulatory oversight of many of these entities. In addition, many of the regulated entities operate in multiple states, making interstate cooperation essential to achieving comprehensive, efficient, and effective regulatory oversight. The OFR interacts with the following federal agencies:

- Financial Crimes Enforcement Network (FinCEN)
- Federal Trade Commission
- Florida Fusion Center (a collaboration of state and federal agencies led by the Florida Department of Law Enforcement)
- Commodities Futures Trading Commission
- Federal Deposit Insurance Corporation
- National Credit Union Association
- Securities Exchange Commission
- Internal Revenue Service

## **Exemption under Review**

Section 119.0712(3), F.S., provides a public record exemption for the following information held by the OFR before, on, or after July 1, 2011:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

The OFR is authorized to obtain and use information in accordance with the requirements imposed as a condition of participating in a joint or multiagency examination or investigation.

Pursuant to the Open Government Sunset Review Act, the public record exemption will repeal on October 2, 2016, unless reenacted by the Legislature.

Professional staff communicated with OFR staff as part of the Open Government Sunset Review process. The OFR staff was asked whether OFR recommended that the Legislature repeal the public record exemption under review, reenact the public record exemption, or reenact it with changes. OFR recommended reenactment of the public record exemption under review.

## **III. Effect of Proposed Changes:**

The bill eliminates the scheduled repeal of the current public records exemption for specified information held by the OFR. The following information held by the OFR will remain confidential and exempt from the public records exemption:

- Information received from another state or federal regulatory, administrative, or criminal justice agency that is otherwise confidential or exempt pursuant to the laws of that state or pursuant to federal law.
- Information that is received or developed by OFR as part of a joint or multiagency investigation or examination.

The bill has an effective date of October 1, 2016.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

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

##### **B. Public Records/Open Meetings Issues:**

Since this bill reenacts a current exemption and does not expand the scope of the exemption, a simple majority vote of the members present and voting in each house of the Legislature is required for passage.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

##### **C. Government Sector Impact:**

The continuation of this exemption will allow the OFR to obtain information that could assist it in pursuing violations of law under its jurisdiction and to participate in joint or multiagency investigations and examinations. Without this exemption, the effective and efficient administration of the regulatory programs administered by the Office of Financial Regulation would be significantly impaired.

Since the exemption is currently in place, there should be no increase in costs associated with redacting records.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.0712 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

597-01339-16

20167032\_\_

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 119.0712, F.S.,  
 4 relating to an exemption from public records  
 5 requirements for confidential information received by  
 6 the Office of Financial Regulation from certain state  
 7 or federal agencies and information received or  
 8 developed by the office in a joint or multiagency  
 9 examination or investigation; removing the scheduled  
 10 repeal of the exemption; providing an effective date.  
 11

12 Be It Enacted by the Legislature of the State of Florida:  
 13

14 Section 1. Subsection (3) of section 119.0712, Florida  
 15 Statutes, is amended to read:  
 16 119.0712 Executive branch agency-specific exemptions from  
 17 inspection or copying of public records.—  
 18 (3) OFFICE OF FINANCIAL REGULATION.—  
 19 ~~(a)~~ The following information held by the Office of  
 20 Financial Regulation before, on, or after July 1, 2011, is  
 21 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 22 of the State Constitution:  
 23 (a)1- Any information received from another state or  
 24 federal regulatory, administrative, or criminal justice agency  
 25 that is otherwise confidential or exempt pursuant to the laws of  
 26 that state or pursuant to federal law.  
 27 (b)2- Any information that is received or developed by the  
 28 office as part of a joint or multiagency examination or  
 29 investigation with another state or federal regulatory,

Page 1 of 2

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597-01339-16

20167032\_\_

30 administrative, or criminal justice agency. The office may  
 31 obtain and use the information in accordance with the conditions  
 32 imposed by the joint or multiagency agreement. This exemption  
 33 does not apply to information obtained or developed by the  
 34 office that would otherwise be available for public inspection  
 35 if the office had conducted an independent examination or  
 36 investigation under Florida law.  
 37 ~~(b) This subsection is subject to the Open Government~~  
 38 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
 39 ~~repealed on October 2, 2016, unless reviewed and saved from~~  
 40 ~~repeal through reenactment by the Legislature.~~  
 41 Section 2. This act shall take effect October 1, 2016.

Page 2 of 2

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THE FLORIDA SENATE

APPEARANCE RECORD

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

1/20/16

Meeting Date

SB 7032

Bill Number (if applicable)

Topic Waiving in Support of SB 7032

Amendment Barcode (if applicable)

Name Ms. Jamie Champion-Mongiovi

Job Title Director, Communications & Government Affairs

Address Florida Office of Financial Regulation

Phone 850-410-9601

Street

101 E Gaines Street

FL

32399

Email jamie.mongiovi@flofr.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Office of Financial Regulation

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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1038

INTRODUCER: Senator Simmons

SUBJECT: Florida Statutes

DATE: January 19, 2016

REVISED: \_\_\_\_\_

---

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Pollitz (DLRI)	Phelps	RC	Fav/CS

---

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

The Division of Law Revision and Information of the Office of Legislative Services is required, by statute, to conduct a systematic and continuing study of the Florida Statutes. The purpose of this study is to recommend to the Legislature changes that will remove inconsistencies, redundancies, and unnecessary repetition from the statutes; improve clarity and facilitate correct interpretation; correct grammatical and typographical errors; and delete obsolete, repealed, or superseded provisions. These recommendations are submitted to the Legislature in the form of technical, nonsubstantive reviser's bills.

This is a general reviser's bill to delete expired or obsolete language; correct cross-references and grammatical or typographical errors; remove inconsistencies and redundancies from the statutes; improve the clarity of the statutes and facilitate their correct interpretation; and confirm the restoration of provisions unintentionally omitted from republication in the acts of the Legislature during the amendatory process. A reviser's bill cannot be amended except to delete a bill section.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: amends ss. 27.7045, 39.0134, 39.701, 55.203, 101.56065, 110.12302, 112.0455, 112.362, 119.0712, 153.74, 159.02, 161.091, 163.3177, 166.271, 189.031, 200.001, 200.065, 200.068, 200.141, 212.08, 213.0532, 218.39, 220.63, 238.05, 255.041, 255.254, 259.032, 272.135, 288.012, 311.12, 316.3025, 333.07, 336.71, 343.1003, 366.95, 373.236, 373.4149, 373.41492, 379.3751, 380.510, 383.402, 395.1012, 400.0065, 400.0070, 400.0081, 400.0087, 400.022, 400.141, 403.5363, 408.301, 409.978, 415.113, 456.074, 458.3265, 459.0137, 468.503, 468.509, 468.513, 468.514, 468.515, 468.518, 480.041, 480.043, 497.159, 546.10, 553.74, 559.55,

559.555, 560.141, 561.42, 561.57, 605.0410, 610.1201, 617.01301, 618.221, 624.5105, 625.012, 631.152, 631.737, 641.225, 719.108, 742.14, 752.001, 765.105, 765.2038, 787.29, 893.138, 944.4731, 945.215, 1001.65, 1002.3105, 1003.21, 1003.5716, 1012.22, and 1012.341, F.S.; reenacts and amends s. 1008.22, F.S; and repeals ss. 200.185 and 624.35, F.S.

## **II. Present Situation:**

The Division of Law Revision and Information, under the authority and requirements of s. 11.242, Florida Statutes, submits reviser's bills to the rules committees of both houses as needed. General reviser's bills to clean up obsolete language, update cross-references, and correct grammatical and typographical errors and the like are submitted every year.

## **III. Effect of Proposed Changes:**

The effect of this bill is of a technical nature only; reviser's bills do not contain substantive changes. The bill will clean up grammatical and similar errors in the Florida Statutes.

## **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 the following sections of the Florida Statutes: ss. 27.7045, 39.0134, 39.701, 55.203, 101.56065, 110.12302, 112.0455, 112.362, 119.0712, 153.74, 159.02, 161.091, 163.3177, 166.271, 189.031, 200.001, 200.065, 200.068, 200.141, 212.08, 213.0532, 218.39, 220.63, 238.05, 255.041, 255.254, 259.032, 272.135, 288.012, 311.12, 316.3025, 333.07, 336.71, 343.1003, 366.95, 373.236, 373.4149, 373.41492, 379.3751, 380.510, 383.402, 395.1012, 400.0065, 400.0070, 400.0081, 400.0087, 400.022, 400.141, 403.5363, 408.301, 409.978, 415.113, 456.074, 458.3265, 459.0137, 468.503, 468.509, 468.513, 468.514, 468.515, 468.518, 480.041, 480.043, 497.159, 546.10, 553.74, 559.55, 559.555, 560.141, 561.42, 561.57, 605.0410, 610.1201, 617.01301, 618.221, 624.5105, 625.012, 631.152, 631.737, 641.225, 719.108, 742.14, 752.001, 765.105, 765.2038, 787.29, 893.138, 944.4731, 945.215, 1001.65, 1002.3105, 1003.21, 1003.5716, 1012.22, 1012.341.

This bill reenacts and substantially amends s. 1008.22, F.S.

This bill creates the following sections of the Florida Statutes: None.

This bill repeals the following sections of the Florida Statutes: ss. 200.185 and 624.35, F.S.

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

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

**CS by Rules on January 20, 2016:**

The committee substitute removes section 70 of the bill that amended s. 560.141, Florida Statutes.

**B. Amendments:**

None.



523840

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
01/20/2016	.	
	.	
	.	
	.	

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The Committee on Rules (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 2016 - 2064.

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

And the title is amended as follows:

Delete line 15

and insert:

559.55, 559.555, 561.42, 561.57, 605.0410,



114760

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

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The Committee on Rules (Simmons) recommended the following:

1           **Senate Substitute for Amendment (523840) (with title**  
2 **amendment)**

3  
4           Delete lines 2019 - 2064.

5  
6 ===== T I T L E   A M E N D M E N T =====

7 And the title is amended as follows:

8           Delete line 15

9 and insert:

10           559.55, 559.555, 561.42, 561.57, 605.0410

By Senator Simmons

10-01720-16

20161038\_\_

1 A reviser's bill to be entitled  
 2 An act relating to the Florida Statutes; amending ss.  
 3 27.7045, 39.0134, 39.701, 55.203, 101.56065,  
 4 110.12302, 112.0455, 112.362, 119.0712, 153.74,  
 5 159.02, 161.091, 163.3177, 166.271, 189.031, 200.001,  
 6 200.065, 200.068, 200.141, 212.08, 213.0532, 218.39,  
 7 220.63, 238.05, 255.041, 255.254, 259.032, 272.135,  
 8 288.012, 311.12, 316.3025, 333.07, 336.71, 343.1003,  
 9 366.95, 373.236, 373.4149, 373.41492, 379.3751,  
 10 380.510, 383.402, 395.1012, 400.0065, 400.0070,  
 11 400.0081, 400.0087, 400.022, 400.141, 403.5363,  
 12 408.301, 409.978, 415.113, 456.074, 458.3265,  
 13 459.0137, 468.503, 468.509, 468.513, 468.514, 468.515,  
 14 468.518, 480.041, 480.043, 497.159, 546.10, 553.74,  
 15 559.55, 559.555, 560.141, 561.42, 561.57, 605.0410,  
 16 610.1201, 617.01301, 618.221, 624.5105, 625.012,  
 17 631.152, 631.737, 641.225, 719.108, 742.14, 752.001,  
 18 765.105, 765.2038, 787.29, 893.138, 944.4731, 945.215,  
 19 1001.65, 1002.3105, 1003.21, 1003.5716, 1012.22, and  
 20 1012.341, F.S.; reenacting and amending s. 1008.22,  
 21 F.S.; and repealing ss. 200.185 and 624.35, F.S.;  
 22 deleting provisions that have expired, have become  
 23 obsolete, have had their effect, have served their  
 24 purpose, or have been impliedly repealed or  
 25 superseded; replacing incorrect cross-references and  
 26 citations; correcting grammatical, typographical, and  
 27 like errors; removing inconsistencies, redundancies,  
 28 and unnecessary repetition in the statutes; improving  
 29 the clarity of the statutes and facilitating their

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30 correct interpretation; and confirming the restoration  
 31 of provisions unintentionally omitted from  
 32 republication in the acts of the Legislature during  
 33 the amendatory process; providing an effective date.  
 34  
 35 Be It Enacted by the Legislature of the State of Florida:  
 36  
 37 Section 1. Section 27.7045, Florida Statutes, is amended to  
 38 read:  
 39 27.7045 Capital case proceedings; constitutionally  
 40 deficient representation.—Notwithstanding any other ~~another~~  
 41 provision of law, an attorney employed by the state or appointed  
 42 pursuant to s. 27.711 may not represent a person charged with a  
 43 capital offense at trial or on direct appeal or a person  
 44 sentenced to death in a postconviction proceeding if, in two  
 45 separate instances, a court, in a capital postconviction  
 46 proceeding, determined that such attorney provided  
 47 constitutionally deficient representation and relief was granted  
 48 as a result. This prohibition on representation shall be for a  
 49 period of 5 years, which commences at the time relief is granted  
 50 after the highest court having jurisdiction to review the  
 51 deficient representation determination has issued its final  
 52 order affirming the second such determination.  
 53 Reviser's note.—Amended to improve clarity.  
 54 Section 2. Paragraph (c) of subsection (2) of section  
 55 39.0134, Florida Statutes, is amended to read:  
 56 39.0134 Appointed counsel; compensation.—  
 57 (2)  
 58 (c) The clerk of the court shall transfer monthly all

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59 attorney's fees and costs collected under this subsection to the  
 60 Department of Revenue for deposit into the Indigent Civil  
 61 Defense Trust Fund, to be used as appropriated by the  
 62 Legislature and consistent with s. 27.5111 ~~27.511~~.  
 63 Reviser's note.—Amended to conform to the fact that the Indigent  
 64 Civil Defense Trust Fund is created in s. 27.5111; the  
 65 trust fund is not referenced in s. 27.511.  
 66 Section 3. Paragraph (b) of subsection (3) of section  
 67 39.701, Florida Statutes, is amended to read:  
 68 39.701 Judicial review.—  
 69 (3) REVIEW HEARINGS FOR CHILDREN 17 YEARS OF AGE.—  
 70 (b) At the first judicial review hearing held subsequent to  
 71 the child's 17th birthday, the department shall provide the  
 72 court with an updated case plan that includes specific  
 73 information related to the independent living skills that the  
 74 child has acquired since the child's 13th birthday, or since the  
 75 date the child came into foster care, whichever came later.  
 76 1. For any child who ~~that~~ may meet the requirements for  
 77 appointment of a guardian pursuant to chapter 744, or a guardian  
 78 advocate pursuant to s. 393.12, the updated case plan must be  
 79 developed in a face-to-face conference with the child, if  
 80 appropriate; the child's attorney; any court-appointed guardian  
 81 ad litem; the temporary custodian of the child; and the parent,  
 82 if the parent's rights have not been terminated.  
 83 2. At the judicial review hearing, if the court determines  
 84 pursuant to chapter 744 that there is a good faith basis to  
 85 believe that the child qualifies for appointment of a guardian  
 86 advocate, limited guardian, or plenary guardian for the child  
 87 and that no less restrictive decisionmaking assistance will meet

10-01720-16 20161038\_\_

88 the child's needs:  
 89 a. The department shall complete a multidisciplinary report  
 90 which must include, but is not limited to, a psychosocial  
 91 evaluation and educational report if such a report has not been  
 92 completed within the previous 2 years.  
 93 b. The department shall identify one or more individuals  
 94 who are willing to serve as the guardian advocate pursuant to s.  
 95 393.12 or as the plenary or limited guardian pursuant to chapter  
 96 744. Any other interested parties or participants may make  
 97 efforts to identify such a guardian advocate, limited guardian,  
 98 or plenary guardian. The child's biological or adoptive family  
 99 members, including the child's parents if the parents' rights  
 100 have not been terminated, may not be considered for service as  
 101 the plenary or limited guardian unless the court enters a  
 102 written order finding that such an appointment is in the child's  
 103 best interests.  
 104 c. Proceedings may be initiated within 180 days after the  
 105 child's 17th birthday for the appointment of a guardian  
 106 advocate, plenary guardian, or limited guardian for the child in  
 107 a separate proceeding in the court division with jurisdiction  
 108 over guardianship matters and pursuant to chapter 744. The  
 109 Legislature encourages the use of pro bono representation to  
 110 initiate proceedings under this section.  
 111 3. In the event another interested party or participant  
 112 initiates proceedings for the appointment of a guardian  
 113 advocate, plenary guardian, or limited guardian for the child,  
 114 the department shall provide all necessary documentation and  
 115 information to the petitioner to complete a petition under s.  
 116 393.12 or chapter 744 within 45 days after the first judicial

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117 review hearing after the child's 17th birthday.  
 118 4. Any proceedings seeking appointment of a guardian  
 119 advocate or a determination of incapacity and the appointment of  
 120 a guardian must be conducted in a separate proceeding in the  
 121 court division with jurisdiction over guardianship matters and  
 122 pursuant to chapter 744.  
 123 Reviser's note.—Amended to confirm the editorial substitution of  
 124 the word "who" for the word "that" to conform to context.  
 125 Section 4. Paragraph (h) of subsection (1) of section  
 126 55.203, Florida Statutes, is repealed.  
 127 Reviser's note.—The referenced paragraph is repealed to delete a  
 128 provision that has served its purpose. The paragraph  
 129 requires an original judgment lien certificate for a lien  
 130 acquired by delivery of a writ of execution to a sheriff  
 131 prior to October 1, 2001, to include an affidavit by the  
 132 judgment creditor attesting that the person or entity  
 133 possesses any documentary evidence of the date of delivery  
 134 of the writ, and a statement of that date or a  
 135 certification by the sheriff of the date as provided in s.  
 136 30.17(4). Section 30.17 was repealed by s. 5, ch. 2005-2,  
 137 Laws of Florida.  
 138 Section 5. Paragraph (a) of subsection (2) of section  
 139 101.56065, Florida Statutes, is amended to read:  
 140 101.56065 Voting system defects; disclosure;  
 141 investigations; penalties.—  
 142 (2) (a) ~~No later than December 31, 2013, and, thereafter,~~ On  
 143 January 1 of every odd-numbered year, each vendor shall file a  
 144 written disclosure with the department identifying any known  
 145 defect in the voting system or the fact that there is no known

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146 defect, the effect of any defect on the operation and use of the  
 147 approved voting system, and any known corrective measures to  
 148 cure a defect, including, but not limited to, advisories and  
 149 bulletins issued to system users.  
 150 Reviser's note.—Amended to delete language that has served its  
 151 purpose.  
 152 Section 6. Section 110.12302, Florida Statutes, is amended  
 153 to read:  
 154 110.12302 Costing options for plan designs required for  
 155 contract solicitation; best value recommendations.—For the state  
 156 group insurance program, the Department of Management Services  
 157 shall require costing options for both fully insured and self-  
 158 insured plan designs, or some combination thereof, as part of  
 159 the department's solicitation for health maintenance  
 160 organization contracts. ~~Prior to contracting, the department~~  
 161 ~~shall recommend to the Legislature, no later than February 1,~~  
 162 ~~2011, the best value to the State group insurance program~~  
 163 ~~relating to health maintenance organizations.~~  
 164 Reviser's note.—Amended to delete an obsolete provision.  
 165 Section 7. Paragraph (e) of subsection (10) of section  
 166 112.0455, Florida Statutes, is amended to read:  
 167 112.0455 Drug-Free Workplace Act.—  
 168 (10) EMPLOYER PROTECTION.—  
 169 (e) Nothing in this section shall be construed to operate  
 170 retroactively, ~~and nothing in this section shall abrogate the~~  
 171 ~~right of an employer under state law to conduct drug tests prior~~  
 172 ~~to January 1, 1990. A drug test conducted by an employer prior~~  
 173 ~~to January 1, 1990, is not subject to this section.~~  
 174 Reviser's note.—Amended to delete obsolete provisions.

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175 Section 8. Subsection (3) of section 112.362, Florida  
 176 Statutes, is amended to read:  
 177 112.362 Recomputation of retirement benefits.—  
 178 (3) A member of any state-supported retirement system who  
 179 has already retired under a retirement plan or system which does  
 180 not require its members to participate in social security  
 181 pursuant to a modification of the federal-state social security  
 182 agreement as authorized by the provisions of chapter 650, who is  
 183 over 65 years of age, and who has not less than 10 years of  
 184 creditable service, or the surviving spouse or beneficiary of  
 185 said member who, if living, would be over 65 years of age, upon  
 186 application to the administrator, may have his or her present  
 187 monthly retirement benefits recomputed and receive a monthly  
 188 retirement allowance equal to \$10 multiplied by the total number  
 189 of years of creditable service. Effective July 1, 1978, this  
 190 minimum monthly benefit shall be equal to \$10.50 multiplied by  
 191 the total number of years of creditable service, and thereafter  
 192 said minimum monthly benefit shall be recomputed as provided in  
 193 paragraph (5) (a). This adjustment shall be made in accordance  
 194 with subsection (2). No retirement benefits shall be reduced  
 195 under this computation. Retirees receiving additional benefits  
 196 under the provisions of this subsection shall also receive the  
 197 cost-of-living adjustments provided by the appropriate state-  
 198 supported retirement system for the fiscal year beginning July  
 199 1, 1977, and for each fiscal year thereafter. The minimum  
 200 monthly benefit provided by this subsection ~~paragraph~~ shall not  
 201 apply to any member or the beneficiary of any member who retires  
 202 after June 30, 1978.  
 203 Reviser's note.—Amended to conform to context and to the fact

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204 that subsection (3) did not have paragraphs when it was  
 205 added by s. 1, ch. 78-364, Laws of Florida, nor does it  
 206 have paragraphs currently.  
 207 Section 9. Paragraph (c) of subsection (2) of section  
 208 119.0712, Florida Statutes, is amended to read:  
 209 119.0712 Executive branch agency-specific exemptions from  
 210 inspection or copying of public records.—  
 211 (2) DEPARTMENT OF HIGHWAY SAFETY AND MOTOR VEHICLES.—  
 212 (c) E-mail addresses collected by the Department of Highway  
 213 Safety and Motor Vehicles pursuant to s. 319.40(3), s.  
 214 320.95(2), or s. 322.08(9) ~~322.08(8)~~ are exempt from s.  
 215 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
 216 exemption applies retroactively. This paragraph is subject to  
 217 the Open Government Sunset Review Act in accordance with s.  
 218 119.15 and shall stand repealed on October 2, 2020, unless  
 219 reviewed and saved from repeal through reenactment by the  
 220 Legislature.  
 221 Reviser's note.—Amended to conform to the redesignation of  
 222 subsections in s. 322.08 by s. 14, ch. 2015-163, Laws of  
 223 Florida.  
 224 Section 10. Subsection (2) of section 153.74, Florida  
 225 Statutes, is amended to read:  
 226 153.74 Issuance of certificates of indebtedness based on  
 227 assessments for assessable improvements.—  
 228 (2) The district may also issue assessment bonds or other  
 229 obligations payable from a special fund into which such  
 230 certificates of indebtedness referred to in the preceding  
 231 subsection may be deposited; or, if such certificates of  
 232 indebtedness have not been issued, the district may assign to

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233 such special fund for the benefit of the holders of such  
 234 assessment bonds or other obligations, or to a trustee for such  
 235 bondholders, the assessment liens provided for in s. 153.73(11)  
 236 ~~153.73(10)~~, unless such certificates of indebtedness or  
 237 assessment liens have been theretofore pledged for any bonds or  
 238 other obligations authorized hereunder. In the event of the  
 239 creation of such special fund and the issuance of such  
 240 assessment bonds or other obligations, the proceeds of such  
 241 certificates of indebtedness or assessment liens deposited  
 242 therein shall be used only for the payment of the assessment  
 243 bonds or other obligations issued as provided in this section.  
 244 The district is hereby authorized to covenant with the holders  
 245 of such assessment bonds or other obligations that it will  
 246 diligently and faithfully enforce and collect all the special  
 247 assessments and interest and penalties thereon for which such  
 248 certificates of indebtedness or assessment liens have been  
 249 deposited in or assigned to such fund, and to foreclose such  
 250 assessment liens so assigned to such special fund or represented  
 251 by the certificates of indebtedness deposited in said special  
 252 fund, after such assessment liens have become delinquent and  
 253 deposit the proceeds derived from such foreclosure, including  
 254 interest and penalties, in such special fund, and to further  
 255 make any other necessary covenants deemed necessary or advisable  
 256 in order to properly secure the holders of such assessment bonds  
 257 or other obligations.  
 258 Reviser's note.—Amended to correct an apparent error. Section  
 259 153.73(10) does not reference assessment liens; s.  
 260 153.73(11)(c) provides that all assessments constitute a  
 261 lien on the property assessed.

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262 Section 11. Subsection (16) of section 159.02, Florida  
 263 Statutes, is amended to read:  
 264 159.02 Definitions.—As used in this part, the following  
 265 words and terms shall have the following meanings, unless some  
 266 other meaning is plainly intended:  
 267 (16) The term "utilities services taxes" shall mean taxes  
 268 levied and collected on the purchase or sale of utilities  
 269 services pursuant to ~~ss. 167.431 and 167.45~~ or any other law.  
 270 Reviser's note.—Amended to delete references to ss. 167.431 and  
 271 167.45, which were repealed by s. 5, ch. 73-129, Laws of  
 272 Florida.  
 273 Section 12. Subsection (1) of section 161.091, Florida  
 274 Statutes, is amended to read:  
 275 161.091 Beach management; funding; repair and maintenance  
 276 strategy.—  
 277 (1) Subject to such appropriations as the Legislature may  
 278 make therefor from time to time, disbursements from the Land  
 279 Acquisition Trust Fund may be made by the department in order to  
 280 carry out the proper state responsibilities in a comprehensive,  
 281 long-range, statewide beach management plan for erosion control;  
 282 beach preservation, restoration, and nourishment; ~~and~~ storm and  
 283 hurricane protection; and other activities authorized for  
 284 beaches and shores pursuant to s. 28, Art. X of the State  
 285 Constitution. Legislative intent in appropriating such funds is  
 286 for the implementation of those projects that contribute most  
 287 significantly to addressing the state's beach erosion problems.  
 288 Reviser's note.—Amended to confirm the editorial deletion of the  
 289 word "and."  
 290 Section 13. Paragraph (a) of subsection (6) of section

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291 163.3177, Florida Statutes, is amended to read:

292 163.3177 Required and optional elements of comprehensive  
293 plan; studies and surveys.—

294 (6) In addition to the requirements of subsections (1)-(5),  
295 the comprehensive plan shall include the following elements:

296 (a) A future land use plan element designating proposed  
297 future general distribution, location, and extent of the uses of  
298 land for residential uses, commercial uses, industry,  
299 agriculture, recreation, conservation, education, public  
300 facilities, and other categories of the public and private uses  
301 of land. The approximate acreage and the general range of  
302 density or intensity of use shall be provided for the gross land  
303 area included in each existing land use category. The element  
304 shall establish the long-term end toward which land use programs  
305 and activities are ultimately directed.

306 1. Each future land use category must be defined in terms  
307 of uses included, and must include standards to be followed in  
308 the control and distribution of population densities and  
309 building and structure intensities. The proposed distribution,  
310 location, and extent of the various categories of land use shall  
311 be shown on a land use map or map series which shall be  
312 supplemented by goals, policies, and measurable objectives.

313 2. The future land use plan and plan amendments shall be  
314 based upon surveys, studies, and data regarding the area, as  
315 applicable, including:

316 a. The amount of land required to accommodate anticipated  
317 growth.

318 b. The projected permanent and seasonal population of the  
319 area.

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320 c. The character of undeveloped land.

321 d. The availability of water supplies, public facilities,  
322 and services.

323 e. The need for redevelopment, including the renewal of  
324 blighted areas and the elimination of nonconforming uses which  
325 are inconsistent with the character of the community.

326 f. The compatibility of uses on lands adjacent to or  
327 closely proximate to military installations.

328 g. The compatibility of uses on lands adjacent to an  
329 airport as defined in s. 330.35 and consistent with s. 333.02.

330 h. The discouragement of urban sprawl.

331 i. The need for job creation, capital investment, and  
332 economic development that will strengthen and diversify the  
333 community's economy.

334 j. The need to modify land uses and development patterns  
335 within antiquated subdivisions.

336 3. The future land use plan element shall include criteria  
337 to be used to:

338 a. Achieve the compatibility of lands adjacent or closely  
339 proximate to military installations, considering factors  
340 identified in s. 163.3175(5).

341 b. Achieve the compatibility of lands adjacent to an  
342 airport as defined in s. 330.35 and consistent with s. 333.02.

343 c. Encourage preservation of recreational and commercial  
344 working waterfronts for water-dependent uses in coastal  
345 communities.

346 d. Encourage the location of schools proximate to urban  
347 residential areas to the extent possible.

348 e. Coordinate future land uses with the topography and soil

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349 conditions, and the availability of facilities and services.

350 f. Ensure the protection of natural and historic resources.

351 g. Provide for the compatibility of adjacent land uses.

352 h. Provide guidelines for the implementation of mixed-use  
353 development including the types of uses allowed, the percentage  
354 distribution among the mix of uses, or other standards, and the  
355 density and intensity of each use.

356 4. The amount of land designated for future planned uses  
357 shall provide a balance of uses that foster vibrant, viable  
358 communities and economic development opportunities and address  
359 outdated development patterns, such as antiquated subdivisions.  
360 The amount of land designated for future land uses should allow  
361 the operation of real estate markets to provide adequate choices  
362 for permanent and seasonal residents and business and may not be  
363 limited solely by the projected population. The element shall  
364 accommodate at least the minimum amount of land required to  
365 accommodate the medium projections as published by the Office of  
366 Economic and Demographic Research for at least a 10-year  
367 planning period unless otherwise limited under s. 380.05,  
368 including related rules of the Administration Commission.

369 5. The future land use plan of a county may designate areas  
370 for possible future municipal incorporation.

371 6. The land use maps or map series shall generally identify  
372 and depict historic district boundaries and shall designate  
373 historically significant properties meriting protection.

374 7. The future land use element must clearly identify the  
375 land use categories in which public schools are an allowable  
376 use. When delineating the land use categories in which public  
377 schools are an allowable use, a local government shall include

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378 in the categories sufficient land proximate to residential  
379 development to meet the projected needs for schools in  
380 coordination with public school boards and may establish  
381 differing criteria for schools of different type or size. Each  
382 local government shall include lands contiguous to existing  
383 school sites, to the maximum extent possible, within the land  
384 use categories in which public schools are an allowable use.

385 8. Future land use map amendments shall be based upon the  
386 following analyses:

387 a. An analysis of the availability of facilities and  
388 services.

389 b. An analysis of the suitability of the plan amendment for  
390 its proposed use considering the character of the undeveloped  
391 land, soils, topography, natural resources, and historic  
392 resources on site.

393 c. An analysis of the minimum amount of land needed to  
394 achieve the goals and requirements of this section.

395 9. The future land use element and any amendment to the  
396 future land use element shall discourage the proliferation of  
397 urban sprawl.

398 a. The primary indicators that a plan or plan amendment  
399 does not discourage the proliferation of urban sprawl are listed  
400 below. The evaluation of the presence of these indicators shall  
401 consist of an analysis of the plan or plan amendment within the  
402 context of features and characteristics unique to each locality  
403 in order to determine whether the plan or plan amendment:

404 (I) Promotes, allows, or designates for development  
405 substantial areas of the jurisdiction to develop as low-  
406 intensity, low-density, or single-use development or uses.

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407 (II) Promotes, allows, or designates significant amounts of  
 408 urban development to occur in rural areas at substantial  
 409 distances from existing urban areas while not using undeveloped  
 410 lands that are available and suitable for development.

411 (III) Promotes, allows, or designates urban development in  
 412 radial, strip, isolated, or ribbon patterns generally emanating  
 413 from existing urban developments.

414 (IV) Fails to adequately protect and conserve natural  
 415 resources, such as wetlands, floodplains, native vegetation,  
 416 environmentally sensitive areas, natural groundwater aquifer  
 417 recharge areas, lakes, rivers, shorelines, beaches, bays,  
 418 estuarine systems, and other significant natural systems.

419 (V) Fails to adequately protect adjacent agricultural areas  
 420 and activities, including silviculture, active agricultural and  
 421 silvicultural activities, passive agricultural activities, and  
 422 dormant, unique, and prime farmlands and soils.

423 (VI) Fails to maximize use of existing public facilities  
 424 and services.

425 (VII) Fails to maximize use of future public facilities and  
 426 services.

427 (VIII) Allows for land use patterns or timing which  
 428 disproportionately increase the cost in time, money, and energy  
 429 of providing and maintaining facilities and services, including  
 430 roads, potable water, sanitary sewer, stormwater management, law  
 431 enforcement, education, health care, fire and emergency  
 432 response, and general government.

433 (IX) Fails to provide a clear separation between rural and  
 434 urban uses.

435 (X) Discourages or inhibits infill development or the

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436 redevelopment of existing neighborhoods and communities.

437 (XI) Fails to encourage a functional mix of uses.

438 (XII) Results in poor accessibility among linked or related  
 439 land uses.

440 (XIII) Results in the loss of significant amounts of  
 441 functional open space.

442 b. The future land use element or plan amendment shall be  
 443 determined to discourage the proliferation of urban sprawl if it  
 444 incorporates a development pattern or urban form that achieves  
 445 four or more of the following:

446 (I) Directs or locates economic growth and associated land  
 447 development to geographic areas of the community in a manner  
 448 that does not have an adverse impact on and protects natural  
 449 resources and ecosystems.

450 (II) Promotes the efficient and cost-effective provision or  
 451 extension of public infrastructure and services.

452 (III) Promotes walkable and connected communities and  
 453 provides for compact development and a mix of uses at densities  
 454 and intensities that will support a range of housing choices and  
 455 a multimodal transportation system, including pedestrian,  
 456 bicycle, and transit, if available.

457 (IV) Promotes conservation of water and energy.

458 (V) Preserves agricultural areas and activities, including  
 459 silviculture, and dormant, unique, and prime farmlands and  
 460 soils.

461 (VI) Preserves open space and natural lands and provides  
 462 for public open space and recreation needs.

463 (VII) Creates a balance of land uses based upon demands of  
 464 the residential population for the nonresidential needs of an

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465 area.

466 (VIII) Provides uses, densities, and intensities of use and

467 urban form that would remediate an existing or planned

468 development pattern in the vicinity that constitutes sprawl or

469 if it provides for an innovative development pattern such as

470 transit-oriented developments or new towns as defined in s.

471 163.3164.

472 10. The future land use element shall include a future land

473 use map or map series.

474 a. The proposed distribution, extent, and location of the

475 following uses shall be shown on the future land use map or map

476 series:

477 (I) Residential.

478 (II) Commercial.

479 (III) Industrial.

480 (IV) Agricultural.

481 (V) Recreational.

482 (VI) Conservation.

483 (VII) Educational.

484 (VIII) Public.

485 b. The following areas shall also be shown on the future

486 land use map or map series, if applicable:

487 (I) Historic district boundaries and designated

488 historically significant properties.

489 (II) Transportation concurrency management area boundaries

490 or transportation concurrency exception area boundaries.

491 (III) Multimodal transportation district boundaries.

492 (IV) Mixed-use categories.

493 c. The following natural resources or conditions shall be

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494 shown on the future land use map or map series, if applicable:

495 (I) Existing and planned public potable waterwells, cones

496 of influence, and wellhead protection areas.

497 (II) Beaches and shores, including estuarine systems.

498 (III) Rivers, bays, lakes, floodplains, and harbors.

499 (IV) Wetlands.

500 (V) Minerals and soils.

501 (VI) Coastal high hazard areas.

502 ~~11. Local governments required to update or amend their~~

503 ~~comprehensive plan to include criteria and address compatibility~~

504 ~~of lands adjacent or closely proximate to existing military~~

505 ~~installations, or lands adjacent to an airport as defined in s.~~

506 ~~330.35 and consistent with s. 333.02, in their future land use~~

507 ~~plan element shall transmit the update or amendment to the state~~

508 ~~land planning agency by June 30, 2012.~~

509 Reviser's note.—Amended to delete an obsolete provision.

510 Section 14. Subsection (1) of section 166.271, Florida

511 Statutes, is amended to read:

512 166.271 Surcharge on municipal facility parking fees.—

513 (1) The governing authority of any municipality with a

514 resident population of 200,000 or more, more than 20 percent of

515 the real property of which is exempt from ad valorem taxes, and

516 which is located in a county with a population of more than

517 500,000 may impose and collect, subject to referendum approval

518 by voters in the municipality, a discretionary per vehicle

519 surcharge of up to 15 percent of the amount charged for the

520 sale, lease, or rental of space at parking facilities within the

521 municipality which are open for use to the general public and

522 which are not airports, seaports, county administration



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523 buildings, or other projects as defined under ss. 125.011 and  
 524 125.015, ~~provided that this surcharge shall not take effect~~  
 525 ~~while any surcharge imposed pursuant to former s. 218.503(6) (a),~~  
 526 ~~is in effect.~~

527 Reviser's note.—Amended to delete obsolete language. The  
 528 surcharge imposed under former s. 218.503(6) expired  
 529 pursuant to its own terms, effective June 30, 2006;  
 530 confirmed by s. 6, ch. 2007-6, Laws of Florida, a reviser's  
 531 bill.

532 Section 15. Subsection (2) of section 189.031, Florida  
 533 Statutes, is amended to read:

534 189.031 Legislative intent for the creation of independent  
 535 special districts; special act prohibitions; model elements and  
 536 other requirements; local general-purpose government/Governor  
 537 and Cabinet creation authorizations.—

538 (2) SPECIAL ACTS PROHIBITED.—Pursuant to s. 11(a)(21), Art.  
 539 III of the State Constitution, the Legislature hereby prohibits  
 540 special laws or general laws of local application which:

541 (a) Create independent special districts that do not, at a  
 542 minimum, conform to the minimum requirements in subsection (3);  
 543 (b) Exempt independent special district elections from the  
 544 appropriate requirements in s. 189.04;  
 545 (c) Exempt an independent special district from the  
 546 requirements for bond referenda in s. 189.042;  
 547 (d) Exempt an independent special district from the  
 548 reporting, notice, or public meetings requirements of s.  
 549 189.015, s. 189.016, s. 189.051, or s. 189.08; or  
 550 (e) Create an independent special district for which a  
 551 statement has not been submitted to the Legislature that

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552 documents the following:

553 1. The purpose of the proposed district;  
 554 2. The authority of the proposed district;  
 555 3. An explanation of why the district is the best  
 556 alternative; and  
 557 4. A resolution or official statement of the governing body  
 558 or an appropriate administrator of the local jurisdiction within  
 559 which the proposed district is located stating that the creation  
 560 of the proposed district is consistent with the approved local  
 561 government plans of the local governing body and that the local  
 562 government has no objection to the creation of the proposed  
 563 district.

564 Reviser's note.—Amended to improve clarity.

565 Section 16. Paragraphs (l) and (m) of subsection (8) of  
 566 section 200.001, Florida Statutes, are amended to read:

567 200.001 Millages; definitions and general provisions.—  
 568 (8)  
 569 (l) "Maximum total county ad valorem taxes levied" means  
 570 the total taxes levied by a county, municipal service taxing  
 571 units of that county, and special districts dependent to that  
 572 county at their individual maximum millages, calculated pursuant  
 573 to s. 200.065(5)(a) for fiscal years 2009-2010 and thereafter  
 574 ~~and pursuant to s. 200.185 for fiscal years 2007-2008 and 2008-~~  
 575 ~~2009.~~

576 (m) "Maximum total municipal ad valorem taxes levied" means  
 577 the total taxes levied by a municipality and special districts  
 578 dependent to that municipality at their individual maximum  
 579 millages, calculated pursuant to s. 200.065(5)(b) for fiscal  
 580 years 2009-2010 and thereafter ~~and by s. 200.185 for fiscal~~

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581 ~~years 2007 2008 and 2008 2009.~~

582 Reviser's note.—Amended to delete obsolete language and to  
583 conform to the repeal of s. 200.185 by this act.

584 Section 17. Paragraph (b) of subsection (5) and paragraphs  
585 (d) and (e) of subsection (13) of section 200.065, Florida  
586 Statutes, are amended to read:

587 200.065 Method of fixing millage.—

588 (5) In each fiscal year:

589 (b) The millage rate of a county or municipality, municipal  
590 service taxing unit of that county, and any special district  
591 dependent to that county or municipality may exceed the maximum  
592 millage rate calculated pursuant to this subsection if the total  
593 county ad valorem taxes levied or total municipal ad valorem  
594 taxes levied do not exceed the maximum total county ad valorem  
595 taxes levied or maximum total municipal ad valorem taxes levied  
596 respectively. Voted millage and taxes levied by a municipality  
597 or independent special district that has levied ad valorem taxes  
598 for less than 5 years are not subject to this limitation. The  
599 millage rate of a county authorized to levy a county public  
600 hospital surtax under s. 212.055 may exceed the maximum millage  
601 rate calculated pursuant to this subsection to the extent  
602 necessary to account for the revenues required to be contributed  
603 to the county public hospital. Total taxes levied may exceed the  
604 maximum calculated pursuant to subsection (6) as a result of an  
605 increase in taxable value above that certified in subsection (1)  
606 if such increase is less than the percentage amounts contained  
607 in subsection (6) or if the administrative adjustment cannot be  
608 made because the value adjustment board is still in session at  
609 the time the tax roll is extended; otherwise, millage rates

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610 subject to this subsection ~~or s. 200.185~~ may be reduced so that  
611 total taxes levied do not exceed the maximum.

612  
613 Any unit of government operating under a home rule charter  
614 adopted pursuant to ss. 10, 11, and 24, Art. VIII of the State  
615 Constitution of 1885, as preserved by s. 6(e), Art. VIII of the  
616 State Constitution of 1968, which is granted the authority in  
617 the State Constitution to exercise all the powers conferred now  
618 or hereafter by general law upon municipalities and which  
619 exercises such powers in the unincorporated area shall be  
620 recognized as a municipality under this subsection. For a  
621 downtown development authority established before the effective  
622 date of the 1968 State Constitution which has a millage that  
623 must be approved by a municipality, the governing body of that  
624 municipality shall be considered the governing body of the  
625 downtown development authority for purposes of this subsection.

626 (13)

627 (d) If any county or municipality, dependent special  
628 district of such county or municipality, or municipal service  
629 taxing unit of such county is in violation of subsection (5) ~~or~~  
630 ~~s. 200.185~~ because total county or municipal ad valorem taxes  
631 exceeded the maximum total county or municipal ad valorem taxes,  
632 respectively, that county or municipality shall forfeit the  
633 distribution of local government half-cent sales tax revenues  
634 during the 12 months following a determination of noncompliance  
635 by the Department of Revenue as described in s. 218.63(3) and  
636 this subsection. If the executive director of the Department of  
637 Revenue determines that any county or municipality, dependent  
638 special district of such county or municipality, or municipal

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639 service taxing unit of such county is in violation of subsection  
640 (5) ~~or s. 200.185~~, the Department of Revenue and the county or  
641 municipality, dependent special district of such county or  
642 municipality, or municipal service taxing unit of such county  
643 shall follow the procedures set forth in this paragraph or  
644 paragraph (e). During the pendency of any procedure under  
645 paragraph (e) or any administrative or judicial action to  
646 challenge any action taken under this subsection, the tax  
647 collector shall hold in escrow any revenues collected by the  
648 noncomplying county or municipality, dependent special district  
649 of such county or municipality, or municipal service taxing unit  
650 of such county in excess of the amount allowed by subsection (5)  
651 ~~or s. 200.185~~, as determined by the executive director. Such  
652 revenues shall be held in escrow until the process required by  
653 paragraph (e) is completed and approved by the department. The  
654 department shall direct the tax collector to so hold such funds.  
655 If the county or municipality, dependent special district of  
656 such county or municipality, or municipal service taxing unit of  
657 such county remedies the noncompliance, any moneys collected in  
658 excess of the new levy or in excess of the amount allowed by  
659 subsection (5) ~~or s. 200.185~~ shall be held in reserve until the  
660 subsequent fiscal year and shall then be used to reduce ad  
661 valorem taxes otherwise necessary. If the county or  
662 municipality, dependent special district of such county or  
663 municipality, or municipal service taxing unit of such county  
664 does not remedy the noncompliance, the provisions of s. 218.63  
665 shall apply.

666 (e) The following procedures shall be followed when the  
667 executive director notifies any county or municipality,

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668 dependent special district of such county or municipality, or  
669 municipal service taxing unit of such county that he or she has  
670 determined that such taxing authority is in violation of  
671 subsection (5) ~~or s. 200.185~~:

672 1. Within 30 days after the deadline for certification of  
673 compliance required by s. 200.068, the executive director shall  
674 notify any such county or municipality, dependent special  
675 district of such county or municipality, or municipal service  
676 taxing unit of such county of his or her determination regarding  
677 subsection (5) ~~or s. 200.185~~ and that such taxing authority is  
678 subject to subparagraph 2.

679 2. Any taxing authority so noticed by the executive  
680 director shall repeat the hearing and notice process required by  
681 paragraph (2) (d), except that:

682 a. The advertisement shall appear within 15 days after  
683 notice from the executive director.

684 b. The advertisement, in addition to meeting the  
685 requirements of subsection (3), must contain the following  
686 statement in boldfaced type immediately after the heading:  
687

688 THE PREVIOUS NOTICE PLACED BY THE ...(name of taxing  
689 authority)... HAS BEEN DETERMINED BY THE DEPARTMENT OF REVENUE  
690 TO BE IN VIOLATION OF THE LAW, NECESSITATING THIS SECOND NOTICE.  
691

692 c. The millage newly adopted at such hearing shall not be  
693 forwarded to the tax collector or property appraiser and may not  
694 exceed the rate previously adopted or the amount allowed by  
695 subsection (5) ~~or s. 200.185~~. Each taxing authority provided  
696 notice pursuant to this paragraph shall recertify compliance

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697 with this chapter as provided in this section within 15 days  
698 after the adoption of a millage at such hearing.

699 d. The determination of the executive director shall be  
700 superseded if the executive director determines that the county  
701 or municipality, dependent special district of such county or  
702 municipality, or municipal service taxing unit of such county  
703 has remedied the noncompliance. Such noncompliance shall be  
704 determined to be remedied if any such taxing authority provided  
705 notice by the executive director pursuant to this paragraph  
706 adopts a new millage that does not exceed the maximum millage  
707 allowed for such taxing authority under paragraph (5) (a) ~~or s.~~  
708 ~~200.185(1)-(5)~~, or if any such county or municipality, dependent  
709 special district of such county or municipality, or municipal  
710 service taxing unit of such county adopts a lower millage  
711 sufficient to reduce the total taxes levied such that total  
712 taxes levied do not exceed the maximum as provided in paragraph  
713 (5) (b) ~~or s. 200.185(8)~~.

714 e. If any such county or municipality, dependent special  
715 district of such county or municipality, or municipal service  
716 taxing unit of such county has not remedied the noncompliance or  
717 recertified compliance with this chapter as provided in this  
718 paragraph, and the executive director determines that the  
719 noncompliance has not been remedied or compliance has not been  
720 recertified, the county or municipality shall forfeit the  
721 distribution of local government half-cent sales tax revenues  
722 during the 12 months following a determination of noncompliance  
723 by the Department of Revenue as described in s. 218.63(2) and  
724 (3) and this subsection.

725 f. The determination of the executive director is not

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726 subject to chapter 120.

727 Reviser's note.—Amended to conform to the repeal of s. 200.185  
728 by this act.

729 Section 18. Section 200.068, Florida Statutes, is amended  
730 to read:

731 200.068 Certification of compliance with this chapter.—Not  
732 later than 30 days following adoption of an ordinance or  
733 resolution establishing a property tax levy, each taxing  
734 authority shall certify compliance with the provisions of this  
735 chapter to the Department of Revenue. In addition to a statement  
736 of compliance, such certification shall include a copy of the  
737 ordinance or resolution so adopted; a copy of the certification  
738 of value showing rolled-back millage and proposed millage rates,  
739 as provided to the property appraiser pursuant to s. 200.065(1)  
740 and (2) (b); maximum millage rates calculated pursuant to s.  
741 200.065(5), ~~s. 200.185~~, ~~or s. 200.186~~, together with values and  
742 calculations upon which the maximum millage rates are based; and  
743 a certified copy of the advertisement, as published pursuant to  
744 s. 200.065(3). In certifying compliance, the governing body of  
745 the county shall also include a certified copy of the notice  
746 required under s. 194.037. However, if the value adjustment  
747 board completes its hearings after the deadline for  
748 certification under this section, the county shall submit such  
749 copy to the department not later than 30 days following  
750 completion of such hearings.

751 Reviser's note.—Amended to conform to the repeal of s. 200.185  
752 by this act and to delete a reference to s. 200.186, which  
753 was created by s. 28, ch. 2007-321, Laws of Florida,  
754 effective contingent upon a constitutional amendment which

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755 did pass but for which the ballot language was ruled  
 756 unconstitutional; s. 200.186 did not become effective.  
 757 Section 19. Section 200.141, Florida Statutes, is amended  
 758 to read:  
 759 200.141 Millage following consolidation of city and county  
 760 functions.—Those cities or counties which now or hereafter  
 761 provide both municipal and county services as authorized under  
 762 ss. 9-11 and 24 of Art. VIII of the State Constitution of 1885,  
 763 as preserved by s. (6) (e), Art. VIII of the State Constitution  
 764 of 1968, shall have the right to levy for county, district and  
 765 municipal purposes a millage up to 20 mills on the dollar of  
 766 assessed valuation under this section. For each increase in the  
 767 county millage above 10 mills which is attributable to an  
 768 assumption of municipal services by a county having home rule,  
 769 or for each increase in the municipal millage above 10 mills  
 770 which is attributable to an assumption of county services by a  
 771 city having home rule, there shall be a decrease in the millage  
 772 levied by each and every municipality which has a service or  
 773 services assumed by the county, or by the county which has a  
 774 service or services assumed by the city. Such decrease shall be  
 775 equal to the cost of that service or services assumed, so that  
 776 an amount equal to that cost shall be eliminated from the budget  
 777 of the county or city giving up the performance of such service  
 778 or services.  
 779 Reviser's note.—Amended to conform to the citation style used at  
 780 other provisions in the Florida Statutes citing to ss. 9-11  
 781 and 24 of Art. VIII of the State Constitution of 1885,  
 782 which were preserved by s. (6) (e), Art. VIII of the State  
 783 Constitution of 1968.

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784 Section 20. Section 200.185, Florida Statutes, is repealed.  
 785 Reviser's note.—The cited section, which relates to maximum  
 786 millage rates for the 2007-2008 and 2008-2009 fiscal years,  
 787 is repealed to delete a provision that has served its  
 788 purpose.  
 789 Section 21. Paragraph (o) of subsection (5) of section  
 790 212.08, Florida Statutes, is amended to read:  
 791 212.08 Sales, rental, use, consumption, distribution, and  
 792 storage tax; specified exemptions.—The sale at retail, the  
 793 rental, the use, the consumption, the distribution, and the  
 794 storage to be used or consumed in this state of the following  
 795 are hereby specifically exempt from the tax imposed by this  
 796 chapter.  
 797 (5) EXEMPTIONS; ACCOUNT OF USE.—  
 798 (o) *Building materials in redevelopment projects.*—  
 799 1. As used in this paragraph, the term:  
 800 a. "Building materials" means tangible personal property  
 801 that becomes a component part of a housing project or a mixed-  
 802 use project.  
 803 b. "Housing project" means the conversion of an existing  
 804 manufacturing or industrial building to a housing unit which is  
 805 in an urban high-crime area, an enterprise zone, an empowerment  
 806 zone, a Front Porch Florida Community, a designated brownfield  
 807 site for which a rehabilitation agreement with the Department of  
 808 Environmental Protection or a local government delegated by the  
 809 Department of Environmental Protection has been executed under  
 810 s. 376.80 and any abutting real property parcel within a  
 811 brownfield area, or an urban infill area; and in which the  
 812 developer agrees to set aside at least 20 percent of the housing

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813 units in the project for low-income and moderate-income persons  
 814 or the construction in a designated brownfield area of  
 815 affordable housing for persons described in s. 420.0004(9),  
 816 (11), (12), or (17) or in s. 159.603(7).

817 c. "Mixed-use project" means the conversion of an existing  
 818 manufacturing or industrial building to mixed-use units that  
 819 include artists' studios, art and entertainment services, or  
 820 other compatible uses. A mixed-use project must be located in an  
 821 urban high-crime area, an enterprise zone, an empowerment zone,  
 822 a Front Porch Florida Community, a designated brownfield site  
 823 for which a rehabilitation agreement with the Department of  
 824 Environmental Protection or a local government delegated by the  
 825 Department of Environmental Protection has been executed under  
 826 s. 376.80 and any abutting real property parcel within a  
 827 brownfield area, or an urban infill area; and the developer must  
 828 agree to set aside at least 20 percent of the square footage of  
 829 the project for low-income and moderate-income housing.

830 d. "Substantially completed" has the same meaning as  
 831 provided in s. 192.042(1).

832 2. Building materials used in the construction of a housing  
 833 project or mixed-use project are exempt from the tax imposed by  
 834 this chapter upon an affirmative showing to the satisfaction of  
 835 the department that the requirements of this paragraph have been  
 836 met. This exemption inures to the owner through a refund of  
 837 previously paid taxes. To receive this refund, the owner must  
 838 file an application under oath with the department which  
 839 includes:

- 840 a. The name and address of the owner.
- 841 b. The address and assessment roll parcel number of the

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842 project for which a refund is sought.

843 c. A copy of the building permit issued for the project.

844 d. A certification by the local building code inspector  
 845 that the project is substantially completed.

846 e. A sworn statement, under penalty of perjury, from the  
 847 general contractor licensed in this state with whom the owner  
 848 contracted to construct the project, which statement lists the  
 849 building materials used in the construction of the project and  
 850 the actual cost thereof, and the amount of sales tax paid on  
 851 these materials. If a general contractor was not used, the owner  
 852 shall provide this information in a sworn statement, under  
 853 penalty of perjury. Copies of invoices evidencing payment of  
 854 sales tax must be attached to the sworn statement.

855 3. An application for a refund under this paragraph must be  
 856 submitted to the department within 6 months after the date the  
 857 project is deemed to be substantially completed by the local  
 858 building code inspector. Within 30 working days after receipt of  
 859 the application, the department shall determine if it meets the  
 860 requirements of this paragraph. A refund approved pursuant to  
 861 this paragraph shall be made within 30 days after formal  
 862 approval of the application by the department.

863 4. The department shall establish by rule an application  
 864 form and criteria for establishing eligibility for exemption  
 865 under this paragraph.

866 5. The exemption shall apply to purchases of materials on  
 867 or after July 1, 2000.

868 Reviser's note.—Amended to confirm the editorial insertion of  
 869 the word "Florida" to conform to the full title of  
 870 communities receiving grants through the Front Porch

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871 Florida Initiative.

872 Section 22. Subsection (8) of section 213.0532, Florida

873 Statutes, is amended to read:

874 213.0532 Information-sharing agreements with financial

875 institutions.—

876 (8) Any financial records obtained pursuant to this section

877 may be disclosed only for the purpose of, and to the extent

878 necessary for, administration and enforcement of ~~to administer~~

879 ~~and enforce~~ the tax laws of this state.

880 Reviser's note.—Amended to improve sentence construction.

881 Section 23. Paragraph (b) of subsection (5) of section

882 218.39, Florida Statutes, is amended to read:

883 218.39 Annual financial audit reports.—

884 (5) At the conclusion of the audit, the auditor shall

885 discuss with the chair of the governing body of the local

886 governmental entity or the chair's designee, the elected

887 official of each county agency or the elected official's

888 designee, the chair of the district school board or the chair's

889 designee, the chair of the board of the charter school or the

890 chair's designee, or the chair of the board of the charter

891 technical career center or the chair's designee, as appropriate,

892 all of the auditor's comments that will be included in the audit

893 report. If the officer is not available to discuss the auditor's

894 comments, their discussion is presumed when the comments are

895 delivered in writing to his or her office. The auditor shall

896 notify each member of the governing body of a local governmental

897 entity, district school board, charter school, or charter

898 technical career center for which:

899 (b) A fund balance deficit in total or a deficit for that

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900 portion of a fund balance not classified as restricted,

901 committed, or nonspendable, or a total or unrestricted net

902 assets deficit, as reported on the fund financial statements of

903 entities required to report under governmental financial

904 reporting standards or on the basic financial statements of

905 entities required to report under not-for-profit financial

906 reporting standards, for which sufficient resources of the local

907 governmental entity, charter school, charter technical career

908 center, or district school board, as reported on the fund

909 financial statements, are not available to cover the deficit.

910 Resources available to cover reported deficits include fund

911 balance or net assets that are not otherwise restricted by

912 federal, state, or local laws, bond covenants, contractual

913 agreements, or other legal constraints. Property, plant, and

914 equipment, the disposal of which would impair the ability of a

915 local governmental entity, charter school, charter technical

916 career center, or district school board to carry out its

917 functions, are not considered resources available to cover

918 reported deficits.

919 Reviser's note.—Amended to facilitate correct understanding.

920 Section 24. Subsection (1) of section 220.63, Florida

921 Statutes, is amended to read:

922 220.63 Franchise tax imposed on banks and savings

923 associations.—

924 (1) A franchise tax measured by net income is hereby

925 imposed on every bank and savings association for each taxable

926 year commencing on or after January 1, 1973, ~~and for each~~

927 ~~taxable year which begins before and ends after January 1, 1973.~~

928 ~~The franchise tax base of any bank for a taxable year which~~

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929 ~~begins before and ends after January 1, 1972, shall be prorated~~  
 930 ~~in the manner prescribed for the proration of net income under~~  
 931 ~~s. 220.12(2).~~

932 Reviser's note.—Amended to delete an obsolete provision and  
 933 conform to the repeal of s. 220.12(2) by s. 14, ch. 90-203,  
 934 Laws of Florida.

935 Section 25. Paragraph (c) of subsection (3) of section  
 936 238.05, Florida Statutes, is amended to read:  
 937 238.05 Membership.—  
 938 (3) Except as otherwise provided in s. 238.07(9),  
 939 membership of any person in the retirement system will cease if  
 940 he or she is continuously unemployed as a teacher for a period  
 941 of more than 5 consecutive years, or upon the withdrawal by the  
 942 member of his or her accumulated contributions as provided in s.  
 943 238.07(13), or upon retirement, or upon death; provided that the  
 944 adjustments prescribed below are to be made for persons who  
 945 enter the Armed Forces of the United States during a period of  
 946 war or national emergency and for persons who are granted leaves  
 947 of absence. Any member of the retirement system who within 1  
 948 year before the time of entering the Armed Forces of the United  
 949 States was a teacher, as defined in s. 238.01, or was engaged in  
 950 other public educational work within the state, and member of  
 951 the Teachers' Retirement System at the time of induction, or who  
 952 has been or is granted leave of absence, shall be permitted to  
 953 elect to continue his or her membership in the Teachers'  
 954 Retirement System; and membership service shall be allowed for  
 955 the period covered by service in the Armed Forces of the United  
 956 States or by leave of absence under the following conditions:  
 957 ~~(c) Any person who served in the Armed Forces of the United~~

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958 ~~States in World War I, or who served as a registered nurse or~~  
 959 ~~nurse's aide in service connected with the Armed Forces of the~~  
 960 ~~United States during the period of World War I, and who is now a~~  
 961 ~~member of the Teachers' Retirement System and who, at or before~~  
 962 ~~the time of entering the Armed Forces or the service of the care~~  
 963 ~~and nursing of members of the Armed Forces of the United States,~~  
 964 ~~was a teacher as defined in s. 238.01 is entitled to prior~~  
 965 ~~service and out of state prior service credit in the Teachers'~~  
 966 ~~Retirement System for his or her period of such service.~~

967 Reviser's note.—Amended to delete an obsolete provision.

968 Section 26. Section 255.041, Florida Statutes, is amended  
 969 to read:  
 970 255.041 Separate specifications for building contracts.—  
 971 Every officer, board, department, or commission ~~or commissions~~  
 972 charged with the duty of preparing specifications or awarding or  
 973 entering into contract for the erection, construction, or  
 974 altering of buildings for the state, when the entire cost of  
 975 such work shall exceed \$10,000, may have prepared separate  
 976 specifications for each of the following branches of work to be  
 977 performed:  
 978 (1) Heating and ventilating and accessories.  
 979 (2) Plumbing and gas fitting and accessories.  
 980 (3) Electrical installations.  
 981 (4) Air-conditioning, for the purpose of comfort cooling by  
 982 the lowering of temperature, and accessories.

983  
 984 All such specifications may be so drawn as to permit separate  
 985 and independent bidding upon each of the classes of work  
 986 enumerated in the above subdivisions. All contracts hereafter

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987 awarded by the state or a department, board, commissioner, or  
 988 officer thereof, for the erection, construction or alteration of  
 989 buildings, or any part thereof, may award the respective work  
 990 specified in the above subdivisions separately to responsible  
 991 and reliable persons, firms or corporations regularly engaged in  
 992 their respective line of work; provided, however, that all or  
 993 any part of the work specified in the above subdivisions may be  
 994 awarded to the same contractor.

995 Reviser's note.—Amended to improve clarity.

996 Section 27. Subsection (2) of section 255.254, Florida  
 997 Statutes, is amended to read:

998 255.254 No facility constructed or leased without life-  
 999 cycle costs.—

1000 (2) ~~On and after January 1, 1979,~~ No state agency shall  
 1001 initiate construction or have construction initiated, prior to  
 1002 approval thereof by the department, on a facility or self-  
 1003 contained unit of any facility, the design and construction of  
 1004 which incorporates or contemplates the use of an energy system  
 1005 other than a solar energy system when the life-cycle costs  
 1006 analysis prepared by the department has determined that a solar  
 1007 energy system is the most cost-efficient energy system for the  
 1008 facility or unit.

1009 Reviser's note.—Amended to delete an obsolete provision.

1010 Section 28. Paragraph (b) of subsection (9) of section  
 1011 259.032, Florida Statutes, is amended to read:

1012 259.032 Conservation and recreation lands.—

1013 (9)

1014 (b) An amount of not less than 1.5 percent of the  
 1015 cumulative total of funds ever deposited into the former Florida

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1016 Preservation 2000 Trust Fund and the Florida Forever Trust Fund  
 1017 shall be made available for the purposes of management,  
 1018 maintenance, and capital improvements, and for associated  
 1019 contractual services, for conservation and recreation lands  
 1020 acquired with funds deposited into the Land Acquisition Trust  
 1021 Fund pursuant to s. 28(a), Art. X of the State Constitution or  
 1022 pursuant to former s. 259.032, Florida Statutes 2014, former s.  
 1023 259.101, Florida Statutes 2014, s. 259.105, s. 259.1052, or  
 1024 previous programs for the acquisition of lands for conservation  
 1025 and recreation, including state forests, to which title is  
 1026 vested in the board of trustees and other conservation and  
 1027 recreation lands managed by a state agency. Each agency with  
 1028 management responsibilities shall annually request from the  
 1029 Legislature funds sufficient to fulfill such responsibilities to  
 1030 implement individual management plans. For the purposes of this  
 1031 paragraph, capital improvements shall include, but need not be  
 1032 limited to, perimeter fencing, signs, firelanes, access roads  
 1033 and trails, and minimal public accommodations, such as primitive  
 1034 campsites, garbage receptacles, and toilets. Any equipment  
 1035 purchased with funds provided pursuant to this paragraph may be  
 1036 used for the purposes described in this paragraph on any  
 1037 conservation and recreation lands managed by a state agency. The  
 1038 funding requirement created in this paragraph is subject to an  
 1039 annual evaluation by the Legislature to ensure that such  
 1040 requirement does not impact the respective trust fund in a  
 1041 manner that would prevent the trust fund from meeting other  
 1042 minimum requirements.

1043 Reviser's note.—Amended to conform to the termination of the  
 1044 Florida Preservation 2000 Trust Fund pursuant to s. 1, ch.

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1045 2015-229, Laws of Florida, and the repeal of s. 375.045,  
 1046 which created the trust fund, by s. 52, ch. 2015-229.  
 1047 Section 29. Paragraph (d) of subsection (2) of section  
 1048 272.135, Florida Statutes, is amended to read:  
 1049 272.135 Florida Historic Capitol Museum Director.—  
 1050 (2) The director shall:  
 1051 (d) Propose a strategic plan to the President of the Senate  
 1052 and the Speaker of the House of Representatives by May 1 of each  
 1053 year in which a general election is held and ~~shall~~ propose an  
 1054 annual operating plan.  
 1055 Reviser's note.—Amended to confirm the editorial deletion of the  
 1056 world "shall."  
 1057 Section 30. Subsection (4) of section 288.012, Florida  
 1058 Statutes, is amended to read:  
 1059 288.012 State of Florida international offices; state  
 1060 protocol officer; protocol manual.—The Legislature finds that  
 1061 the expansion of international trade and tourism is vital to the  
 1062 overall health and growth of the economy of this state. This  
 1063 expansion is hampered by the lack of technical and business  
 1064 assistance, financial assistance, and information services for  
 1065 businesses in this state. The Legislature finds that these  
 1066 businesses could be assisted by providing these services at  
 1067 State of Florida international offices. The Legislature further  
 1068 finds that the accessibility and provision of services at these  
 1069 offices can be enhanced through cooperative agreements or  
 1070 strategic alliances between private businesses and state, local,  
 1071 and international governmental entities.  
 1072 (4) The Department of Economic Opportunity, in connection  
 1073 with the establishment, operation, and management of any of its

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1074 offices located in another country, is exempt from the  
 1075 provisions of ss. 255.21, 255.25, and 255.254 relating to  
 1076 leasing of buildings; ss. 283.33 and 283.35 relating to bids for  
 1077 printing; ss. 287.001-287.20 relating to purchasing and motor  
 1078 vehicles; and ss. 282.003-282.00515 ~~282.003-282.0056~~ and  
 1079 282.702-282.7101 relating to communications, and from all  
 1080 statutory provisions relating to state employment.  
 1081 (a) The department may exercise such exemptions only upon  
 1082 prior approval of the Governor.  
 1083 (b) If approval for an exemption under this section is  
 1084 granted as an integral part of a plan of operation for a  
 1085 specified international office, such action shall constitute  
 1086 continuing authority for the department to exercise the  
 1087 exemption, but only in the context and upon the terms originally  
 1088 granted. Any modification of the approved plan of operation with  
 1089 respect to an exemption contained therein must be resubmitted to  
 1090 the Governor for his or her approval. An approval granted to  
 1091 exercise an exemption in any other context shall be restricted  
 1092 to the specific instance for which the exemption is to be  
 1093 exercised.  
 1094 (c) As used in this subsection, the term "plan of  
 1095 operation" means the plan developed pursuant to subsection (2).  
 1096 (d) Upon final action by the Governor with respect to a  
 1097 request to exercise the exemption authorized in this subsection,  
 1098 the department shall report such action, along with the original  
 1099 request and any modifications thereto, to the President of the  
 1100 Senate and the Speaker of the House of Representatives within 30  
 1101 days.  
 1102 Reviser's note.—Amended to conform to the repeal of s. 282.0056

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1103 by s. 12, ch. 2014-221, Laws of Florida.  
 1104 Section 31. Paragraph (b) of subsection (4) of section  
 1105 311.12, Florida Statutes, is amended to read:  
 1106 311.12 Seaport security.—  
 1107 (4) ACCESS TO SECURE AND RESTRICTED AREAS.—  
 1108 (b) A seaport may not charge a fee for the administration  
 1109 or production of any access control credential that requires or  
 1110 is associated with a fingerprint-based background check, in  
 1111 addition to the fee for the federal TWIC. Beginning July 1,  
 1112 2013, a seaport may not charge a fee for a seaport-specific  
 1113 access credential issued in addition to the federal TWIC, except  
 1114 under the following circumstances:  
 1115 1. The individual seeking to gain secured access is a new  
 1116 hire as defined under 33 C.F.R. part ~~s.~~ 105; or  
 1117 2. The individual has lost or misplaced his or her federal  
 1118 TWIC.  
 1119 Reviser's note.—Amended to facilitate correct interpretation.  
 1120 There is no 33 C.F.R. s. 105; there is a 33 C.F.R. part  
 1121 105, which relates to security of maritime facilities.  
 1122 Section 32. Subsection (5) of section 316.3025, Florida  
 1123 Statutes, is amended to read:  
 1124 316.3025 Penalties.—  
 1125 (5) Whenever any person or motor carrier as defined in  
 1126 chapter 320 violates the provisions of this section and becomes  
 1127 indebted to the state because of such violation and refuses to  
 1128 pay the appropriate penalty, in addition to the provisions of s.  
 1129 316.3026, such penalty becomes a lien upon the property  
 1130 including the motor vehicles of such person or motor carrier and  
 1131 such property may be seized and foreclosed by the state in a

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1132 civil action in any court of this state. It shall be presumed  
 1133 that the owner of the motor vehicle is liable for the sum, and  
 1134 the vehicle may be detained or impounded until the penalty is  
 1135 paid.  
 1136 Reviser's note.—Amended to improve clarity.  
 1137 Section 33. Paragraph (c) of subsection (3) of section  
 1138 333.07, Florida Statutes, is amended to read:  
 1139 333.07 Permits and variances.—  
 1140 (3) OBSTRUCTION MARKING AND LIGHTING.—  
 1141 ~~(c) Existing structures not in compliance on October 1,~~  
 1142 ~~1988, shall be required to comply whenever the existing marking~~  
 1143 ~~requires refurbishment, whenever the existing lighting requires~~  
 1144 ~~replacement, or within 5 years of October 1, 1988, whichever~~  
 1145 ~~occurs first.~~  
 1146 Reviser's note.—Amended to delete an obsolete provision.  
 1147 Section 34. Subsection (2) of section 336.71, Florida  
 1148 Statutes, is amended to read:  
 1149 336.71 Public-private cooperation in construction of county  
 1150 roads.—  
 1151 (2) The notice for the public hearing provided for in  
 1152 subsection (1) must be published at least 14 days before the  
 1153 date of the public meeting at which the governing board takes  
 1154 final action. The notice must identify the project and, the  
 1155 estimated cost of the project, and specify that the purpose for  
 1156 the public meeting is to consider whether it is in the public's  
 1157 best interest to accept the proposal and enter into an agreement  
 1158 pursuant thereto. The determination of cost savings pursuant to  
 1159 paragraph (1) (e) must be supported by a professional engineer's  
 1160 cost estimate made available to the public at least 14 days

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1161 before the public meeting and placed in the record for that  
 1162 meeting.  
 1163 Reviser's note.—Amended to improve clarity.  
 1164 Section 35. Subsection (13) of section 343.1003, Florida  
 1165 Statutes, is amended to read:  
 1166 343.1003 Northeast Florida Regional Transportation  
 1167 Commission.—  
 1168 (13) There shall be no liability on the part of, and no  
 1169 cause of action may arise against, any member for any action  
 1170 taken in the performance of his or her duties under this part.  
 1171 Reviser's note.—Amended to improve clarity.  
 1172 Section 36. Paragraph (e) of subsection (1) of section  
 1173 366.95, Florida Statutes, is amended to read:  
 1174 366.95 Financing for certain nuclear generating asset  
 1175 retirement or abandonment costs.—  
 1176 (1) DEFINITIONS.—As used in this section, the term:  
 1177 (e) "Financing costs" means:  
 1178 1. Interest and acquisition, defeasance, or redemption  
 1179 premiums payable on nuclear asset-recovery bonds;  
 1180 2. Any payment required under an ancillary agreement and  
 1181 any amount required to fund or replenish a reserve account or  
 1182 other accounts established under the terms of any indenture,  
 1183 ancillary agreement, or other financing documents pertaining to  
 1184 nuclear asset-recovery bonds;  
 1185 3. Any other cost related to issuing, supporting, repaying,  
 1186 refunding, and servicing nuclear asset-recovery bonds,  
 1187 including, but not limited to, servicing fees, accounting and  
 1188 auditing fees, trustee fees, legal fees, consulting fees,  
 1189 financial adviser fees, administrative fees, placement and

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1190 underwriting fees, capitalized interest, rating agency fees,  
 1191 stock exchange listing and compliance fees, security  
 1192 registration fees, filing fees, information technology  
 1193 programming costs, and any other costs necessary to otherwise  
 1194 ensure the timely payment of nuclear asset-recovery bonds or  
 1195 other amounts or charges payable in connection with the bonds,  
 1196 including costs related to obtaining the financing order;  
 1197 4. Any taxes and license fees imposed on the revenues  
 1198 generated from the collection of the nuclear asset-recovery  
 1199 charge;  
 1200 5. Any state and local taxes, franchise fees, gross  
 1201 receipts taxes, and other taxes or similar charges, including,  
 1202 but not limited to, regulatory assessment fees, in any such case  
 1203 whether paid, payable, or accrued; and  
 1204 6. Any costs incurred by the commission for any outside  
 1205 consultants or counsel pursuant to subparagraph (2)(c)2.  
 1206 Reviser's note.—Amended to improve clarity and facilitate  
 1207 correct interpretation.  
 1208 Section 37. Subsection (8) of section 373.236, Florida  
 1209 Statutes, is amended to read:  
 1210 373.236 Duration of permits; compliance reports.—  
 1211 (8) A water management district may issue a permit to an  
 1212 applicant, as set forth in s. 163.3245(13), for the same period  
 1213 of time as the applicant's approved master development order if  
 1214 the master development order was issued under s. 380.06(21) by a  
 1215 county which, at the time the order was issued, was designated  
 1216 as a rural area of opportunity under s. 288.0656, was not  
 1217 located in an area encompassed by a regional water supply plan  
 1218 as set forth in s. 373.709(1), and was not located within the

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1219 basin management action plan of a first magnitude spring. In  
 1220 reviewing the permit application and determining the permit  
 1221 duration, the water management district shall apply s.  
 1222 163.3245(4)(b).

1223 Reviser's note.—Amended to confirm the editorial insertion of  
 1224 the word "was" to improve clarity.

1225 Section 38. Subsections (4) and (5) of section 373.4149,  
 1226 Florida Statutes, are amended to read:  
 1227 373.4149 Miami-Dade County Lake Belt Plan.—  
 1228 (4) The identification of the Miami-Dade County Lake Belt  
 1229 Area shall not preempt local land use jurisdiction, planning, or  
 1230 regulatory authority in regard to the use of land by private  
 1231 land owners. When amending local comprehensive plans, or  
 1232 implementing zoning regulations, development regulations, or  
 1233 other local regulations, Miami-Dade County shall strongly  
 1234 consider limestone mining activities and ancillary operations,  
 1235 such as lake excavation, including use of explosives, rock  
 1236 processing, cement, concrete and asphalt products manufacturing,  
 1237 and ancillary activities, within the rock mining supported and  
 1238 allowable areas of the Miami-Dade County Lake Belt Plan adopted  
 1239 by subsection (1); provided, however, that limerock mining  
 1240 activities are consistent with wellfield protection. Rezoning,  
 1241 amendments to local zoning and subdivision regulations, and  
 1242 amendments to local comprehensive plans concerning properties  
 1243 that are located within 1 mile of the Miami-Dade County Lake  
 1244 Belt Area shall be compatible with limestone mining activities.  
 1245 No rezonings, variances, amendments to local zoning and  
 1246 subdivision regulations which would result in an increase in  
 1247 residential density, or amendments to local comprehensive plans

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1248 for any residential purpose may be approved for any property  
 1249 located in sections 35 and 36 and the east one-half of sections  
 1250 24 and 25, Township 53 South, Range 39 East until such time as  
 1251 there is no active mining within 2 miles of the property. This  
 1252 section does not preclude residential development that complies  
 1253 with current regulations.

1254 (5) The secretary of the Department of Environmental  
 1255 Protection, the executive director of the Department of Economic  
 1256 Opportunity, the secretary of the Department of Transportation,  
 1257 the Commissioner of Agriculture, the executive director of the  
 1258 Fish and Wildlife Conservation Commission, and the executive  
 1259 director of the South Florida Water Management District may  
 1260 enter into agreements with landowners, developers, businesses,  
 1261 industries, individuals, and governmental agencies as necessary  
 1262 to effectuate the Miami-Dade County Lake Belt Plan and the  
 1263 provisions of this section.

1264 Reviser's note.—Amended to conform to context and to the full  
 1265 names of the Miami-Dade County Lake Belt Area and the  
 1266 Miami-Dade County Lake Belt Plan.

1267 Section 39. Subsection (7) of section 373.41492, Florida  
 1268 Statutes, is amended to read:  
 1269 373.41492 Miami-Dade County Lake Belt Mitigation Plan;  
 1270 mitigation for mining activities within the Miami-Dade County  
 1271 Lake Belt.—  
 1272 (7) Payment of the mitigation fee imposed by this section  
 1273 satisfies the mitigation requirements imposed under ss. 373.403-  
 1274 373.439 and any applicable county ordinance for loss of the  
 1275 value and functions from mining of the wetlands identified as  
 1276 rock mining supported and allowable areas of the Miami-Dade

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1277 County Lake Belt Plan adopted by s. 373.4149(1). In addition, it  
 1278 is the intent of the Legislature that the payment of the  
 1279 mitigation fee imposed by this section satisfy all federal  
 1280 mitigation requirements for the wetlands mined.

1281 Reviser's note.—Amended to conform to context and to the full  
 1282 name of the Miami-Dade County Lake Belt Plan.

1283 Section 40. Paragraph (g) of subsection (1) of section  
 1284 379.3751, Florida Statutes, is amended to read:

1285 379.3751 Taking and possession of alligators; trapping  
 1286 licenses; fees.—

1287 (1)

1288 (g) A person engaged in the taking of alligators under any  
 1289 permit issued by the commission which authorizes the taking ~~take~~  
 1290 of alligators is not required to possess a management area  
 1291 permit under s. 379.354(8).

1292 Reviser's note.—Amended to confirm the editorial substitution of  
 1293 the word "taking" for the word "take" to improve clarity.

1294 Section 41. Paragraph (b) of subsection (7) of section  
 1295 380.510, Florida Statutes, is amended to read:

1296 380.510 Conditions of grants and loans.—

1297 (7) Any funds received by the trust pursuant to s.  
 1298 259.105(3) (c) or s. 375.041 shall be held separate and apart  
 1299 from any other funds held by the trust and used for the land  
 1300 acquisition purposes of this part.

1301 (b) All deeds or leases with respect to any real property  
 1302 acquired with funds received by the trust from the former  
 1303 Preservation 2000 Trust Fund, the Florida Forever Trust Fund, or  
 1304 the Land Acquisition Trust Fund must contain such covenants and  
 1305 restrictions as are sufficient to ensure that the use of such

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1306 real property at all times complies with s. 375.051 and s. 9,  
 1307 Art. XII of the State Constitution. Each deed or lease with  
 1308 respect to any real property acquired with funds received by the  
 1309 trust from the Florida Forever Trust Fund before July 1, 2015,  
 1310 must contain covenants and restrictions sufficient to ensure  
 1311 that the use of such real property at all times complies with s.  
 1312 11(e), Art. VII of the State Constitution. Each deed or lease  
 1313 with respect to any real property acquired with funds received  
 1314 by the trust from the Florida Forever Trust Fund after July 1,  
 1315 2015, must contain covenants and restrictions sufficient to  
 1316 ensure that the use of such real property at all times complies  
 1317 with s. 28, Art. X of the State Constitution. Each deed or lease  
 1318 must contain a reversion, conveyance, or termination clause that  
 1319 vests title in the Board of Trustees of the Internal Improvement  
 1320 Trust Fund if any of the covenants or restrictions are violated  
 1321 by the titleholder or leaseholder or by some third party with  
 1322 the knowledge of the titleholder or leaseholder.

1323 Reviser's note.—Amended to conform to the termination of the  
 1324 Florida Preservation 2000 Trust Fund pursuant to s. 1, ch.  
 1325 2015-229, Laws of Florida, and the repeal of s. 375.045,  
 1326 which created the trust fund, by s. 52, ch. 2015-229.

1327 Section 42. Paragraph (g) of subsection (5) of section  
 1328 383.402, Florida Statutes, is amended to read:

1329 383.402 Child abuse death review; State Child Abuse Death  
 1330 Review Committee; local child abuse death review committees.—

1331 (5) ACCESS TO AND USE OF RECORDS.—

1332 (g) A person who has attended a meeting of the state  
 1333 committee or a local committee or who has otherwise participated  
 1334 in activities authorized by this section may not be permitted or

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1335 required to testify in any civil, criminal, or administrative  
 1336 proceeding as to any records or information produced or  
 1337 presented to a committee during meetings or other activities  
 1338 authorized by this section. However, this paragraph ~~subsection~~  
 1339 does not prevent any person who testifies before the committee  
 1340 or who is a member of the committee from testifying as to  
 1341 matters otherwise within his or her knowledge. An organization,  
 1342 institution, committee member, or other person who furnishes  
 1343 information, data, reports, or records to the state committee or  
 1344 a local committee is not liable for damages to any person and is  
 1345 not subject to any other civil, criminal, or administrative  
 1346 recourse. This paragraph ~~subsection~~ does not apply to any person  
 1347 who admits to committing a crime.

1348 Reviser's note.—Amended to confirm the editorial substitution of  
 1349 the word "paragraph" for the word "subsection" to conform  
 1350 to the redesignation of subsection (14) as paragraph (5) (g)  
 1351 by s. 4, ch. 2015-79, Laws of Florida.

1352 Section 43. Subsection (1) of section 395.1012, Florida  
 1353 Statutes, is amended to read:

1354 395.1012 Patient safety.—

1355 (1) Each licensed facility must adopt a patient safety  
 1356 plan. A plan adopted to implement the requirements of 42 C.F.R.  
 1357 s. part 482.21 shall be deemed to comply with this requirement.

1358 Reviser's note.—Amended to facilitate correct interpretation.

1359 There is no 42 C.F.R. part 482.21; there is a 42 C.F.R. s.  
 1360 482.21, which requires a program for quality improvement  
 1361 and patient safety.

1362 Section 44. Paragraph (d) of subsection (1) of section  
 1363 400.0065, Florida Statutes, is amended to read:

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1364 400.0065 State Long-Term Care Ombudsman Program; duties and  
 1365 responsibilities.—

1366 (1) The purpose of the State Long-Term Care Ombudsman  
 1367 Program is to:

1368 (d) Ensure that residents have regular and timely access to  
 1369 the services provided through the State Long-Term Care Ombudsman  
 1370 Program and that residents and complainants receive timely  
 1371 responses from representatives of the State Long-Term Care  
 1372 Ombudsman Program to their complaints.

1373 Reviser's note.—Amended to confirm the editorial insertion of  
 1374 the word "Ombudsman" to conform to the name of the program  
 1375 established in s. 400.0063.

1376 Section 45. Paragraph (a) of subsection (3) of section  
 1377 400.0070, Florida Statutes, is amended to read:

1378 400.0070 Conflicts of interest.—

1379 (3) The department, in consultation with the state  
 1380 ombudsman, shall define by rule:

1381 (a) Situations that constitute a conflict of interest which  
 1382 could materially affect the objectivity or capacity of an  
 1383 individual to serve as a representative of the State Long-Term  
 1384 Care Ombudsman Program while carrying out the purposes of the  
 1385 State Long-Term Care Ombudsman Program as specified in this  
 1386 part.

1387 Reviser's note.—Amended to confirm the editorial insertion of  
 1388 the word "Ombudsman" to conform to the name of the program  
 1389 established in s. 400.0063.

1390 Section 46. Subsection (1) of section 400.0081, Florida  
 1391 Statutes, is amended to read:

1392 400.0081 Access to facilities, residents, and records.—

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1393 (1) A long-term care facility shall provide representatives  
 1394 of the State Long-Term Care Ombudsman Program with access to:  
 1395 (a) The long-term care facility and its residents.  
 1396 (b) Where appropriate, medical and social records of a  
 1397 resident for review if:  
 1398 1. The representative of the State Long-Term Care Ombudsman  
 1399 Program has the permission of the resident or the legal  
 1400 representative of the resident; or  
 1401 2. The resident is unable to consent to the review and does  
 1402 not have a legal representative.  
 1403 (c) Medical and social records of a resident as necessary  
 1404 to investigate a complaint, if:  
 1405 1. A legal representative or guardian of the resident  
 1406 refuses to give permission;  
 1407 2. The representative of the State Long-Term Care Ombudsman  
 1408 Program has reasonable cause to believe that the legal  
 1409 representative or guardian is not acting in the best interests  
 1410 of the resident; and  
 1411 3. The representative of the State Long-Term Care Ombudsman  
 1412 Program obtains the approval of the state ombudsman.  
 1413 (d) ~~Access to~~ Administrative records, policies, and  
 1414 documents to which residents or the general public have access.  
 1415 (e) Upon request, copies of all licensing and certification  
 1416 records maintained by the state with respect to a long-term care  
 1417 facility.  
 1418 Reviser's note.—The introductory paragraph to subsection (1) is  
 1419 amended to confirm the editorial insertion of the word  
 1420 "Ombudsman" to conform to the name of the program  
 1421 established in s. 400.0063. Paragraph (1) (d) is amended to

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1422 confirm the editorial deletion of the words "Access to" to  
 1423 improve clarity.  
 1424 Section 47. Paragraph (c) of subsection (3) of section  
 1425 400.0087, Florida Statutes, is amended to read:  
 1426 400.0087 Department oversight; funding.—  
 1427 (3) The department is responsible for ensuring that the  
 1428 State Long-Term Care Ombudsman Program:  
 1429 (c) Provides appropriate training to representatives of the  
 1430 State Long-Term Care Ombudsman Program Office.  
 1431 Reviser's note.—Amended to substitute the term "State Long-Term  
 1432 Care Ombudsman Program" for the term "State Long-Term Care  
 1433 Ombudsman Office" to conform to context and revisions to  
 1434 this material by ch. 2015-31, Laws of Florida.  
 1435 Section 48. Subsection (2) of section 400.022, Florida  
 1436 Statutes, is amended to read:  
 1437 400.022 Residents' rights.—  
 1438 (2) The licensee for each nursing home shall orally inform  
 1439 the resident of the resident's rights and provide a copy of the  
 1440 statement required by subsection (1) to each resident or the  
 1441 resident's legal representative at or before the resident's  
 1442 admission to a facility. The licensee shall provide a copy of  
 1443 the resident's rights to each staff member of the facility. Each  
 1444 such licensee shall prepare a written plan and provide  
 1445 appropriate staff training to implement the provisions of this  
 1446 section. The written statement of rights must include a  
 1447 statement that a resident may file a complaint with the agency  
 1448 or state or local ombudsman council. The statement must be in  
 1449 boldfaced type and include the telephone number and e-mail  
 1450 address of the State Long-Term Care Ombudsman Program and the



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1451 telephone numbers of the local ombudsman council and the Elder  
1452 Abuse Hotline operated by the Department of Children and  
1453 Families.

1454 Reviser's note.—Amended to confirm the editorial insertion of  
1455 the word "and" and to insert the word "telephone" to  
1456 improve clarity.

1457 Section 49. Paragraph (d) of subsection (1) of section  
1458 400.141, Florida Statutes, is amended to read:

1459 400.141 Administration and management of nursing home  
1460 facilities.—

1461 (1) Every licensed facility shall comply with all  
1462 applicable standards and rules of the agency and shall:

1463 (d) Provide for resident use of a community pharmacy as  
1464 specified in s. 400.022(1)(q). Any other law to the contrary  
1465 notwithstanding, a registered pharmacist licensed in Florida,  
1466 that is under contract with a facility licensed under this  
1467 chapter or chapter 429, shall repackage a nursing facility  
1468 resident's bulk prescription medication which has been packaged  
1469 by another pharmacist licensed in any state in the United States  
1470 into a unit dose system compatible with the system used by the  
1471 nursing facility, if the pharmacist is requested to offer such  
1472 service. In order to be eligible for the repackaging, a resident  
1473 or the resident's spouse must receive prescription medication  
1474 benefits provided through a former employer as part of his or  
1475 her retirement benefits, a qualified pension plan as specified  
1476 in s. 4972 of the Internal Revenue Code, a federal retirement  
1477 program as specified under 5 C.F.R. part ~~s~~ 831, or a long-term  
1478 care policy as defined in s. 627.9404(1). A pharmacist who  
1479 correctly repackages and relabels the medication and the nursing

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1480 facility which correctly administers such repackaged medication  
1481 under this paragraph may not be held liable in any civil or  
1482 administrative action arising from the repackaging. In order to  
1483 be eligible for the repackaging, a nursing facility resident for  
1484 whom the medication is to be repackaged shall sign an informed  
1485 consent form provided by the facility which includes an  
1486 explanation of the repackaging process and which notifies the  
1487 resident of the immunities from liability provided in this  
1488 paragraph. A pharmacist who repackages and relabels prescription  
1489 medications, as authorized under this paragraph, may charge a  
1490 reasonable fee for costs resulting from the implementation of  
1491 this provision.

1492 Reviser's note.—Amended to facilitate correct interpretation.

1493 There is no 5 C.F.R. s. 831; there is a 5 C.F.R. part 831,  
1494 which relates to retirement.

1495 Section 50. Paragraph (b) of subsection (1) of section  
1496 403.5363, Florida Statutes, is amended to read:

1497 403.5363 Public notices; requirements.—

1498 (1)

1499 (b) Public notices that must be published under this  
1500 section include:

1501 1. The notice of the filing of an application, which must  
1502 include a description of the proceedings required by this act.  
1503 The notice must describe the provisions of s. 403.531(1) and (2)  
1504 and give the date by which notice of intent to be a party or a  
1505 petition to intervene in accordance with s. 403.527(2) must be  
1506 filed. This notice must be published no more than 21 days after  
1507 the application is filed. The notice shall, at a minimum, be  
1508 one-half page in size in a standard size newspaper or a full

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1509 page in a tabloid size newspaper. The notice must include a map  
 1510 generally depicting all transmission corridors proper for  
 1511 certification.

1512 2. The notice of the certification hearing and any public  
 1513 hearing held under s. 403.527(4). The notice must include the  
 1514 date by which a person wishing to appear as a party must file  
 1515 the notice to do so. The notice of the originally scheduled  
 1516 certification hearing must be published at least 65 days before  
 1517 the date set for the certification hearing. The notice shall  
 1518 meet the size and map requirements set forth in subparagraph 1.  
 1519 3. The notice of the cancellation of the certification  
 1520 hearing under s. 403.527(6), if applicable. The notice must be  
 1521 published at least 3 days before the date of the originally  
 1522 scheduled certification hearing. The notice shall, at a minimum,  
 1523 be one-fourth page in size in a standard size newspaper or one-  
 1524 half page in a tabloid size newspaper. The notice shall not  
 1525 require a map to be included.

1526 4. The notice of the deferment of the certification hearing  
 1527 due to the acceptance of an alternate corridor under s.  
 1528 403.5271(1)(b)2. ~~403.5272(1)(b)2.~~ The notice must be published  
 1529 at least 7 days before the date of the originally scheduled  
 1530 certification hearing. The notice shall, at a minimum, be one-  
 1531 eighth page in size in a standard size newspaper or one-fourth  
 1532 page in a tabloid size newspaper. The notice shall not require a  
 1533 map to be included.

1534 5. If the notice of the rescheduled certification hearing  
 1535 required of an alternate proponent under s. 403.5271(1)(c) is  
 1536 not timely published or does not meet the notice requirements  
 1537 such that an alternate corridor is withdrawn under the

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1538 provisions of s. 403.5271(1)(c), the notice of the rescheduled  
 1539 hearing and any local hearings shall be provided by the  
 1540 applicant at least 30 days prior to the rescheduled  
 1541 certification hearing.

1542 6. The notice of the filing of a proposal to modify the  
 1543 certification submitted under s. 403.5315, if the department  
 1544 determines that the modification would require relocation or  
 1545 expansion of the transmission line right-of-way or a certified  
 1546 substation.

1547 Reviser's note.—Amended to conform to context and facilitate  
 1548 correct interpretation. Section 403.5272(1)(b)2. does not  
 1549 exist; s. 403.5271(1)(b)2. relates to certification  
 1550 hearings for alternate corridors.

1551 Section 51. Section 408.301, Florida Statutes, is amended  
 1552 to read:

1553 408.301 Legislative findings.—The Legislature has found  
 1554 that access to quality, affordable, health care for all  
 1555 Floridians is an important goal for the state. The Legislature  
 1556 recognizes that there are Floridians with special health care  
 1557 and social needs which require particular attention. The people  
 1558 served by the Department of Children and Families, the Agency  
 1559 for Persons with Disabilities, the Department of Health, and the  
 1560 Department of Elderly Affairs are examples of citizens with  
 1561 special needs. The Legislature further recognizes that the  
 1562 Medicaid program is an intricate part of the service delivery  
 1563 system for the special needs citizens. However, the Agency for  
 1564 Health Care Administration is not a service provider and does  
 1565 not develop or direct programs for the special needs citizens.  
 1566 Therefore, it is the intent of the Legislature that the Agency

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1567 for Health Care Administration work closely with the Department  
 1568 of Children and Families, the Agency for Persons with  
 1569 Disabilities, the Department of Health, and the Department of  
 1570 Elderly Affairs in developing plans for assuring access to all  
 1571 Floridians in order to assure that the needs of special needs  
 1572 citizens are met.

1573 Reviser's note.—Amended to insert the word "needs" to conform to  
 1574 context and facilitate correct interpretation.

1575 Section 52. Subsection (2) of section 409.978, Florida  
 1576 Statutes, is amended to read:

1577 409.978 Long-term care managed care program.—

1578 (2) The agency shall make payments for long-term care,  
 1579 including home and community-based services, using a managed  
 1580 care model. Unless otherwise specified, ss. 409.961-409.969  
 1581 ~~409.961-409.97~~ apply to the long-term care managed care program.

1582 Reviser's note.—Amended to conform to the repeal of s. 409.97 by  
 1583 s. 11, ch. 2015-225, Laws of Florida.

1584 Section 53. Section 415.113, Florida Statutes, is amended  
 1585 to read:

1586 415.113 Statutory construction; treatment by spiritual  
 1587 means.—Nothing in ss. 415.101-415.1115 ~~415.101-415.112~~ shall be  
 1588 construed to mean a person is abused, neglected, or in need of  
 1589 emergency or protective services for the sole reason that the  
 1590 person relies upon and is, therefore, being furnished treatment  
 1591 by spiritual means through prayer alone in accordance with the  
 1592 tenets and practices of a well-recognized church or religious  
 1593 denomination or organization; nor shall anything in such  
 1594 sections be construed to authorize, permit, or require any  
 1595 medical care or treatment in contravention of the stated or

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1596 implied objection of such person. Such construction does not:

1597 (1) Eliminate the requirement that such a case be reported  
 1598 to the department;

1599 (2) Prevent the department from investigating such a case;  
 1600 or

1601 (3) Preclude a court from ordering, when the health of the  
 1602 individual requires it, the provision of medical services by a  
 1603 licensed physician or treatment by a duly accredited  
 1604 practitioner who relies solely on spiritual means for healing in  
 1605 accordance with the tenets and practices of a well-recognized  
 1606 church or religious denomination or organization.

1607 Reviser's note.—Amended to conform to the repeal of s. 415.112  
 1608 by s. 31, ch. 2015-4, Laws of Florida.

1609 Section 54. Paragraph (1) of subsection (5) of section  
 1610 456.074, Florida Statutes, is amended to read:

1611 456.074 Certain health care practitioners; immediate  
 1612 suspension of license.—

1613 (5) The department shall issue an emergency order  
 1614 suspending the license of a massage therapist or establishment  
 1615 as defined in chapter 480 upon receipt of information that the  
 1616 massage therapist, a person with an ownership interest in the  
 1617 establishment, or, for a corporation that has more than \$250,000  
 1618 of business assets in this state, the owner, officer, or  
 1619 individual directly involved in the management of the  
 1620 establishment has been convicted or found guilty of, or has  
 1621 entered a plea of guilty or nolo contendere to, regardless of  
 1622 adjudication, a felony offense under any of the following  
 1623 provisions of state law or a similar provision in another  
 1624 jurisdiction:

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1625 (1) Section 796.07(4)(a)~~3.796.07(4)(e)~~, relating to a  
 1626 felony of the third degree for a third or subsequent violation  
 1627 of s. 796.07, relating to prohibiting prostitution and related  
 1628 acts.

1629 Reviser's note.—Amended to conform to the redesignation of s.  
 1630 796.07(4)(c) as s. 796.07(4)(a)3. by s. 1, ch. 2015-145,  
 1631 Laws of Florida.

1632 Section 55. Paragraph (a) of subsection (1) of section  
 1633 458.3265, Florida Statutes, is amended to read:

1634 458.3265 Pain-management clinics.—

1635 (1) REGISTRATION.—

1636 (a)1. As used in this section, the term:

1637 a. "Board eligible" means successful completion of an  
 1638 anesthesia, physical medicine and rehabilitation, rheumatology,  
 1639 or neurology residency program approved by the Accreditation  
 1640 Council for Graduate Medical Education or the American  
 1641 Osteopathic Association for a period of 6 years from successful  
 1642 completion of such residency program.

1643 b. "Chronic nonmalignant pain" means pain unrelated to  
 1644 cancer which persists beyond the usual course of disease or the  
 1645 injury that is the cause of the pain or more than 90 days after  
 1646 surgery.

1647 c. "Pain-management clinic" or "clinic" means any publicly  
 1648 or privately owned facility:

1649 (I) That advertises in any medium for any type of pain-  
 1650 management services; or

1651 (II) Where in any month a majority of patients are  
 1652 prescribed opioids, benzodiazepines, barbiturates, or  
 1653 carisoprodol for the treatment of chronic nonmalignant pain.

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1654 2. Each pain-management clinic must register with the  
 1655 department unless:

1656 a. That clinic is licensed as a facility pursuant to  
 1657 chapter 395;

1658 b. The majority of the physicians who provide services in  
 1659 the clinic primarily provide surgical services;

1660 c. The clinic is owned by a publicly held corporation whose  
 1661 shares are traded on a national exchange or on the over-the-  
 1662 counter market and whose total assets at the end of the  
 1663 corporation's most recent fiscal quarter exceeded \$50 million;

1664 d. The clinic is affiliated with an accredited medical  
 1665 school at which training is provided for medical students,  
 1666 residents, or fellows;

1667 e. The clinic does not prescribe controlled substances for  
 1668 the treatment of pain;

1669 f. The clinic is owned by a corporate entity exempt from  
 1670 federal taxation under 26 U.S.C. s. 501(c)(3);

1671 g. The clinic is wholly owned and operated by one or more  
 1672 board-eligible or board-certified anesthesiologists,  
 1673 psychiatrists, rheumatologists, or neurologists; or

1674 h. The clinic is wholly owned and operated by a physician  
 1675 multispecialty practice where one or more board-eligible or  
 1676 board-certified medical specialists, who have also completed  
 1677 fellowships in pain medicine approved by the Accreditation  
 1678 Council for Graduate Medical Education, or who are also board-  
 1679 certified in pain medicine by the American Board of Pain  
 1680 Medicine or a board approved by the American Board of Medical  
 1681 Specialties, the American Association of Physician Specialists,  
 1682 or the American Osteopathic Association, ~~and~~ perform

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1683 interventional pain procedures of the type routinely billed  
 1684 using surgical codes.  
 1685 Reviser's note.—Amended to facilitate correct interpretation and  
 1686 improve clarity.  
 1687 Section 56. Paragraph (a) of subsection (1) of section  
 1688 459.0137, Florida Statutes, is amended to read:  
 1689 459.0137 Pain-management clinics.—  
 1690 (1) REGISTRATION.—  
 1691 (a)1. As used in this section, the term:  
 1692 a. "Board eligible" means successful completion of an  
 1693 anesthesia, physical medicine and rehabilitation, rheumatology,  
 1694 or neurology residency program approved by the Accreditation  
 1695 Council for Graduate Medical Education or the American  
 1696 Osteopathic Association for a period of 6 years from successful  
 1697 completion of such residency program.  
 1698 b. "Chronic nonmalignant pain" means pain unrelated to  
 1699 cancer which persists beyond the usual course of disease or the  
 1700 injury that is the cause of the pain or more than 90 days after  
 1701 surgery.  
 1702 c. "Pain-management clinic" or "clinic" means any publicly  
 1703 or privately owned facility:  
 1704 (I) That advertises in any medium for any type of pain-  
 1705 management services; or  
 1706 (II) Where in any month a majority of patients are  
 1707 prescribed opioids, benzodiazepines, barbiturates, or  
 1708 carisoprodol for the treatment of chronic nonmalignant pain.  
 1709 2. Each pain-management clinic must register with the  
 1710 department unless:  
 1711 a. That clinic is licensed as a facility pursuant to

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1712 chapter 395;  
 1713 b. The majority of the physicians who provide services in  
 1714 the clinic primarily provide surgical services;  
 1715 c. The clinic is owned by a publicly held corporation whose  
 1716 shares are traded on a national exchange or on the over-the-  
 1717 counter market and whose total assets at the end of the  
 1718 corporation's most recent fiscal quarter exceeded \$50 million;  
 1719 d. The clinic is affiliated with an accredited medical  
 1720 school at which training is provided for medical students,  
 1721 residents, or fellows;  
 1722 e. The clinic does not prescribe controlled substances for  
 1723 the treatment of pain;  
 1724 f. The clinic is owned by a corporate entity exempt from  
 1725 federal taxation under 26 U.S.C. s. 501(c)(3);  
 1726 g. The clinic is wholly owned and operated by one or more  
 1727 board-eligible or board-certified anesthesiologists,  
 1728 physiatrists, rheumatologists, or neurologists; or  
 1729 h. The clinic is wholly owned and operated by a physician  
 1730 multispecialty practice where one or more board-eligible or  
 1731 board-certified medical specialists, who have also completed  
 1732 fellowships in pain medicine approved by the Accreditation  
 1733 Council for Graduate Medical Education or the American  
 1734 Osteopathic Association, or who are also board-certified in pain  
 1735 medicine by the American Board of Pain Medicine or a board  
 1736 approved by the American Board of Medical Specialties, the  
 1737 American Association of Physician Specialists, or the American  
 1738 Osteopathic Association, and perform interventional pain  
 1739 procedures of the type routinely billed using surgical codes.  
 1740 Reviser's note.—Amended to facilitate correct interpretation and

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1741 improve clarity.

1742 Section 57. Subsections (1), (2), and (3) of section

1743 468.503, Florida Statutes, are amended and reordered to read:

1744 468.503 Definitions.—As used in this part:

1745 (1)~~(2)~~ "Board" means the Board of Medicine.

1746 (2)~~(3)~~ "Commission" means the Commission on Dietetic

1747 Registration, the credentialing agency of the Academy of

1748 Nutrition and Dietetics.

1749 (3)~~(4)~~ "Department" means the Department of Health "Agency"

1750 ~~means the Agency for Health Care Administration.~~

1751 Reviser's note.—The definition of "department" as the

1752 "Department of Health" was substituted by the editors for a

1753 definition of "agency" as the "Agency for Health Care

1754 Administration" to conform to the fact that s.

1755 20.43(3)(g)17. provides that Dietetics and Nutrition

1756 Practice, as provided under part X of chapter 468, is under

1757 the Division of Medical Quality Assurance of the Department

1758 of Health. Section 8, ch. 96-403, Laws of Florida, enacted

1759 s. 20.43, and provided for department oversight of

1760 Dietetics and Nutrition Practice, effective July 1, 1997.

1761 Some references to the Agency for Health Care

1762 Administration were never conformed.

1763 Section 58. Subsections (1), (2), and (4) of section

1764 468.509, Florida Statutes, are amended to read:

1765 468.509 Dietitian/nutritionist; requirements for

1766 licensure.—

1767 (1) Any person desiring to be licensed as a

1768 dietitian/nutritionist shall apply to the department agency to

1769 take the licensure examination.

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1770 (2) The department ~~agency~~ shall examine any applicant who

1771 the board certifies has completed the application form and

1772 remitted the application and examination fees specified in s.

1773 468.508 and who:

1774 (a)1. Possesses a baccalaureate or postbaccalaureate degree

1775 with a major course of study in human nutrition, food and

1776 nutrition, dietetics, or food management, or an equivalent major

1777 course of study, from a school or program accredited, at the

1778 time of the applicant's graduation, by the appropriate

1779 accrediting agency recognized by the Commission on Recognition

1780 of Postsecondary Accreditation and the United States Department

1781 of Education; and

1782 2. Has completed a preprofessional experience component of

1783 not less than 900 hours or has education or experience

1784 determined to be equivalent by the board; or

1785 (b)1. Has an academic degree, from a foreign country, that

1786 has been validated by an accrediting agency approved by the

1787 United States Department of Education as equivalent to the

1788 baccalaureate or postbaccalaureate degree conferred by a

1789 regionally accredited college or university in the United

1790 States;

1791 2. Has completed a major course of study in human

1792 nutrition, food and nutrition, dietetics, or food management;

1793 and

1794 3. Has completed a preprofessional experience component of

1795 not less than 900 hours or has education or experience

1796 determined to be equivalent by the board.

1797 (4) The department ~~agency~~ shall license as a

1798 dietitian/nutritionist any applicant who has remitted the

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1799 initial licensure fee and has passed the examination in  
 1800 accordance with this section.

1801 Reviser's note.—The word "department" was substituted for the  
 1802 word "agency" by the editors to conform to the fact that s.  
 1803 20.43(3)(g)17. provides that Dietetics and Nutrition  
 1804 Practice, as provided under part X of chapter 468, is under  
 1805 the Division of Medical Quality Assurance of the Department  
 1806 of Health. Section 8, ch. 96-403, Laws of Florida, enacted  
 1807 s. 20.43, and provided for department oversight of  
 1808 Dietetics and Nutrition Practice, effective July 1, 1997.  
 1809 Some references to the Agency for Health Care  
 1810 Administration were never conformed.

1811 Section 59. Subsections (1) and (3) of section 468.513,  
 1812 Florida Statutes, are amended to read:

1813 468.513 Dietitian/nutritionist; licensure by endorsement.—

1814 (1) The department ~~agency~~ shall issue a license to practice  
 1815 dietetics and nutrition by endorsement to any applicant who the  
 1816 board certifies as qualified, upon receipt of a completed  
 1817 application and the fee specified in s. 468.508.

1818 (3) The department ~~agency~~ shall not issue a license by  
 1819 endorsement under this section to any applicant who is under  
 1820 investigation in any jurisdiction for any act which would  
 1821 constitute a violation of this part or chapter 456 until such  
 1822 time as the investigation is complete and disciplinary  
 1823 proceedings have been terminated.

1824 Reviser's note.—The word "department" was substituted for the  
 1825 word "agency" by the editors to conform to the fact that s.  
 1826 20.43(3)(g)17. provides that Dietetics and Nutrition  
 1827 Practice, as provided under part X of chapter 468, is under

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1828 the Division of Medical Quality Assurance of the Department  
 1829 of Health. Section 8, ch. 96-403, Laws of Florida, enacted  
 1830 s. 20.43, and provided for department oversight of  
 1831 Dietetics and Nutrition Practice, effective July 1, 1997.  
 1832 Some references to the Agency for Health Care  
 1833 Administration were never conformed.

1834 Section 60. Section 468.514, Florida Statutes, is amended  
 1835 to read:

1836 468.514 Renewal of license.—

1837 (1) The department ~~agency~~ shall renew a license under this  
 1838 part upon receipt of the renewal application, fee, and proof of  
 1839 the successful completion of continuing education requirements  
 1840 as determined by the board.

1841 (2) The department ~~agency~~ shall adopt rules establishing a  
 1842 procedure for the biennial renewal of licenses under this part.

1843 Reviser's note.—The word "department" was substituted for the  
 1844 word "agency" by the editors to conform to the fact that s.  
 1845 20.43(3)(g)17. provides that Dietetics and Nutrition  
 1846 Practice, as provided under part X of chapter 468, is under  
 1847 the Division of Medical Quality Assurance of the Department  
 1848 of Health. Section 8, ch. 96-403, Laws of Florida, enacted  
 1849 s. 20.43, and provided for department oversight of  
 1850 Dietetics and Nutrition Practice, effective July 1, 1997.  
 1851 Some references to the Agency for Health Care  
 1852 Administration were never conformed.

1853 Section 61. Subsection (2) of section 468.515, Florida  
 1854 Statutes, is amended to read:

1855 468.515 Inactive status.—

1856 (2) The department ~~agency~~ shall reactivate a license under

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1857 this part upon receipt of the reactivation application, fee, and  
 1858 proof of the successful completion of continuing education  
 1859 prescribed by the board.

1860 Reviser's note.—The word "department" was substituted for the  
 1861 word "agency" by the editors to conform to the fact that s.  
 1862 20.43(3)(g)17. provides that Dietetics and Nutrition  
 1863 Practice, as provided under part X of chapter 468, is under  
 1864 the Division of Medical Quality Assurance of the Department  
 1865 of Health. Section 8, ch. 96-403, Laws of Florida, enacted  
 1866 s. 20.43, and provided for department oversight of  
 1867 Dietetics and Nutrition Practice, effective July 1, 1997.  
 1868 Some references to the Agency for Health Care  
 1869 Administration were never conformed.

1870 Section 62. Paragraph (a) of subsection (1) and subsection  
 1871 (3) of section 468.518, Florida Statutes, are amended to read:  
 1872 468.518 Grounds for disciplinary action.—  
 1873 (1) The following acts constitute grounds for denial of a  
 1874 license or disciplinary action, as specified in s. 456.072(2):  
 1875 (a) Violating any provision of this part, any board or  
 1876 department ~~agency~~ rule adopted pursuant thereto, or any lawful  
 1877 order of the board or department ~~agency~~ previously entered in a  
 1878 disciplinary hearing held pursuant to this part, or failing to  
 1879 comply with a lawfully issued subpoena of the department ~~agency~~.  
 1880 The provisions of this paragraph also apply to any order or  
 1881 subpoena previously issued by the Department of Health during  
 1882 its period of regulatory control over this part.

1883 (3) The department ~~agency~~ shall reissue the license of a  
 1884 disciplined dietitian/nutritionist or nutrition counselor upon  
 1885 certification by the board that the disciplined

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1886 dietitian/nutritionist or nutrition counselor has complied with  
 1887 all of the terms and conditions set forth in the final order.

1888 Reviser's note.—The word "department" was substituted for the  
 1889 word "agency" by the editors to conform to the fact that s.  
 1890 20.43(3)(g)17. provides that Dietetics and Nutrition  
 1891 Practice, as provided under part X of chapter 468, is under  
 1892 the Division of Medical Quality Assurance of the Department  
 1893 of Health. Section 8, ch. 96-403, Laws of Florida, enacted  
 1894 s. 20.43, and provided for department oversight of  
 1895 Dietetics and Nutrition Practice, effective July 1, 1997.  
 1896 Some references to the Agency for Health Care  
 1897 Administration were never conformed.

1898 Section 63. Paragraph (1) of subsection (7) of section  
 1899 480.041, Florida Statutes, is amended to read:  
 1900 480.041 Massage therapists; qualifications; licensure;  
 1901 endorsement.—  
 1902 (7) The board shall deny an application for a new or  
 1903 renewal license if an applicant has been convicted or found  
 1904 guilty of, or enters a plea of guilty or nolo contendere to,  
 1905 regardless of adjudication, a felony offense under any of the  
 1906 following provisions of state law or a similar provision in  
 1907 another jurisdiction:

1908 (1) Section 796.07(4)(a)3. ~~796.07(4)(c).~~, relating to a  
 1909 felony of the third degree for a third or subsequent violation  
 1910 of s. 796.07, relating to prohibiting prostitution and related  
 1911 acts.

1912 Reviser's note.—Amended to conform to the redesignation of s.  
 1913 796.07(4)(c) as s. 796.07(4)(a)3. by s. 1, ch. 2015-145,  
 1914 Laws of Florida.



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1915 Section 64. Paragraph (1) of subsection (8) of section  
 1916 480.043, Florida Statutes, is amended to read:  
 1917 480.043 Massage establishments; requisites; licensure;  
 1918 inspection.—  
 1919 (8) The department shall deny an application for a new or  
 1920 renewal license if a person with an ownership interest in the  
 1921 establishment or, for a corporation that has more than \$250,000  
 1922 of business assets in this state, the owner, officer, or  
 1923 individual directly involved in the management of the  
 1924 establishment has been convicted or found guilty of, or entered  
 1925 a plea of guilty or nolo contendere to, regardless of  
 1926 adjudication, a felony offense under any of the following  
 1927 provisions of state law or a similar provision in another  
 1928 jurisdiction:  
 1929 (1) Section 796.07(4)(a)3. ~~796.07(4)(e)~~, relating to a  
 1930 felony of the third degree for a third or subsequent violation  
 1931 of s. 796.07, relating to prohibiting prostitution and related  
 1932 acts.  
 1933 Reviser's note.—Amended to conform to the redesignation of s.  
 1934 796.07(4)(c) as s. 796.07(4)(a)3. by s. 1, ch. 2015-145,  
 1935 Laws of Florida.  
 1936 Section 65. Subsection (3) of section 497.159, Florida  
 1937 Statutes, is amended to read:  
 1938 497.159 Crimes.—  
 1939 (3) Any person who willfully obstructs the department or  
 1940 its examiner in any examination or investigation authorized by  
 1941 this chapter commits a misdemeanor of the second degree ~~and is,~~  
 1942 ~~in addition to any disciplinary action under this chapter,~~  
 1943 punishable as provided in s. 775.082 or s. 775.083, in addition

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1944 ~~to any disciplinary action under this chapter.~~ The initiation of  
 1945 action in any court by or on behalf of any licensee to terminate  
 1946 or limit any examination or investigation under this chapter  
 1947 shall not constitute a violation under this subsection.  
 1948 Reviser's note.—Amended to facilitate correct interpretation and  
 1949 improve clarity.  
 1950 Section 66. Paragraph (a) of subsection (6) of section  
 1951 546.10, Florida Statutes, is amended to read:  
 1952 546.10 Amusement games or machines.—  
 1953 (6) (a) A Type B amusement game or machine may only be  
 1954 operated at:  
 1955 1. A facility as defined in s. 721.05(17) that is under the  
 1956 control of a timeshare plan.~~+~~  
 1957 2. A public lodging establishment or public food service  
 1958 establishment licensed pursuant to chapter 509.~~+~~  
 1959 3. The following premises, if the owner or operator of the  
 1960 premises has a current license issued by the Department of  
 1961 Business and Professional Regulation pursuant to chapter 509,  
 1962 chapter 561, chapter 562, chapter 563, chapter 564, chapter 565,  
 1963 chapter 567, or chapter 568:  
 1964 a. An arcade amusement center;  
 1965 b. A bowling center, as defined in s. 849.141; or  
 1966 c. A truck stop.  
 1967 Reviser's note.—Amended to improve punctuation.  
 1968 Section 67. Paragraph (q) of subsection (1) of section  
 1969 553.74, Florida Statutes, is amended to read:  
 1970 553.74 Florida Building Commission.—  
 1971 (1) The Florida Building Commission is created and located  
 1972 within the Department of Business and Professional Regulation

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1973 for administrative purposes. Members are appointed by the  
 1974 Governor subject to confirmation by the Senate. The commission  
 1975 is composed of 27 members, consisting of the following:

1976 (q) One member of the building products manufacturing  
 1977 industry who is authorized to do business in this state and is  
 1978 actively engaged in the industry. The Florida Building Material  
 1979 Association, the Florida Concrete and Products ~~Product~~  
 1980 Association, and the Fenestration Manufacturers Association are  
 1981 encouraged to recommend a list of candidates for consideration.  
 1982 Reviser's note.—Amended to conform to the correct name of the  
 1983 Florida Concrete and Products Association.

1984 Section 68. Paragraph (b) of subsection (7) of section  
 1985 559.55, Florida Statutes, is amended to read:

1986 559.55 Definitions.—The following terms shall, unless the  
 1987 context otherwise indicates, have the following meanings for the  
 1988 purpose of this part:

1989 (7) "Debt collector" means any person who uses any  
 1990 instrumentality of commerce within this state, whether initiated  
 1991 from within or outside this state, in any business the principal  
 1992 purpose of which is the collection of debts, or who regularly  
 1993 collects or attempts to collect, directly or indirectly, debts  
 1994 owed or due or asserted to be owed or due another. The term  
 1995 "debt collector" includes any creditor who, in the process of  
 1996 collecting her or his own debts, uses any name other than her or  
 1997 his own which would indicate that a third person is collecting  
 1998 or attempting to collect such debts. The term does not include:

1999 (b) Any person while acting as a debt collector for another  
 2000 person, both of whom are related by common ownership or  
 2001 affiliated by corporate control, if the person is acting as a

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2002 debt collector for persons to whom it is so related or  
 2003 affiliated and if the principal business of such persons is not  
 2004 the collection of debts;

2005 Reviser's note.—Amended to confirm the editorial insertion of  
 2006 the word "is."

2007 Section 69. Subsection (7) of section 559.555, Florida  
 2008 Statutes, is amended to read:

2009 559.555 Registration of consumer collection agencies;  
 2010 procedure.—

2011 ~~(7) A consumer collection agency registrant whose initial~~  
 2012 ~~registration was approved and issued by the office pursuant to~~  
 2013 ~~this section before October 1, 2014, and who seeks renewal of~~  
 2014 ~~the registration must submit fingerprints for each control~~  
 2015 ~~person for live-scan processing as described in paragraph~~  
 2016 ~~(2)(c). The fingerprints must be submitted before renewing a~~  
 2017 ~~registration that is scheduled to expire on December 31, 2014.~~

2018 Reviser's note.—Amended to delete an obsolete provision.

2019 Section 70. Paragraph (c) of subsection (1) of section  
 2020 560.141, Florida Statutes, is amended to read:

2021 560.141 License application.—

2022 (1) To apply for a license as a money services business  
 2023 under this chapter, the applicant must submit:

2024 (c) Fingerprints for each person listed in subparagraph  
 2025 (a)3. for live-scan processing in accordance with rules adopted  
 2026 by the commission.

2027 1. The fingerprints may be submitted through a third-party  
 2028 vendor authorized by the Department of Law Enforcement to  
 2029 provide live-scan fingerprinting.

2030 2. The Department of Law Enforcement must conduct the state

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2031 criminal history background check, and a federal criminal  
2032 history background check must be conducted through the Federal  
2033 Bureau of Investigation.

2034 3. All fingerprints submitted to the Department of Law  
2035 Enforcement must be submitted electronically and entered into  
2036 the statewide automated fingerprint identification system  
2037 established in s. 943.05(2)(b) and available for use in  
2038 accordance with s. 943.05(2)(g) and (h). The office shall pay an  
2039 annual fee to the Department of Law Enforcement to participate  
2040 in the system and shall inform the Department of Law Enforcement  
2041 of any person whose fingerprints no longer must be retained.

2042 4. The costs of fingerprint processing, including the cost  
2043 of retaining the fingerprints, shall be borne by the person  
2044 subject to the background check.

2045 5. The office shall review the results of the state and  
2046 federal criminal history background checks and determine whether  
2047 the applicant meets licensure requirements.

2048 6. For purposes of this paragraph, fingerprints are not  
2049 required to be submitted if the applicant is a publicly traded  
2050 corporation or is exempted from this chapter under s.  
2051 560.104(1). The term "publicly traded" means a stock is  
2052 currently traded on a national securities exchange registered  
2053 with the federal Securities and Exchange Commission or traded on  
2054 an exchange in a country other than the United States regulated  
2055 by a regulator equivalent to the Securities and Exchange  
2056 Commission and the disclosure and reporting requirements of such  
2057 regulator are substantially similar to those of the commission.

2058 ~~7. Licensees initially approved before October 1, 2013, who~~  
2059 ~~are seeking renewal must submit fingerprints for each person~~

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2060 ~~listed in subparagraph (a)3. for live scan processing pursuant~~  
2061 ~~to this paragraph. Such fingerprints must be submitted before~~  
2062 ~~renewing a license that is scheduled to expire between April 30,~~  
2063 ~~2014, and December 31, 2015.~~

2064 Reviser's note.—Amended to delete an obsolete provision.

2065 Section 71. Paragraph (a) of subsection (13) of section  
2066 561.42, Florida Statutes, is amended to read:

2067 561.42 Tied house evil; financial aid and assistance to  
2068 vendor by manufacturer, distributor, importer, primary American  
2069 source of supply, brand owner or registrant, or any broker,  
2070 sales agent, or sales person thereof, prohibited; procedure for  
2071 enforcement; exception.—

2072 (13) A licensee under the Beverage Law may not possess or  
2073 use, in physical or electronic format, any type of malt beverage  
2074 coupon or malt beverage cross-merchandising coupon in this  
2075 state, where:

2076 (a) The coupon is produced, sponsored, or furnished,  
2077 whether directly or indirectly, by an alcoholic ~~alcohol~~ beverage  
2078 manufacturer, distributor, importer, brand owner, or brand  
2079 registrant or any broker, sales agent, or sales person thereof;  
2080 and

2081 Reviser's note.—Amended to conform to context and facilitate  
2082 correct interpretation.

2083 Section 72. Subsection (4) of section 561.57, Florida  
2084 Statutes, is amended to read:

2085 561.57 Deliveries by licensees.—

2086 (4) Nothing contained in this section shall prohibit  
2087 deliveries by the licensee from his or her permitted storage  
2088 area or deliveries by a distributor from the manufacturer to his

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2089 or her licensed premises; nor shall a pool buying agent be  
 2090 prohibited from transporting pool purchases to the licensed  
 2091 premises of his or her members with the licensee's owned or  
 2092 leased vehicles, ~~and in such cases~~. In addition, a licensed  
 2093 salesperson of wine and spirits is authorized to deliver  
 2094 alcoholic beverages in his or her vehicle on behalf of the  
 2095 distributor.

2096 Reviser's note.—Amended to confirm the editorial deletion of the  
 2097 phrase “, and in such cases,” to conform to the striking of  
 2098 the remaining words of the sentence by s. 5, ch. 2015-12,  
 2099 Laws of Florida.

2100 Section 73. Paragraph (b) of subsection (2) of section  
 2101 605.0410, Florida Statutes, is amended to read:

2102 605.0410 Records to be kept; rights of member, manager, and  
 2103 person dissociated to information.—

2104 (2) In a member-managed limited liability company, the  
 2105 following rules apply:

2106 (b) The company shall furnish to each member:

2107 1. Without demand, any information concerning the company's  
 2108 activities, affairs, financial condition, and other  
 2109 circumstances that is known to ~~that~~ the company ~~knows~~ and is  
 2110 material to the proper exercise of the member's rights and  
 2111 duties under the operating agreement or this chapter, except to  
 2112 the extent the company can establish that it reasonably believes  
 2113 the member already knows the information; and

2114 2. On demand, other information concerning the company's  
 2115 activities, affairs, financial condition, and other  
 2116 circumstances, except to the extent the demand or information  
 2117 demanded is unreasonable or otherwise improper under the

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2118 circumstances.

2119 Reviser's note.—Amended to improve clarity and to facilitate  
 2120 correct interpretation.

2121 Section 74. Section 610.1201, Florida Statutes, is amended  
 2122 to read:

2123 610.1201 Severability.—If any provision of ss. 610.102-  
 2124 610.118 ~~610.102-610.119~~ or the application thereof to any person  
 2125 or circumstance is held invalid, such invalidity shall not  
 2126 affect other provisions or application of ss. 610.102-610.118  
 2127 ~~610.102-610.119~~ which can be given effect without the invalid  
 2128 provision or application, and to this end the provisions of ss.  
 2129 610.102-610.118 ~~610.102-610.119~~ are severable.

2130 Reviser's note.—Amended to conform to the repeal of s. 610.119  
 2131 by s. 1, ch. 2014-90, Laws of Florida.

2132 Section 75. Subsection (3) of section 617.01301, Florida  
 2133 Statutes, is amended to read:

2134 617.01301 Powers of Department of State.—

2135 (3) The Department of State may, based upon its findings  
 2136 hereunder or as provided in s. 213.053(15) ~~213.053(13)~~, bring an  
 2137 action in circuit court to collect any penalties, fees, or taxes  
 2138 determined to be due and owing the state and to compel any  
 2139 filing, qualification, or registration required by law. In  
 2140 connection with such proceeding the department may, without  
 2141 prior approval by the court, file a lis pendens against any  
 2142 property owned by the corporation and may further certify any  
 2143 findings to the Department of Legal Affairs for the initiation  
 2144 of any action permitted pursuant to s. 617.0503 which the  
 2145 Department of Legal Affairs may deem appropriate.

2146 Reviser's note.—Amended to conform to the fact that s.

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2147 213.053(15), not s. 2130.053(13), references the Department  
2148 of State and to conform to similar provisions in ss.  
2149 605.1104 and 607.0130.

2150 Section 76. Section 618.221, Florida Statutes, is amended  
2151 to read:

2152 618.221 Conversion into a corporation for profit.—Any  
2153 association incorporated under or that has adopted the  
2154 provisions of this chapter, may, by a majority vote of its  
2155 stockholders or members be brought under part I of chapter 607,  
2156 as a corporation for profit by surrendering all right to carry  
2157 on its business under this chapter, and the privileges and  
2158 immunities incident thereto. It shall make out in duplicate a  
2159 statement signed and sworn to by its directors to the effect  
2160 that the association has, by a majority vote of its stockholders  
2161 or members, decided to surrender all rights, powers, and  
2162 privileges as a nonprofit cooperative marketing association  
2163 under this chapter and to do business under and be bound by part  
2164 I of chapter 607, as a corporation for profit and has authorized  
2165 all changes accordingly. Articles of incorporation shall be  
2166 delivered to the Department of State for filing as required  
2167 under part I of chapter 607, except that they shall be signed by  
2168 the members of the then board of directors. The filing fees and  
2169 taxes shall be as provided under part I of chapter 607. Such  
2170 articles of incorporation shall adequately protect and preserve  
2171 the relative rights of the stockholders or members of the  
2172 association so converting into a corporation for profit;  
2173 provided that no rights or obligations due any stockholder or  
2174 member of such association or any other person, firm, or  
2175 corporation which have ~~has~~ not been waived or satisfied shall be

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2176 impaired by such conversion into a corporation for profit as  
2177 herein authorized.

2178 Reviser's note.—Amended to improve clarity and facilitate  
2179 correct interpretation.

2180 Section 77. Section 624.35, Florida Statutes, is repealed.

2181 Reviser's note.—Repealed to delete a provision that has served  
2182 its purpose. Section 624.35 is the short title for the  
2183 "Medicaid and Public Assistance Fraud Strike Force,"  
2184 consisting of ss. 624.35, 624.351, and 624.352. Sections  
2185 624.351 and 624.352 were repealed by ss. 21, 22, ch. 2015-  
2186 3, Laws of Florida.

2187 Section 78. Paragraph (d) of subsection (2) of section  
2188 624.5105, Florida Statutes, is amended to read:

2189 624.5105 Community contribution tax credit; authorization;  
2190 limitations; eligibility and application requirements;  
2191 administration; definitions; expiration.—

2192 (2) ELIGIBILITY REQUIREMENTS.—

2193 (d) The project shall be located in an area that was  
2194 designated as an enterprise zone pursuant to chapter 290 as of  
2195 May 1, 2015, or a Front Porch Florida Community. Any project  
2196 designed to provide housing opportunities for persons with  
2197 special needs as defined in s. 420.0004 or to construct or  
2198 rehabilitate housing for low-income or very-low-income  
2199 households as defined in s. 420.9071(19) and (28) is exempt from  
2200 the area requirement of this paragraph.

2201 Reviser's note.—Amended to conform the editorial insertion of  
2202 the word "Florida" to conform to the full title of  
2203 communities receiving grants through the Front Porch  
2204 Florida Initiative.

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2205 Section 79. Paragraph (b) of subsection (15) of section  
 2206 625.012, Florida Statutes, is amended to read:  
 2207 625.012 "Assets" defined.—In any determination of the  
 2208 financial condition of an insurer, there shall be allowed as  
 2209 "assets" only such assets as are owned by the insurer and which  
 2210 consist of:  
 2211 (15)  
 2212 (b) Assessments levied as monthly installments pursuant to  
 2213 s. ~~631.57(3)(e)3.~~ 631.57(3)(e)1.e. that are paid after policy  
 2214 surcharges are collected so that the recognition of assets is  
 2215 based on actual premium written offset by the obligation to the  
 2216 Florida Insurance Guaranty Association.  
 2217 Reviser's note.—Amended to conform to the redesignation of s.  
 2218 631.57(3)(e)1.c. as s. 631.57(3)(e)3. by s. 2, ch. 2015-65,  
 2219 Laws of Florida.  
 2220 Section 80. Subsection (2) of section 631.152, Florida  
 2221 Statutes, is amended to read:  
 2222 631.152 Conduct of delinquency proceeding; foreign  
 2223 insurers.—  
 2224 (2) The domiciliary receiver for the purpose of liquidating  
 2225 an insurer domiciled in a reciprocal state shall be vested by  
 2226 operation of law with the title to all of the property (except  
 2227 statutory deposits, special statutory deposits, and property  
 2228 located in this state subject to a security interest),  
 2229 contracts, and rights of action, and all of the books and  
 2230 records of the insurer located in this state, and it shall have  
 2231 the immediate right to recover balances due from local agents  
 2232 and to obtain possession of any books and records of the insurer  
 2233 found in this state. It shall also be entitled to recover the

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2234 property subject to a security interest, statutory deposits, and  
 2235 special statutory deposits of the insurer located in this state,  
 2236 except that upon the appointment of an ancillary receiver in  
 2237 this state, the ancillary receiver shall during the ancillary  
 2238 receivership proceeding have the sole right to recover such  
 2239 other assets. The ancillary receiver shall, as soon as  
 2240 practicable, liquidate from their respective securities those  
 2241 special deposit claims and secured claims which are proved and  
 2242 allowed in the ancillary proceeding in this state, and shall pay  
 2243 the necessary expenses of the proceeding. ~~All remaining assets~~  
 2244 It shall promptly transfer all remaining assets to the  
 2245 domiciliary receiver. Subject to the foregoing provisions, the  
 2246 ancillary receiver and its agents shall have the same powers and  
 2247 be subject to the same duties with respect to the administration  
 2248 of such assets as a receiver of an insurer domiciled in this  
 2249 state.  
 2250 Reviser's note.—Amended to improve clarity and facilitate  
 2251 correct interpretation.  
 2252 Section 81. Section 631.737, Florida Statutes, is amended  
 2253 to read:  
 2254 631.737 Rescission and review generally.—The association  
 2255 shall review claims and matters regarding covered policies based  
 2256 upon the record available to it on and after the date of  
 2257 liquidation. Notwithstanding any other provision of this part,  
 2258 in order to allow for orderly claims administration by the  
 2259 association, entry of a liquidation order by a court of  
 2260 competent jurisdiction tolls for 1 year any rescission or  
 2261 noncontestable period allowed by the contract, by the policy, or  
 2262 by law. The association's obligation is to pay any valid

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2263 insurance policy or contract claims, if warranted, after its  
 2264 independent de novo review of the policies, contracts, and  
 2265 claims presented to it, whether domestic or foreign, following a  
 2266 rehabilitation or a liquidation.

2267 Reviser's note.—Amended to improve clarity and facilitate  
 2268 correct interpretation.

2269 Section 82. Subsection (2) of section 641.225, Florida  
 2270 Statutes, is amended to read:

2271 641.225 Surplus requirements.—

2272 (2) The office shall not issue a certificate of authority,  
 2273 ~~except as provided in subsection (3),~~ unless the health  
 2274 maintenance organization has a minimum surplus in an amount  
 2275 which is the greater of:

2276 (a) Ten percent of their total liabilities based on their  
 2277 startup projection as set forth in this part;

2278 (b) Two percent of their total projected premiums based on  
 2279 their startup projection as set forth in this part; or

2280 (c) \$1,500,000, plus all startup losses, excluding profits,  
 2281 projected to be incurred on their startup projection until the  
 2282 projection reflects statutory net profits for 12 consecutive  
 2283 months.

2284 Reviser's note.—Amended to conform to the repeal of s.  
 2285 641.225(3) by s. 31, ch. 2015-3, Laws of Florida.

2286 Section 83. Subsection (3) of section 719.108, Florida  
 2287 Statutes, is amended to read:

2288 719.108 Rents and assessments; liability; lien and  
 2289 priority; interest; collection; cooperative ownership.—

2290 (3) Rents and assessments, and installments on them, not  
 2291 paid when due bear interest at the rate provided in the

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2292 cooperative documents from the date due until paid. This rate  
 2293 may not exceed the rate allowed by law and, if a rate is not  
 2294 provided in the cooperative documents, accrues at 18 percent per  
 2295 annum. If the cooperative documents or bylaws so provide, the  
 2296 association may charge an administrative late fee in addition to  
 2297 such interest, not to exceed the greater of \$25 or 5 percent of  
 2298 each installment of the assessment for each delinquent  
 2299 installment that the payment is late. Any payment received by an  
 2300 association must be applied first to any interest accrued by the  
 2301 association, then to any administrative late fee, then to any  
 2302 costs and reasonable attorney fees incurred in collection, and  
 2303 then to the delinquent assessment. The foregoing applies  
 2304 notwithstanding s. 673.3111, any purported accord and  
 2305 satisfaction, or any restrictive endorsement, designation, or  
 2306 instruction placed on or accompanying a payment. The preceding  
 2307 sentence ~~of~~ is intended to clarify existing law. A late fee is  
 2308 not subject to chapter 687 or s. 719.303(4).

2309 Reviser's note.—Amended to confirm the editorial deletion of the  
 2310 word "of."

2311 Section 84. Section 742.14, Florida Statutes, is amended to  
 2312 read:

2313 742.14 Donation of eggs, sperm, or preembryos.—The donor of  
 2314 any egg, sperm, or preembryo, other than the commissioning  
 2315 couple or a father who has executed a preplanned adoption  
 2316 agreement under s. 63.213 ~~63-212~~, shall relinquish all maternal  
 2317 or paternal rights and obligations with respect to the donation  
 2318 or the resulting children. Only reasonable compensation directly  
 2319 related to the donation of eggs, sperm, and preembryos shall be  
 2320 permitted.

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2321 Reviser's note.—Amended to conform to the deletion of material  
 2322 relating to entry into a preplanned adoption arrangement  
 2323 from s. 63.212 by s. 35, ch. 2003-58, Laws of Florida, and  
 2324 creation of s. 63.213 relating to preplanned adoption  
 2325 agreements by s. 36 of that act.  
 2326 Section 85. Subsection (3) of section 752.001, Florida  
 2327 Statutes, is amended to read:  
 2328 752.001 Definitions.—As used in this chapter, the term:  
 2329 (3) "Persistent vegetative state" has the same meaning as  
 2330 provided in s. 765.101(15) ~~765.101(12)~~.  
 2331 Reviser's note.—Amended to conform to the redesignation of s.  
 2332 765.101(12) as s. 765.101(15) by s. 2, ch. 2015-153, Laws  
 2333 of Florida.  
 2334 Section 86. Subsection (2) of section 765.105, Florida  
 2335 Statutes, is amended to read:  
 2336 765.105 Review of surrogate or proxy's decision.—  
 2337 (2) This section does not apply to a patient who is not  
 2338 incapacitated and who has designated a surrogate who has  
 2339 immediate authority to make health care decisions or ~~and~~ receive  
 2340 health information, or both, on behalf of the patient.  
 2341 Reviser's note.—Amended to confirm the editorial substitution of  
 2342 the word "or" for the word "and" to conform to context and  
 2343 facilitate correct interpretation.  
 2344 Section 87. Section 765.2038, Florida Statutes, is amended  
 2345 to read:  
 2346 765.2038 Designation of health care surrogate for a minor;  
 2347 suggested form.—A written designation of a health care surrogate  
 2348 for a minor executed pursuant to this chapter may, but need not,  
 2349 ~~be~~ be, in the following form:

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2350  
 2351 DESIGNATION OF HEALTH CARE SURROGATE  
 2352 FOR MINOR  
 2353  
 2354 I/We, ...(name/names)..., the [...] natural guardian(s) as  
 2355 defined in s. 744.301(1), Florida Statutes; [...] legal  
 2356 custodian(s); [...] legal guardian(s) [check one] of the  
 2357 following minor(s):  
 2358  
 2359 .....;  
 2360 .....;  
 2361 .....;  
 2362  
 2363 pursuant to s. 765.2035, Florida Statutes, designate the  
 2364 following person to act as my/our surrogate for health care  
 2365 decisions for such minor(s) in the event that I/we am/are not  
 2366 able or reasonably available to provide consent for medical  
 2367 treatment and surgical and diagnostic procedures:  
 2368  
 2369 Name: ...(name)...  
 2370 Address: ...(address)...  
 2371 Zip Code: ...(zip code)...  
 2372 Phone: ...(telephone)...  
 2373  
 2374 If my/our designated health care surrogate for a minor is  
 2375 not willing, able, or reasonably available to perform his or her  
 2376 duties, I/we designate the following person as my/our alternate  
 2377 health care surrogate for a minor:  
 2378



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2379 Name: ...(name)...  
 2380 Address: ...(address)...  
 2381 Zip Code: ...(zip code)...  
 2382 Phone: ...(telephone)...

2383  
 2384 I/We authorize and request all physicians, hospitals, or  
 2385 other providers of medical services to follow the instructions  
 2386 of my/our surrogate or alternate surrogate, as the case may be,  
 2387 at any time and under any circumstances whatsoever, with regard  
 2388 to medical treatment and surgical and diagnostic procedures for  
 2389 a minor, provided the medical care and treatment of any minor is  
 2390 on the advice of a licensed physician.

2391  
 2392 I/We fully understand that this designation will permit  
 2393 my/our designee to make health care decisions for a minor and to  
 2394 provide, withhold, or withdraw consent on my/our behalf, to  
 2395 apply for public benefits to defray the cost of health care, and  
 2396 to authorize the admission or transfer of a minor to or from a  
 2397 health care facility.

2398  
 2399 I/We will notify and send a copy of this document to the  
 2400 following person(s) other than my/our surrogate, so that they  
 2401 may know the identity of my/our surrogate:

2402  
 2403 Name: ...(name)...  
 2404 Name: ...(name)...  
 2405  
 2406 Signed: ...(signature)...  
 2407 Date: ...(date)...

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2408  
 2409 WITNESSES:  
 2410 1. ...(witness)...  
 2411 2. ...(witness)...  
 2412 Reviser's note.—Amended to confirm the editorial substitution of  
 2413 the word "not" for the word "to" to conform to context and  
 2414 facilitate correct interpretation.  
 2415 Section 88. Paragraph (b) of subsection (3) of section  
 2416 787.29, Florida Statutes, is amended to read:  
 2417 787.29 Human trafficking public awareness signs.—  
 2418 (3) The employer at each of the following establishments  
 2419 shall display a public awareness sign developed under subsection  
 2420 (4) in a conspicuous location that is clearly visible to the  
 2421 public and employees of the establishment:  
 2422 (b) A business or establishment that offers massage or  
 2423 bodywork services for compensation that is not owned by a health  
 2424 care practitioner ~~profession~~ regulated pursuant to chapter 456  
 2425 and defined in s. 456.001.  
 2426 Reviser's note.—Amended to improve clarity and facilitate  
 2427 correct interpretation.  
 2428 Section 89. Paragraph (c) of subsection (3) of section  
 2429 893.138, Florida Statutes, is amended to read:  
 2430 893.138 Local administrative action to abate drug-related,  
 2431 prostitution-related, or stolen-property-related public  
 2432 nuisances and criminal gang activity.—  
 2433 (3) Any pain-management clinic, as described in s. 458.3265  
 2434 or s. 459.0137, which has been used on more than two occasions  
 2435 within a 6-month period as the site of a violation of:  
 2436 (c) Section 812.014, relating to ~~dealing in~~ theft;

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2437  
 2438 may be declared to be a public nuisance, and such nuisance may  
 2439 be abated pursuant to the procedures provided in this section.  
 2440 Reviser's note.—Amended to conform to context.  
 2441 Section 90. Paragraph (b) of subsection (2) of section  
 2442 944.4731, Florida Statutes, is amended to read:  
 2443 944.4731 Addiction-Recovery Supervision Program.—  
 2444 (2)  
 2445 (b) An offender released under addiction-recovery  
 2446 supervision shall be subject to specified terms and conditions,  
 2447 including payment of the costs of supervision under s. 948.09  
 2448 and any other court-ordered payments, such as child support and  
 2449 restitution. If an offender has received a term of probation or  
 2450 community control to be served after release from incarceration,  
 2451 the period of probation or community control may not be  
 2452 substituted for addiction-recovery supervision and shall follow  
 2453 the term of addiction-recovery supervision. A panel of not fewer  
 2454 than two ~~parole~~ commissioners shall establish the terms and  
 2455 conditions of supervision, and the terms and conditions must be  
 2456 included in the supervision order. In setting the terms and  
 2457 conditions of supervision, the commission shall weigh heavily  
 2458 the program requirements, including, but not limited to, work at  
 2459 paid employment while participating in treatment and traveling  
 2460 restrictions. The commission shall also determine whether an  
 2461 offender violates the terms and conditions of supervision and  
 2462 whether a violation warrants revocation of addiction-recovery  
 2463 supervision pursuant to s. 947.141. The commission shall review  
 2464 the offender's record for the purpose of establishing the terms  
 2465 and conditions of supervision. The commission may impose any

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2466 special conditions it considers warranted from its review of the  
 2467 record. The length of supervision may not exceed the maximum  
 2468 penalty imposed by the court.  
 2469 Reviser's note.—Amended to conform to the renaming of the  
 2470 Florida Parole Commission as the Florida Commission on  
 2471 Offender Review by s. 4, ch. 2014-191, Laws of Florida.  
 2472 Section 91. Paragraph (a) of subsection (1) of section  
 2473 945.215, Florida Statutes, is amended to read:  
 2474 945.215 Inmate welfare and employee benefit trust funds.—  
 2475 (1) INMATE PURCHASES; DEPARTMENT OF CORRECTIONS.—  
 2476 (a) ~~From~~ The net proceeds from operating inmate canteens,  
 2477 vending machines used primarily by inmates and visitors, hobby  
 2478 shops, and other such facilities must be deposited in the  
 2479 General Revenue Fund; however, funds necessary to purchase items  
 2480 for resale at inmate canteens and vending machines must be  
 2481 deposited into local bank accounts designated by the department.  
 2482 Reviser's note.—Amended to improve clarity and facilitate  
 2483 correct interpretation.  
 2484 Section 92. Subsection (20) of section 1001.65, Florida  
 2485 Statutes, is amended to read:  
 2486 1001.65 Florida College System institution presidents;  
 2487 powers and duties.—The president is the chief executive officer  
 2488 of the Florida College System institution, shall be corporate  
 2489 secretary of the Florida College System institution board of  
 2490 trustees, and is responsible for the operation and  
 2491 administration of the Florida College System institution. Each  
 2492 Florida College System institution president shall:  
 2493 ~~(20) Establish a committee to consider requests for waivers~~  
 2494 ~~from the provisions of s. 1008.29 and approve or disapprove the~~

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2495 ~~committee's recommendations.~~

2496 Reviser's note.—Amended to delete an obsolete provision and  
 2497 conform to the repeal of s. 1008.29 by s. 21, ch. 2009-59,  
 2498 Laws of Florida.

2499 Section 93. Subsection (5) of section 1002.3105, Florida  
 2500 Statutes, is amended to read:

2501 1002.3105 Academically Challenging Curriculum to Enhance  
 2502 Learning (ACCEL) options.—

2503 (5) AWARD OF A STANDARD HIGH SCHOOL DIPLOMA.—A student who  
 2504 meets the applicable grade 9 cohort graduation requirements of  
 2505 s. 1003.4282(3)(a)-(e) or s. 1003.4282(9)(a)1.-5.  
 2506 ~~1003.4282(10)(a)1.-5.~~, (b)1.-5., (c)1.-5., or (d)1.-5., earns  
 2507 three credits in electives, and earns a cumulative grade point  
 2508 average (GPA) of 2.0 on a 4.0 scale shall be awarded a standard  
 2509 high school diploma in a form prescribed by the State Board of  
 2510 Education.

2511 Reviser's note.— Amended to conform to the redesignation of s.  
 2512 1003.4282(10) as s. 1003.4282(9) by the editors to conform  
 2513 to the repeal of s. 1003.4282(5) by s. 4, ch. 2015-6, Laws  
 2514 of Florida.

2515 Section 94. Paragraph (e) of subsection (1) of section  
 2516 1003.21, Florida Statutes, is amended to read:

2517 1003.21 School attendance.—

2518 (1)

2519 (e) Consistent with rules adopted by the State Board of  
 2520 Education, children with disabilities who have attained the age  
 2521 of 3 years shall be eligible for admission to public special  
 2522 education programs and for related services. Children with  
 2523 disabilities younger than 3 years of age who are deaf or hard of

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2524 hearing, ~~+~~ visually impaired, ~~+~~ dual sensory impaired, ~~+~~  
 2525 orthopedically impaired, ~~or~~ other health impaired ~~or~~ who have  
 2526 experienced traumatic brain injury, ~~+~~ ~~who~~ have autism spectrum  
 2527 disorder, ~~have~~ established conditions, or ~~who~~ exhibit  
 2528 developmental delays or intellectual disabilities may be  
 2529 eligible for special programs and may receive services in  
 2530 accordance with rules of the State Board of Education. Rules for  
 2531 the identification of established conditions for children birth  
 2532 through 2 years of age and developmental delays for children  
 2533 birth through 5 years of age must be adopted by the State Board  
 2534 of Education.

2535 Reviser's note.—Amended to improve clarity.

2536 Section 95. Paragraph (b) of subsection (2) of section  
 2537 1003.5716, Florida Statutes, is amended to read:

2538 1003.5716 Transition to postsecondary education and career  
 2539 opportunities.—All students with disabilities who are 3 years of  
 2540 age to 21 years of age have the right to a free, appropriate  
 2541 public education. As used in this section, the term "IEP" means  
 2542 individual education plan.

2543 (2) Beginning not later than the first IEP to be in effect  
 2544 when the student attains the age of 16, or younger if determined  
 2545 appropriate by the parent and the IEP team, the IEP must include  
 2546 the following statements that must be updated annually:

2547 (b) A statement of intent to receive a standard high school  
 2548 diploma before the student attains the age of 22 and a  
 2549 description of how the student will fully meet the requirements  
 2550 in s. 1003.4282, including, but not limited to, a portfolio  
 2551 pursuant to s. 1003.4282(10)(b) ~~1003.4282(11)(b)~~ which meets the  
 2552 criteria specified in State Board of Education rule. The IEP

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2553 must also specify the outcomes and additional benefits expected  
 2554 by the parent and the IEP team at the time of the student's  
 2555 graduation.

2556 Reviser's note.—Amended to conform to the redesignation of s.  
 2557 1003.4282(11) as s. 1003.4282(10) by the editors to conform  
 2558 to the repeal of s. 1003.4282(5) by s. 4, ch. 2015-6, Laws  
 2559 of Florida.

2560 Section 96. Subsection (1) of section 1008.22, Florida  
 2561 Statutes, is reenacted, and paragraph (d) of subsection (7) of  
 2562 that section is amended, to read:

2563 1008.22 Student assessment program for public schools.—

2564 (1) PURPOSE.—The primary purpose of the student assessment  
 2565 program is to provide student academic achievement and learning  
 2566 gains data to students, parents, teachers, school  
 2567 administrators, and school district staff. This data is to be  
 2568 used by districts to improve instruction; by students, parents,  
 2569 and teachers to guide learning objectives; by education  
 2570 researchers to assess national and international education  
 2571 comparison data; and by the public to assess the cost benefit of  
 2572 the expenditure of taxpayer dollars. The program must be  
 2573 designed to:

2574 (a) Assess the achievement level and annual learning gains  
 2575 of each student in English Language Arts and mathematics and the  
 2576 achievement level in all other subjects assessed.

2577 (b) Provide data for making decisions regarding school  
 2578 accountability, recognition, and improvement of operations and  
 2579 management, including schools operating for the purpose of  
 2580 providing educational services to youth in Department of  
 2581 Juvenile Justice programs.

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2582 (c) Identify the educational strengths and needs of  
 2583 students and the readiness of students to be promoted to the  
 2584 next grade level or to graduate from high school.

2585 (d) Assess how well educational goals and curricular  
 2586 standards are met at the school, district, state, national, and  
 2587 international levels.

2588 (e) Provide information to aid in the evaluation and  
 2589 development of educational programs and policies.

2590 (f) When available, provide instructional personnel with  
 2591 information on student achievement of standards and benchmarks  
 2592 in order to improve instruction.

2593 (7) ASSESSMENT SCHEDULES AND REPORTING OF RESULTS.—

2594 (d) A school district may not schedule more than 5 percent  
 2595 of a student's total school hours in a school year to administer  
 2596 statewide, standardized assessments and district-required local  
 2597 assessments. The district must secure written consent from a  
 2598 student's parent before administering district-required local  
 2599 assessments that, after applicable statewide, standardized  
 2600 assessments are scheduled, exceed the 5 percent test  
 2601 administration limit for that student under this paragraph. The  
 2602 5 percent test administration limit for a student under this  
 2603 paragraph may be exceeded as needed to provide test  
 2604 accommodations that are required by an IEP or are appropriate  
 2605 for an English language learner who is currently receiving  
 2606 services in a program operated in accordance with an approved  
 2607 English language learner district plan pursuant to s. 1003.56.  
 2608 Notwithstanding this paragraph, a student may choose within a  
 2609 school year to take an examination or assessment adopted by  
 2610 State Board of Education rule pursuant to this section and ss.

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2611 1007.27, 1008.30, and 1008.44.

2612 Reviser's note.—Section 7, ch. 2015-6, Laws of Florida,

2613 purported to amend subsection (1) but did not publish

2614 paragraphs (a)-(e). Absent affirmative evidence of

2615 legislative intent to repeal the omitted paragraphs,

2616 subsection (1) is reenacted to confirm the omission was not

2617 intended. Paragraph (7) (d) is amended to confirm the

2618 editorial insertion of the word "assessments" to conform to

2619 context.

2620 Section 97. Paragraph (c) of subsection (1) of section

2621 1012.22, Florida Statutes, is amended to read:

2622 1012.22 Public school personnel; powers and duties of the

2623 district school board.—The district school board shall:

2624 (1) Designate positions to be filled, prescribe

2625 qualifications for those positions, and provide for the

2626 appointment, compensation, promotion, suspension, and dismissal

2627 of employees as follows, subject to the requirements of this

2628 chapter:

2629 (c) *Compensation and salary schedules.*—

2630 1. Definitions.—As used in this paragraph:

2631 a. "Adjustment" means an addition to the base salary

2632 schedule that is not a bonus and becomes part of the employee's

2633 permanent base salary and shall be considered compensation under

2634 s. 121.021(22).

2635 b. "Grandfathered salary schedule" means the salary

2636 schedule or schedules adopted by a district school board before

2637 July 1, 2014, pursuant to subparagraph 4.

2638 c. "Instructional personnel" means instructional personnel

2639 as defined in s. 1012.01(2) (a)-(d), excluding substitute

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2640 teachers.

2641 d. "Performance salary schedule" means the salary schedule

2642 or schedules adopted by a district school board pursuant to

2643 subparagraph 5.

2644 e. "Salary schedule" means the schedule or schedules used

2645 to provide the base salary for district school board personnel.

2646 f. "School administrator" means a school administrator as

2647 defined in s. 1012.01(3) (c).

2648 g. "Supplement" means an annual addition to the base salary

2649 for the term of the negotiated supplement as long as the

2650 employee continues his or her employment for the purpose of the

2651 supplement. A supplement does not become part of the employee's

2652 continuing base salary but shall be considered compensation

2653 under s. 121.021(22).

2654 2. Cost-of-living adjustment.—A district school board may

2655 provide a cost-of-living salary adjustment if the adjustment:

2656 a. Does not discriminate among comparable classes of

2657 employees based upon the salary schedule under which they are

2658 compensated.

2659 b. Does not exceed 50 percent of the annual adjustment

2660 provided to instructional personnel rated as effective.

2661 3. Advanced degrees.—A district school board may not use

2662 advanced degrees in setting a salary schedule for instructional

2663 personnel or school administrators hired on or after July 1,

2664 2011, unless the advanced degree is held in the individual's

2665 area of certification and is only a salary supplement.

2666 4. Grandfathered salary schedule.—

2667 a. The district school board shall adopt a salary schedule

2668 or salary schedules to be used as the basis for paying all

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2669 school employees hired before July 1, 2014. Instructional  
 2670 personnel on annual contract as of July 1, 2014, shall be placed  
 2671 on the performance salary schedule adopted under subparagraph 5.  
 2672 Instructional personnel on continuing contract or professional  
 2673 service contract may opt into the performance salary schedule if  
 2674 the employee relinquishes such contract and agrees to be  
 2675 employed on an annual contract under s. 1012.335. Such an  
 2676 employee shall be placed on the performance salary schedule and  
 2677 may not return to continuing contract or professional service  
 2678 contract status. Any employee who opts into the performance  
 2679 salary schedule may not return to the grandfathered salary  
 2680 schedule.

2681       b. In determining the grandfathered salary schedule for  
 2682 instructional personnel, a district school board must base a  
 2683 portion of each employee's compensation upon performance  
 2684 demonstrated under s. 1012.34 and shall provide differentiated  
 2685 pay for both instructional personnel and school administrators  
 2686 based upon district-determined factors, including, but not  
 2687 limited to, additional responsibilities, school demographics,  
 2688 critical shortage areas, and level of job performance  
 2689 difficulties.

2690       5. Performance salary schedule.—By July 1, 2014, the  
 2691 district school board shall adopt a performance salary schedule  
 2692 that provides annual salary adjustments for instructional  
 2693 personnel and school administrators based upon performance  
 2694 determined under s. 1012.34. Employees hired on or after July 1,  
 2695 2014, or employees who choose to move from the grandfathered  
 2696 salary schedule to the performance salary schedule shall be  
 2697 compensated pursuant to the performance salary schedule once

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2698 they have received the appropriate performance evaluation for  
 2699 this purpose. ~~However, a classroom teacher whose performance  
 2700 evaluation utilizes student learning growth measures established  
 2701 under s. 1012.34(7)(c) shall remain under the grandfathered  
 2702 salary schedule until his or her teaching assignment changes to  
 2703 a subject for which there is an assessment or the school  
 2704 district establishes equally appropriate measures of student  
 2705 learning growth as defined under s. 1012.34 and rules of the  
 2706 State Board of Education.~~

2707       a. Base salary.—The base salary shall be established as  
 2708 follows:

2709       (I) The base salary for instructional personnel or school  
 2710 administrators who opt into the performance salary schedule  
 2711 shall be the salary paid in the prior year, including  
 2712 adjustments only.

2713       (II) Beginning July 1, 2014, instructional personnel or  
 2714 school administrators new to the district, returning to the  
 2715 district after a break in service without an authorized leave of  
 2716 absence, or appointed for the first time to a position in the  
 2717 district in the capacity of instructional personnel or school  
 2718 administrator shall be placed on the performance salary  
 2719 schedule.

2720       b. Salary adjustments.—Salary adjustments for highly  
 2721 effective or effective performance shall be established as  
 2722 follows:

2723       (I) The annual salary adjustment under the performance  
 2724 salary schedule for an employee rated as highly effective must  
 2725 be greater than the highest annual salary adjustment available  
 2726 to an employee of the same classification through any other

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2727 salary schedule adopted by the district.

2728 (II) The annual salary adjustment under the performance  
2729 salary schedule for an employee rated as effective must be equal  
2730 to at least 50 percent and no more than 75 percent of the annual  
2731 adjustment provided for a highly effective employee of the same  
2732 classification.

2733 (III) The performance salary schedule shall not provide an  
2734 annual salary adjustment for an employee who receives a rating  
2735 other than highly effective or effective for the year.

2736 c. Salary supplements.—In addition to the salary  
2737 adjustments, each district school board shall provide for salary  
2738 supplements for activities that must include, but are not  
2739 limited to:

2740 (I) Assignment to a Title I eligible school.

2741 (II) Assignment to a school that earned a grade of "F" or  
2742 three consecutive grades of "D" pursuant to s. 1008.34 such that  
2743 the supplement remains in force for at least 1 year following  
2744 improved performance in that school.

2745 (III) Certification and teaching in critical teacher  
2746 shortage areas. Statewide critical teacher shortage areas shall  
2747 be identified by the State Board of Education under s. 1012.07.  
2748 However, the district school board may identify other areas of  
2749 critical shortage within the school district for purposes of  
2750 this sub-sub-subparagraph and may remove areas identified by the  
2751 state board which do not apply within the school district.

2752 (IV) Assignment of additional academic responsibilities.

2753  
2754 If budget constraints in any given year limit a district school  
2755 board's ability to fully fund all adopted salary schedules, the

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2756 performance salary schedule shall not be reduced on the basis of  
2757 total cost or the value of individual awards in a manner that is  
2758 proportionally greater than reductions to any other salary  
2759 schedules adopted by the district.

2760 Reviser's note.—Amended to conform to the repeal of s.

2761 1012.34(7)(e) by s. 12, ch. 2015-6, Laws of Florida.

2762 Section 98. Subsection (2) of section 1012.341, Florida  
2763 Statutes, is amended to read:

2764 1012.341 Exemption from performance evaluation system and  
2765 compensation and salary schedule requirements.—

2766 (2) ~~By October 1, 2014, and~~ By October 1 annually  
2767 ~~thereafter~~, the superintendent of Hillsborough County School  
2768 District shall attest, in writing, to the Commissioner of  
2769 Education that:

2770 (a) The instructional personnel and school administrator  
2771 evaluation systems base at least 40 percent of an employee's  
2772 performance evaluation upon student performance and that student  
2773 performance is the single greatest component of an employee's  
2774 evaluation.

2775 (b) The instructional personnel and school administrator  
2776 evaluation systems adopt the Commissioner of Education's student  
2777 learning growth formula for statewide assessments as provided  
2778 under s. 1012.34(7).

2779 (c) The school district's instructional personnel and  
2780 school administrator compensation system awards salary increases  
2781 based upon sustained student performance.

2782 (d) The school district's contract system awards  
2783 instructional personnel and school administrators based upon  
2784 student performance and removes ineffective employees.

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2785

2786 This section is repealed August 1, 2017, unless reviewed and  
2787 reenacted by the Legislature.

2788 Reviser's note.—Amended to delete an obsolete provision.

2789 Section 99. This act shall take effect on the 60th day  
2790 after adjournment sine die of the session of the Legislature in  
2791 which enacted.



**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: SB 1040

INTRODUCER: Senator Simmons

SUBJECT: Florida Statutes

DATE: January 19, 2016

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Pollitz (DLRI)	Phelps	RC	<b>Favorable</b>

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**I. Summary:**

The Division of Law Revision and Information of the Office of Legislative Services is required, by statute, to conduct a systematic and continuing study of the Florida Statutes. The purpose of this study is to recommend to the Legislature changes that will remove inconsistencies, redundancies, and unnecessary repetition from the statutes; improve clarity and facilitate correct interpretation; correct grammatical and typographical errors; and delete obsolete, repealed, or superseded provisions. These recommendations are submitted to the Legislature in the form of technical, nonsubstantive reviser's bills. A reviser's bill cannot be amended except to delete a bill section.

This bill deletes statutes provisions that have been repealed by a noncurrent (past-year) session of the Legislature where that repeal or expiration date has now occurred, rendering the provision of no effect (an example would be a repeal set for October 1, 2015, by the 2014 Regular Session of the Legislature).

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: amends ss. 29.008, 255.25001, 339.135, 373.4137, 379.204, 403.7095, 409.997, 465.1862, 527.06, 553.844, 627.410, 627.411, 627.601, 627.6699, 627.66997, 641.31, 1002.20, 1011.62, and 1013.64, F.S.; repeals ss. 15.0525, 627.648, 627.6482, 627.6484, 627.6486, 627.6488, 627.6489, 627.649, 627.6492, 627.6494, 627.6496, 627.6498, 627.6499, and 1003.438, F.S.

**II. Present Situation:**

The Division of Law Revision and Information, under the authority and requirements of s. 11.242(5)(b) and (i), Florida Statutes, must remove repealed statutory provisions from the statutes text where the repeal was voted by the Legislature sitting in the current year; sections effectively repealed but where that repeal was passed by a past-year session of the Legislature can only be omitted from the statutes text through a reviser's bill pursuant to s. 11.242(5)(i).

**III. Effect of Proposed Changes:**

This bill will delete sections that have already been repealed by the Legislature by substantive legislation that the Division of Law Revision and Information could not remove from the statutes text without the required inclusion in a reviser's bill.

**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 the following sections of the Florida Statutes: ss. 29.008, 255.25001, 339.135, 373.4137, 379.204, 403.7095, 409.997, 465.1862, 527.06, 553.844, 627.410, 627.411, 627.601, 627.6699, 627.66997, 641.31, 1002.20, 1011.62, and 1013.64, F.S. This bill creates the following sections of the Florida Statutes: None.

This bill repeals the following sections of the Florida Statutes: ss. 15.0525, 627.648, 627.6482, 627.6484, 627.6486, 627.6488, 627.6489, 627.649, 627.6492, 627.6494, 627.6496, 627.6498, 627.6499, and 1003.438, F.S.

**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.

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

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By Senator Simmons

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1 A reviser's bill to be entitled  
 2 An act relating to the Florida Statutes; repealing ss.  
 3 15.0525, 29.008(4)(c), 255.25001(3), 339.135(4)(j) and  
 4 (5)(c), 373.4137(3)(f), 379.204(3), 403.7095(5),  
 5 409.997(2), 527.06(3)(b) as created by section 1 of  
 6 chapter 2011-106, Laws of Florida, 553.844(4),  
 7 627.410(9), 627.411(4), 627.648, 627.6482, 627.6484,  
 8 627.6486, 627.6488, 627.6489, 627.649, 627.6492,  
 9 627.6494, 627.6496, 627.6498, 627.6499, 641.31(3)(f),  
 10 and 1003.438, F.S., and amending ss. 409.997, 1011.62  
 11 as amended by section 9 of chapter 2015-222, Laws of  
 12 Florida, and 1013.64, F.S., to delete provisions which  
 13 have become inoperative by noncurrent repeal or  
 14 expiration and, pursuant to s. 11.242(5)(b) and (i),  
 15 F.S., may be omitted from the 2016 Florida Statutes  
 16 only through a reviser's bill duly enacted by the  
 17 Legislature; amending ss. 465.1862, 627.601, 627.6699,  
 18 627.66997, and 1002.20, F.S., to conform cross-  
 19 references; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Section 15.0525, Florida Statutes, is repealed.

24 Reviser's note.—The cited section, which relates to the Admiral  
 25 John H. Fetterman State of Florida Maritime Museum and  
 26 Research Center, expired pursuant to its own terms,  
 27 effective July 1, 2015.

28 Section 2. Paragraph (c) of subsection (4) of section  
 29 29.008, Florida Statutes, is repealed.

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30 Reviser's note.—The cited paragraph, which exempts counties from  
 31 the requirements and provisions of s. 29.008(4)(a) for the  
 32 2014-2015 fiscal year, expired pursuant to its own terms,  
 33 effective July 1, 2015.

34 Section 3. Subsection (3) of section 255.25001, Florida  
 35 Statutes, is repealed.

36 Reviser's note.—The cited subsection, which provides for deposit  
 37 of funds from the sale of property located in Sanford,  
 38 Florida, by the Department of Agriculture and Consumer  
 39 Services to the Market Improvements Working Capital Trust  
 40 Fund, expired pursuant to its own terms, effective July 1,  
 41 2015.

42 Section 4. Paragraph (j) of subsection (4) and paragraph  
 43 (c) of subsection (5) of section 339.135, Florida Statutes, are  
 44 repealed.

45 Reviser's note.—The cited paragraphs, which relate to Department  
 46 of Transportation use, for the 2014-2015 fiscal year only,  
 47 of up to \$15 million of appropriated funds to pay the costs  
 48 of strategic and regionally significant transportation  
 49 projects, expired pursuant to their own terms, effective  
 50 July 1, 2015.

51 Section 5. Paragraph (f) of subsection (3) of section  
 52 373.4137, Florida Statutes, is repealed.

53 Reviser's note.—The cited paragraph requires funds identified in  
 54 the Department of Transportation's work program or  
 55 participating transportation authorities' escrow accounts  
 56 to correspond to a cost per acre of \$75,000 multiplied by  
 57 the projected acres of impact as identified in the  
 58 environmental impact inventory for purposes of preparing

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59 and implementing the mitigation plans to be adopted by the  
 60 water management districts on or before March 1, 2014, for  
 61 impacts based on the July 1, 2013, environmental impact  
 62 inventory, and for adjustment to a specified percentage  
 63 change in the average of the Consumer Price Index. Payment  
 64 under this paragraph is limited to mitigation activities  
 65 that are identified in the first year of the 2013  
 66 mitigation plan and for which the transportation project is  
 67 permitted and are in the department's adopted work program,  
 68 or equivalent for a transportation authority. When  
 69 implementing the mitigation activities necessary to offset  
 70 the permitted impacts as provided in the approved  
 71 mitigation plan, the water management district shall  
 72 maintain specified records of the costs incurred in  
 73 implementing the mitigation. To the extent moneys paid to a  
 74 water management district by the department or a  
 75 participating transportation authority are greater than the  
 76 amount spent by the water management districts in  
 77 implementing the mitigation to offset the permitted  
 78 impacts, these funds must be refunded to the department or  
 79 participating transportation authority. This paragraph  
 80 expired pursuant to its own terms, effective June 30, 2015.

81 Section 6. Subsection (3) of section 379.204, Florida  
 82 Statutes, is repealed.

83 Reviser's note.—The cited subsection, which authorizes transfer  
 84 of the cash balance originating from hunting and fishing  
 85 license fees from other trust funds into the Federal Grants  
 86 Trust Fund for the purpose of supporting cash flow needs,  
 87 expired pursuant to its own terms, effective July 1, 2012.

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88 Section 7. Subsection (5) of section 403.7095, Florida  
 89 Statutes, is repealed.

90 Reviser's note.—The cited subsection, which requires the  
 91 Department of Environmental Protection, for the 2014-2015  
 92 fiscal year only, to award the sum of \$3 million in grants  
 93 equally to counties having populations of fewer than  
 94 100,000 for waste tire and litter prevention, recycling  
 95 education, and general solid waste programs, expired  
 96 pursuant to its own terms, effective July 1, 2015.

97 Section 8. Subsection (2) of section 409.997, Florida  
 98 Statutes, is repealed, and subsection (4) of that section is  
 99 amended to read:

100 409.997 Child welfare results-oriented accountability  
 101 program.—

102 ~~(3)(4) Subject to a specific appropriation to implement the~~  
 103 ~~accountability program developed under subsection (2),~~ The  
 104 department shall establish a technical advisory panel consisting  
 105 of representatives from the Florida Institute for Child Welfare  
 106 established pursuant to s. 1004.615, lead agencies, community-  
 107 based care providers, other contract providers, community  
 108 alliances, and family representatives. The President of the  
 109 Senate and the Speaker of the House of Representatives shall  
 110 each appoint a member to serve as a legislative liaison to the  
 111 panel. The technical advisory panel shall advise the department  
 112 on the implementation of the results-oriented accountability  
 113 program.

114 Reviser's note.—Subsection (2), which relates to contracting for  
 115 and submittal of a plan for implementing the child welfare  
 116 results-oriented accountability program, expired pursuant

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117 to its own terms, effective June 30, 2015. Subsection (4)  
 118 is amended to conform to the expiration of subsection (2).  
 119 Section 9. Paragraph (b) of subsection (3) of section  
 120 527.06, Florida Statutes, as created by section 1 of chapter  
 121 2011-106, Laws of Florida, is repealed.  
 122 Reviser's note.—The cited paragraph, which provides that the  
 123 department or other state agency may not require compliance  
 124 with the minimum separation distances of NFPA 58 for  
 125 separation between a liquefied petroleum gas tank and a  
 126 building, adjoining property line, other liquefied  
 127 petroleum gas tank, or any source of ignition, except in  
 128 compliance with the minimum separation distances of the  
 129 2011 edition of NFPA 58, expired pursuant to its own terms  
 130 "upon the last effective date of rules adopted, directly or  
 131 incorporated by reference, by the department, the Florida  
 132 Building Commission as part of the Florida Building Code,  
 133 and the Office of State Fire Marshal as part of the Florida  
 134 Fire Prevention Code of these minimum separation distances  
 135 contained in the 2011 edition of NFPA 58, promulgated by  
 136 the National Fire Protection Association." Rules 5J-20.002  
 137 and 69A-3.012, Florida Administrative Code, incorporate  
 138 NFPA 58 (2011 edition) re storage and handling of liquefied  
 139 petroleum gas; s. 401.2 of the Florida Building Code also  
 140 incorporates the NFPA 58 standard. Two conflicting laws,  
 141 chapters 2011-106, Laws of Florida, and 2011-222, Laws of  
 142 Florida, amended s. 527.06 and included very similar  
 143 language; paragraph (3) (b) as created by s. 1, ch. 2011-  
 144 106, expired pursuant to adoption of the rules, and  
 145 subsection (3), as amended by s. 19, ch. 2011-222, was

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146 repealed upon adoption of the rules.  
 147 Section 10. Subsection (4) of section 553.844, Florida  
 148 Statutes, is repealed.  
 149 Reviser's note.—The cited subsection, which provides that  
 150 exposed mechanical equipment or appliances fastened to a  
 151 roof or installed on the ground in compliance with the code  
 152 using rated stands, platforms, curbs, slabs, or other means  
 153 are deemed to comply with the wind resistance requirements  
 154 of the 2007 Florida Building Code, as amended, and further  
 155 support or enclosure of such mechanical equipment or  
 156 appliance is not required by a state or local official  
 157 having authority to enforce the Florida Building Code,  
 158 expired pursuant to its own terms, on the effective date of  
 159 the 2013 Florida Building Code. The new edition of the code  
 160 became effective June 30, 2015, but the Florida Building  
 161 Commission elected to rename it as the 2014 Florida  
 162 Building Code.  
 163 Section 11. Subsection (9) of section 627.410, Florida  
 164 Statutes, is repealed.  
 165 Reviser's note.—The cited subsection, which provides that, for  
 166 plan years 2014 and 2015, nongrandfathered health plans for  
 167 the individual or small group market are not subject to  
 168 rate review or approval by the Office of Insurance  
 169 Regulation, was repealed pursuant to its own terms,  
 170 effective March 1, 2015.  
 171 Section 12. Subsection (4) of section 627.411, Florida  
 172 Statutes, is repealed.  
 173 Reviser's note.—The cited subsection, which provides that the  
 174 provisions of s. 627.411 which apply to rates, rating

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175 practices, or the relationship of benefits to the premium  
 176 charged do not apply to nongrandfathered health plans  
 177 described in s. 627.410(9), was repealed pursuant to its  
 178 own terms, effective March 1, 2015.

179 Section 13. Sections 627.648, 627.6482, 627.6484, 627.6486,  
 180 627.6488, 627.6489, 627.649, 627.6492, 627.6494, 627.6496,  
 181 627.6498, and 627.6499, Florida Statutes, are repealed.

182 Reviser's note.—The cited sections, which relate to the Florida  
 183 Comprehensive Health Association, were repealed by s. 20,  
 184 ch. 2013-101, Laws of Florida, effective October 1, 2015.  
 185 Since the sections were not repealed by a "current session"  
 186 of the Legislature, they may be omitted from the 2016  
 187 Florida Statutes only through a reviser's bill duly enacted  
 188 by the Legislature. See s. 11.242(5)(b) and (i).

189 Section 14. Paragraph (f) of subsection (3) of section  
 190 641.31, Florida Statutes, is repealed.

191 Reviser's note.—The cited paragraph, which, for plan years 2014  
 192 and 2015, provides that nongrandfathered health plans for  
 193 the individual or small group market are not subject to  
 194 rate review or approval by the office, and that a health  
 195 maintenance organization that issues or renews a  
 196 nongrandfathered health plan is subject to s. 627.410(9),  
 197 expired pursuant to its own terms, effective March 1, 2015.

198 Section 15. Section 1003.438, Florida Statutes, is  
 199 repealed.

200 Reviser's note.—The cited section, which relates to special high  
 201 school graduation requirements for certain exceptional  
 202 students, was repealed by s. 19, ch. 2014-184, Laws of  
 203 Florida, effective July 1, 2015. Since the section was not

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204 repealed by a "current session" of the Legislature, it may  
 205 be omitted from the 2016 Florida Statutes only through a  
 206 reviser's bill duly enacted by the Legislature. See s.  
 207 11.242(5)(b) and (i).

208 Section 16. Effective July 1, 2016, paragraph (e) of  
 209 subsection (4) of section 1011.62, Florida Statutes, as amended  
 210 by section 9 of chapter 2015-222, Laws of Florida, is amended to  
 211 read:

212 1011.62 Funds for operation of schools.—If the annual  
 213 allocation from the Florida Education Finance Program to each  
 214 district for operation of schools is not determined in the  
 215 annual appropriations act or the substantive bill implementing  
 216 the annual appropriations act, it shall be determined as  
 217 follows:

218 (4) COMPUTATION OF DISTRICT REQUIRED LOCAL EFFORT.—The  
 219 Legislature shall prescribe the aggregate required local effort  
 220 for all school districts collectively as an item in the General  
 221 Appropriations Act for each fiscal year. The amount that each  
 222 district shall provide annually toward the cost of the Florida  
 223 Education Finance Program for kindergarten through grade 12  
 224 programs shall be calculated as follows:

225 (e) *Prior period funding adjustment millage.*—

226 1. There shall be an additional millage to be known as the  
 227 Prior Period Funding Adjustment Millage levied by a school  
 228 district if the prior period unrealized required local effort  
 229 funds are greater than zero. The Commissioner of Education shall  
 230 calculate the amount of the prior period unrealized required  
 231 local effort funds as specified in subparagraph 2. and the  
 232 millage required to generate that amount as specified in this

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233 subparagraph. The Prior Period Funding Adjustment Millage shall  
 234 be the quotient of the prior period unrealized required local  
 235 effort funds divided by the current year taxable value certified  
 236 to the Commissioner of Education pursuant to sub-subparagraph  
 237 (a)1.a. This levy shall be in addition to the required local  
 238 effort millage certified pursuant to this subsection. Such  
 239 millage shall not affect the calculation of the current year's  
 240 required local effort, and the funds generated by such levy  
 241 shall not be included in the district's Florida Education  
 242 Finance Program allocation for that fiscal year. For purposes of  
 243 the millage to be included on the Notice of Proposed Taxes, the  
 244 Commissioner of Education shall adjust the required local effort  
 245 millage computed pursuant to paragraph (a) as adjusted by  
 246 paragraph (b) for the current year for any district that levies  
 247 a Prior Period Funding Adjustment Millage to include all Prior  
 248 Period Funding Adjustment Millage. For the purpose of this  
 249 paragraph, there shall be a Prior Period Funding Adjustment  
 250 Millage levied for each year certified by the Department of  
 251 Revenue pursuant to sub-subparagraph (a)2.a. since the previous  
 252 year certification and for which the calculation in sub-  
 253 subparagraph 2.b. is greater than zero.

254 2.a. As used in this subparagraph, the term:

255 (I) "Prior year" means a year certified under sub-  
 256 subparagraph (a)2.a.

257 (II) "Preliminary taxable value" means:

258 (A) If the prior year is the 2009-2010 fiscal year or  
 259 later, the taxable value certified to the Commissioner of  
 260 Education pursuant to sub-subparagraph (a)1.a.

261 (B) If the prior year is the 2008-2009 fiscal year or

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262 earlier, the taxable value certified pursuant to the final  
 263 calculation as specified in former paragraph (b) as that  
 264 paragraph existed in the prior year.

265 (III) "Final taxable value" means the district's taxable  
 266 value as certified by the property appraiser pursuant to s.  
 267 193.122(2) or (3), if applicable. This is the certification that  
 268 reflects all final administrative actions of the value  
 269 adjustment board.

270 b. For purposes of this subsection and with respect to each  
 271 year certified pursuant to sub-subparagraph (a)2.a., if the  
 272 district's prior year preliminary taxable value is greater than  
 273 the district's prior year final taxable value, the prior period  
 274 unrealized required local effort funds are the difference  
 275 between the district's prior year preliminary taxable value and  
 276 the district's prior year final taxable value, multiplied by the  
 277 prior year district required local effort millage. If the  
 278 district's prior year preliminary taxable value is less than the  
 279 district's prior year final taxable value, the prior period  
 280 unrealized required local effort funds are zero.

281 ~~e. For the 2014-2015 fiscal year only, if a district's~~  
 282 ~~prior period unrealized required local effort funds and prior~~  
 283 ~~period district required local effort millage cannot be~~  
 284 ~~determined because such district's final taxable value has not~~  
 285 ~~yet been certified pursuant to s. 193.122(2) or (3), for the~~  
 286 ~~2014 tax levy, the Prior Period Funding Adjustment Millage for~~  
 287 ~~such fiscal year shall be levied in 2014 in an amount equal to~~  
 288 ~~75 percent of such district's most recent unrealized required~~  
 289 ~~local effort for which a Prior Period Funding Adjustment Millage~~  
 290 ~~was determined as provided in this section. Upon certification~~



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291 ~~of the final taxable value for the 2013 tax roll in accordance~~  
 292 ~~with s. 193.122(2) or (3), the Prior Period Funding Adjustment~~  
 293 ~~Millage levied in 2015 shall be adjusted to include any~~  
 294 ~~shortfall or surplus in the prior period unrealized required~~  
 295 ~~local effort funds that would have been levied in 2014, had the~~  
 296 ~~district's final taxable value been certified pursuant to s.~~  
 297 ~~193.122(2) or (3) for the 2014 tax levy. This provision shall be~~  
 298 ~~implemented by a district only if the millage calculated~~  
 299 ~~pursuant to this paragraph when added to the millage levied by~~  
 300 ~~the district for all purposes for the 2014-2015 fiscal year is~~  
 301 ~~less than or equal to the total millage levied for the 2013-2014~~  
 302 ~~fiscal year. This sub-subparagraph expires July 1, 2015.~~

303 Reviser's note.—Amended, as amended by s. 9, ch. 2015-222, Laws  
 304 of Florida, effective July 1, 2016, to delete sub-  
 305 subparagraph (4)(e)2.c., to conform to the expiration of  
 306 that sub-subparagraph pursuant to its own terms, effective  
 307 July 1, 2015.

308 Section 17. Paragraph (a) of subsection (1) of section  
 309 1013.64, Florida Statutes, is amended to read:  
 310 1013.64 Funds for comprehensive educational plant needs;  
 311 construction cost maximums for school district capital  
 312 projects.—Allocations from the Public Education Capital Outlay  
 313 and Debt Service Trust Fund to the various boards for capital  
 314 outlay projects shall be determined as follows:

315 (1) (a) ~~1~~ Funds for remodeling, renovation, maintenance,  
 316 repairs, and site improvement for existing satisfactory  
 317 facilities shall be given priority consideration by the  
 318 Legislature for appropriations allocated to the boards from the  
 319 total amount of the Public Education Capital Outlay and Debt

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320 Service Trust Fund appropriated. These funds shall be calculated  
 321 pursuant to the following basic formula: the building value  
 322 times the building age over the sum of the years' digits  
 323 assuming a 50-year building life. For modular noncombustible  
 324 facilities, a 35-year life shall be used, and for relocatable  
 325 facilities, a 20-year life shall be used. "Building value" is  
 326 calculated by multiplying each building's total assignable  
 327 square feet times the appropriate net-to-gross conversion rate  
 328 found in state board rules and that product times the current  
 329 average new construction cost. "Building age" is calculated by  
 330 multiplying the prior year's building age times 1 minus the  
 331 prior year's sum received from this subsection divided by the  
 332 prior year's building value. To the net result shall be added  
 333 the number 1. Each board shall receive the percentage generated  
 334 by the preceding formula of the total amount appropriated for  
 335 the purposes of this section.

336 ~~2. Notwithstanding subparagraph 1., and for the 2014-2015~~  
 337 ~~fiscal year only, funds appropriated for remodeling, renovation,~~  
 338 ~~maintenance, repairs, and site improvement for existing~~  
 339 ~~satisfactory facilities shall be allocated by prorating the~~  
 340 ~~total appropriation based on each school district's share of the~~  
 341 ~~2013-2014 reported fixed capital outlay full-time equivalent~~  
 342 ~~student. This subparagraph expires July 1, 2015.~~

343 Reviser's note.—Amended to delete subparagraph 2., which expired  
 344 pursuant to its own terms, effective July 1, 2015.

345 Section 18. Paragraph (b) of subsection (1) of section  
 346 465.1862, Florida Statutes, is amended to read:

347 465.1862 Pharmacy benefits manager contracts.—

348 (1) As used in this section, the term:

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349 (b) "Pharmacy benefits manager" means a person or entity  
 350 doing business in this state which contracts to administer or  
 351 manage prescription drug benefits on behalf of a health  
 352 insurance plan, as defined in former s. 627.6482, to residents  
 353 of this state.  
 354 Reviser's note.—Amended to conform to the repeal of s. 627.6482  
 355 by s. 20, ch. 2013-101, Laws of Florida, effective October  
 356 1, 2015, and confirmed in this act.  
 357 Section 19. Subsection (2) of section 627.601, Florida  
 358 Statutes, is amended to read:  
 359 627.601 Scope of this part.—Nothing in this part applies to  
 360 or affects:  
 361 (2) Any group or blanket policy, ~~except as provided in ss.~~  
 362 ~~627.648-627.6499.~~  
 363 Reviser's note.—Amended to conform to the repeal of ss. 627.648,  
 364 627.6482, 627.6484, 627.6486, 627.6488, 627.6489, 627.649,  
 365 627.6492, 627.6494, 627.6496, 627.6498, and 627.6499, which  
 366 relate to the Florida Comprehensive Health Association, by  
 367 s. 20, ch. 2013-101, Laws of Florida, effective October 1,  
 368 2015, and confirmed in this act. Sections 627.6487 and  
 369 627.64871 were created by ch. 97-179, Laws of Florida. The  
 370 most recent amendment to s. 627.601 was by s. 53, ch. 92-  
 371 318, Laws of Florida.  
 372 Section 20. Paragraph (b) of subsection (15) of section  
 373 627.6699, Florida Statutes, is amended to read:  
 374 627.6699 Employee Health Care Access Act.—  
 375 (15) APPLICABILITY OF OTHER STATE LAWS.—  
 376 ~~(b) Any second tier assessment paid by a carrier pursuant~~  
 377 ~~to paragraph (11)(j) may be credited against assessments levied~~

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378 ~~against the carrier pursuant to s. 627.6494.~~  
 379 Reviser's note.—Amended to conform to the repeal of s. 627.6494  
 380 by s. 20, ch. 2013-101, Laws of Florida, effective October  
 381 1, 2015, and confirmed by this act.  
 382 Section 21. Subsection (2) of section 627.66997, Florida  
 383 Statutes, is amended to read:  
 384 627.66997 Stop-loss insurance.—  
 385 (2) A self-insured health benefit plan established or  
 386 maintained by an employer with 51 or more covered employees is  
 387 considered health insurance if the plan's stop-loss coverage, as  
 388 defined in former s. 627.6482(14), has an aggregate attachment  
 389 point that is lower than the greater of:  
 390 (a) One hundred ten percent of expected claims, as  
 391 determined by the stop-loss insurer in accordance with actuarial  
 392 standards of practice; or  
 393 (b) Twenty thousand dollars.  
 394 Reviser's note.—Amended to conform to the repeal of s. 627.6482  
 395 by s. 20, ch. 2013-101, Laws of Florida, effective October  
 396 1, 2015, and confirmed by this act.  
 397 Section 22. Subsection (8) of section 1002.20, Florida  
 398 Statutes, is amended to read:  
 399 1002.20 K-12 student and parent rights.—Parents of public  
 400 school students must receive accurate and timely information  
 401 regarding their child's academic progress and must be informed  
 402 of ways they can help their child to succeed in school. K-12  
 403 students and their parents are afforded numerous statutory  
 404 rights including, but not limited to, the following:  
 405 (8) STUDENTS WITH DISABILITIES.—Parents of public school  
 406 students with disabilities and parents of public school students

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407 in residential care facilities are entitled to notice and due  
408 process in accordance with the provisions of ss. 1003.57 and  
409 1003.58. Public school students with disabilities must be  
410 provided the opportunity to meet the graduation requirements for  
411 a standard high school diploma as set forth in s. 1003.4282 in  
412 accordance with the provisions of ss. 1003.57 and 1008.22.  
413 ~~Pursuant to s. 1003.438, certain public school students with~~  
414 ~~disabilities may be awarded a special diploma upon high school~~  
415 ~~graduation.~~

416 Reviser's note.—Amended to conform to the repeal of s. 1003.438  
417 by s. 19, ch. 2014-184, Laws of Florida, effective July 1,  
418 2015, and confirmed by this act.

419 Section 23. This act shall take effect on the 60th day  
420 after adjournment sine die of the session of the Legislature in  
421 which enacted.

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/SB 1032

INTRODUCER: Senator Simmons

SUBJECT: Florida Statutes

DATE: January 19, 2016

REVISED: \_\_\_\_\_

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ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Pollitz (DLRI)	Phelps	RC	Fav/CS

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

The Division of Law Revision and Information of the Office of Legislative Services is required, by statute, to conduct a systematic and continuing study of the Florida Statutes. The purpose of this study is to recommend to the Legislature changes that will remove inconsistencies, redundancies, and unnecessary repetition from the statutes; improve clarity and facilitate correct interpretation; correct grammatical and typographical errors; and delete obsolete, repealed, or superseded provisions. These recommendations are submitted to the Legislature in the form of technical, nonsubstantive reviser's bills. Responses to directives from the Legislature to make specific changes in the statutes, such as renaming a department, are also submitted to the Legislature via reviser's bills.

Section 9, ch. 2012-116, Laws of Florida, created s. 11.242(5)(j), Florida Statutes, requiring the Division of Law Revision and Information to omit statutory provisions granting duplicative, redundant, or unused rulemaking authority from the Florida Statutes as part of the reviser's bill process for each regular session.

This bill substantially amends, creates, or repeals the following sections of the Florida Statutes: amends ss. 487.064, 487.071, 493.6113, 493.6115, 570.921, 573.1201, 583.181, and 593.107, F.S.

**II. Present Situation:**

Section 9, ch. 2012-116, Laws of Florida, created s. 11.242(5)(j), Florida Statutes, requiring the Division of Law Revision and Information to prepare reviser's bills each regular session to omit

all statutory provisions granting duplicative, redundant, or unused rulemaking authority from the Florida Statutes. Rulemaking authority is deemed unused if the statutory provision “has been in effect for more than 5 years and no rule has been promulgated in reliance thereon.”

### **III. Effect of Proposed Changes:**

The bill revises Florida Statutes text to conform to the directive in s. 9, ch. 2012-116, Laws of Florida, codified as s. 11.242(5)(j), Florida Statutes, to omit statutory provisions granting duplicative, redundant, or unused rulemaking authority from the Florida Statutes.

### **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 the following sections of the Florida Statutes: ss. 487.064, 487.071, 493.6113, 493.6115, 570.921, 573.1201, 583.181, 593.107.

This bill creates the following sections of the Florida Statutes: None.

This bill repeals the following sections of the Florida Statutes: None.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

**CS by Rules on January 20, 2016:**

The committee substitute removes sections 3 and 4 of the bill that amended ss. 493.6113 and 493.6115, Florida Statutes.

**B. Amendments:**

None.

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

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560448

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/20/2016	.	
	.	
	.	
	.	

The Committee on Rules (Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 29 - 91.

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

And the title is amended as follows:

Delete line 3

and insert:

487.064, 487.071, 570.921,

By Senator Simmons

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1 A reviser's bill to be entitled  
 2 An act relating to the Florida Statutes; amending ss.  
 3 487.064, 487.071, 493.6113, 493.6115, 570.921,  
 4 573.1201, 583.181, and 593.107, F.S., to conform to  
 5 the directive of the Legislature in section 9 of  
 6 chapter 2012-116, Laws of Florida, codified as section  
 7 11.242(5)(j), Florida Statutes, to prepare a reviser's  
 8 bill to omit all statutes and laws, or parts thereof,  
 9 which grant duplicative, redundant, or unused  
 10 rulemaking authority; providing an effective date.

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

14 Section 1. Subsection (3) of section 487.064, Florida  
 15 Statutes, is amended to read:

16 487.064 Antisiphon requirements for irrigation systems.-

17 ~~(3) The department may establish by rule specific~~  
 18 ~~requirements for antisiphon devices and for sites where~~  
 19 ~~pesticide mixing-loading occurs.~~

20 Section 2. Paragraph (b) of subsection (7) of section  
 21 487.071, Florida Statutes, is amended to read:

22 487.071 Enforcement, inspection, sampling, and analysis.-

23 (7)

24 (b) The department shall establish ~~by rule~~ a fee schedule  
 25 for pesticide samples analyzed upon request. The fees shall be  
 26 sufficient to cover the costs to the department for taking the  
 27 samples and performing the analysis. However, no fee shall  
 28 exceed \$400 per test.

29 Section 3. Paragraph (b) of subsection (3) of section

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30 493.6113, Florida Statutes, is amended to read:

31 493.6113 Renewal application for licensure.-

32 (3) Each licensee is responsible for renewing his or her  
 33 license on or before its expiration by filing with the  
 34 department an application for renewal accompanied by payment of  
 35 the prescribed license fee.

36 (b) Each Class "G" licensee shall additionally submit proof  
 37 that he or she has received during each year of the license  
 38 period a minimum of 4 hours of firearms recertification training  
 39 taught by a Class "K" licensee and has complied with such other  
 40 health and training requirements that the department shall adopt  
 41 ~~by rule~~. Proof of completion of firearms recertification  
 42 training shall be submitted to the department upon completion of  
 43 the training. If the licensee fails to complete the required 4  
 44 hours of annual training during the first year of the 2-year  
 45 term of the license, the license shall be automatically  
 46 suspended. The licensee must complete the minimum number of  
 47 hours of range and classroom training required at the time of  
 48 initial licensure and submit proof of completion of such  
 49 training to the department before the license may be reinstated.  
 50 If the licensee fails to complete the required 4 hours of annual  
 51 training during the second year of the 2-year term of the  
 52 license, the licensee must complete the minimum number of hours  
 53 of range and classroom training required at the time of initial  
 54 licensure and submit proof of completion of such training to the  
 55 department before the license may be renewed. The department may  
 56 waive the firearms training requirement if:

57 1. The applicant provides proof that he or she is currently  
 58 certified as a law enforcement officer or correctional officer

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59 under the Criminal Justice Standards and Training Commission and  
60 has completed law enforcement firearms requalification training  
61 annually during the previous 2 years of the licensure period;

62 2. The applicant provides proof that he or she is currently  
63 certified as a federal law enforcement officer and has received  
64 law enforcement firearms training administered by a federal law  
65 enforcement agency annually during the previous 2 years of the  
66 licensure period; or

67 3. The applicant submits a valid firearm certificate among  
68 those specified in s. 493.6105(6) (a) and provides proof of  
69 having completed requalification training during the previous 2  
70 years of the licensure period.

71 Section 4. Subsection (16) of section 493.6115, Florida  
72 Statutes, is amended to read:

73 493.6115 Weapons and firearms.—

74 (16) If the criminal history record check program  
75 referenced in s. 493.6108(1) is inoperable, the department may  
76 issue a temporary "G" license on a case-by-case basis, provided  
77 that the applicant has met all statutory requirements for the  
78 issuance of a temporary "G" license as specified in subsection  
79 (12), excepting the criminal history record check stipulated  
80 there; provided, that the department requires that the licensed  
81 employer of the applicant conduct a criminal history record  
82 check of the applicant pursuant to standards set forth ~~in rule~~  
83 by the department, and provide to the department an affidavit  
84 containing such information and statements as required by the  
85 department, including a statement that the criminal history  
86 record check did not indicate the existence of any criminal  
87 history that would prohibit licensure. Failure to properly

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88 conduct such a check, or knowingly providing incorrect or  
89 misleading information or statements in the affidavit  
90 constitutes grounds for disciplinary action against the licensed  
91 agency, including revocation of license.

92 Section 5. Section 570.921, Florida Statutes, is amended to  
93 read:

94 570.921 Environmental Stewardship Certification Program.—

95 The department may, ~~by rule~~, establish the Environmental  
96 Stewardship Certification Program consistent with this section.  
97 ~~A rule adopted under this section must be developed in~~  
98 ~~consultation with state universities, agricultural~~  
99 ~~organizations, and other interested parties.~~

100 (1) The program must:

101 (a) Be integrated, to the maximum extent practicable, with  
102 programs that are sponsored by agricultural organizations or  
103 state universities.

104 (b) Be designed to recognize and promote agricultural  
105 operations or homeowner practices that demonstrate exemplary  
106 resource management that is related to environmental  
107 stewardship.

108 (c) Include a process to periodically review a  
109 certification to ensure compliance with the program  
110 requirements, including implementation by the certificateholder.

111 (d) Require periodic continuing education in relevant  
112 environmental stewardship issues in order to maintain  
113 certification.

114 (2) The department shall provide an agricultural  
115 certification under this program for implementation of one or  
116 more of the following criteria:

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117 (a) A voluntary agreement between an agency and an  
118 agricultural producer for environmental improvement or water-  
119 resource protection.

120 (b) A conservation plan that meets or exceeds the  
121 requirements of the United States Department of Agriculture.

122 (c) Best management practices adopted ~~by rule~~ pursuant to  
123 s. 403.067(7) (c) or s. 570.93(1) (b).

124 (3) The Soil and Water Conservation Council created by s.  
125 582.06 may develop and recommend to the department for adoption  
126 additional criteria for receipt of an agricultural certification  
127 which may include, but not be limited to:

128 (a) Comprehensive management of all on-farm resources.

129 (b) Promotion of environmental awareness and responsible  
130 resource stewardship in agricultural or urban communities.

131 (c) Completion of a curriculum of study that is related to  
132 environmental issues and regulation.

133 (4) If needed, the department and the Institute of Food and  
134 Agricultural Sciences at the University of Florida may jointly  
135 develop a curriculum that provides instruction concerning  
136 environmental issues pertinent to agricultural certification and  
137 deliver such curriculum to, and certify its completion by, any  
138 person seeking certification or to maintain certification.

139 (5) The department may enter into agreements with third-  
140 party providers to administer or implement all or part of the  
141 program.

142 Section 6. Subsection (1) of section 573.1201, Florida  
143 Statutes, is amended to read:

144 573.1201 Certificates of exemption.—

145 ~~(1) The department may adopt procedures pursuant to which~~

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146 ~~certificates of exemption will be issued to producers or~~  
147 ~~handlers.~~

148 Section 7. Paragraph (a) of subsection (3) of section  
149 583.181, Florida Statutes, is amended to read:

150 583.181 Disposal of dead poultry and hatchery residue;  
151 inspection and quarantine; penalties.—

152 (3) POWERS AND DUTIES.—In the discharge of its duties under  
153 this section, the department has the power:

154 (a) ~~To prescribe promulgate rules prescribing~~ satisfactory  
155 facilities and equipment for the handling, destruction, and  
156 disposal of dead birds and hatchery residue so as to prevent the  
157 spread or dissemination of diseases of poultry.

158 Section 8. Section 593.107, Florida Statutes, is amended to  
159 read:

160 593.107 Regulation of collection, transportation,  
161 distribution, and movement of cotton.—Each grower of cotton  
162 shall keep and furnish the department such information as it  
163 may, ~~by rule~~, require regarding the collection, transportation,  
164 distribution, and processing of cotton for the purpose of  
165 determining if the cotton is infested with the boll weevil.  
166 Further, each such grower is required to keep and maintain  
167 sanitary at all times her or his vehicles used in the  
168 collection, transportation, and distribution of cotton ~~under~~  
169 ~~such rules~~ as may be required by the department. The department  
170 may govern ~~promulgate rules governing~~ the movement of regulated  
171 articles within the state and from another state, or portion  
172 thereof, into an eradication zone when that state is known to be  
173 infested with the boll weevil.

174 Reviser's note.—Amends or repeals provisions of the Florida

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

10-00612-16

20161032\_\_

175 Statutes pursuant to the directive of the Legislature in s.  
176 9, ch. 2012-116, Laws of Florida, codified as s.  
177 11.242(5)(j), Florida Statutes, to prepare a reviser's bill  
178 to omit all statutes and laws, or parts thereof, which  
179 grant duplicative, redundant, or unused rulemaking  
180 authority.

181 Section 9. This act shall take effect on the 60th day after  
182 adjournment sine die of the session of the Legislature in which  
183 enacted.

# CourtSmart Tag Report

Room: EL 110  
Caption: Senate Rules Committee

Case No.:  
Judge:

Type:

Started: 1/20/2016 4:04:16 PM  
Ends: 1/20/2016 5:22:51 PM Length: 01:18:36

4:04:14 PM Senator Simmons calls meeting to order  
4:04:24 PM roll call  
4:04:26 PM quorum present  
4:05:22 PM SB 494 by Senator Hukill  
4:06:02 PM Elizabeth Fetterhoff will explain the bill for Senator Hukill  
4:07:39 PM Senator Latvala with a question  
4:07:47 PM Elizabeth Fetterhoff answers  
4:08:29 PM Senator Latvala with a question  
4:08:39 PM Elizabeth Fetterhoff answers  
4:08:52 PM Sarah Butters, attorney for real property, probate & trust law speaks  
4:10:07 PM Senator Joyner with a question  
4:11:15 PM Elizabeth Fetterhoff answers  
4:12:03 PM Amendment 254758 by Senator Montford  
4:12:18 PM Elizabeth Fetterhoff explains the amendment  
4:13:15 PM Ms. Fetterhoff closes on amendment  
4:13:24 PM Amendment is adopted  
4:13:32 PM Back on the bill as amended  
4:13:46 PMayne Smith, Associate State Director representing AARP waives in support  
4:13:59 PM Kenneth Pratt, Senior VP of Governmental Affairs waives in support  
4:14:19 PM Senator Joyner in debate  
4:14:35 PM Elizabeth Fetterhoff waives close on the bill  
4:14:44 PM roll call on SB 494  
4:14:54 PM SB 494 passes  
4:15:43 PM SB 196 by Senator Hudson  
4:15:50 PM Senator Hudson explains the bill  
4:16:17 PM Senator Latvala with a question  
4:16:40 PM Senator Hudson responds  
4:17:25 PM Senator Latvala with additional question  
4:17:39 PM Senator Hudson responds  
4:18:05 PM Senator Gaetz with a question  
4:18:14 PM Senator Hudson responds  
4:19:05 PM Senator Gaetz with a follow up question  
4:19:14 PM Senator Hudson responds  
4:19:54 PM Senator Gaetz with a question  
4:20:23 PM Senator Hudson answers  
4:21:51 PM Senator Richter with a question  
4:22:38 PM Senator Hudson responds  
4:23:52 PM Senator Joyner with a question  
4:24:06 PM Senator Hudson responds  
4:25:34 PM Senator Diaz de la Portilla with a question  
4:26:25 PM Senator Joyner with a question  
4:27:29 PM Senator Hudson responds  
4:28:14 PM Senator Joyner with a follow up  
4:28:21 PM Senator Hudson responds  
4:30:06 PM Senator Montford with a question  
4:30:15 PM Senator Hudson responds  
4:30:33 PM Senator Gibson with a question  
4:31:34 PM Senator Hudson responds  
4:32:05 PM Senator Gibson with a follow up  
4:32:52 PM Senator Hudson responds  
4:33:43 PM Doug Mann with AIF waives in support  
4:33:55 PM Bill Hunter representing Assn of Florida Community Developers waives in support  
4:34:32 PM Senator Hudson explains 1st amendment letter  
4:34:50 PM Senator Joyner in debate  
4:36:54 PM Senator Lee in debate  
4:40:02 PM Senator Richter in debate  
4:41:42 PM Senator Latvala in debate  
4:42:39 PM Senator Gibson in debate  
4:44:49 PM Senator Hudson closes on the bill  
4:45:08 PM roll call on SB 196  
4:46:04 PM SB 196 passes  
4:46:55 PM SB 812 by Senator Diaz de la Portilla  
4:47:14 PM Senator Diaz de la Portilla explains the bill  
4:48:21 PM Sean Stafford with Star and Shield Insurance waives in support  
4:48:41 PM Senator Diaz de la Portilla waives close on the bill  
4:48:53 PM roll call on SB 812  
4:49:02 PM SB 812 passes

4:49:39 PM SB 666 by Senator Legg  
4:49:49 PM Rich Reidy explains the bill for Senator Legg  
4:50:43 PM Jessica Kraynak with the FI Dept of Veterans' Affairs waives in support  
4:51:01 PM Ron Labasky representing FI State Assoc of Supervisors of Elections waives in support  
4:51:26 PM Rich Reidy waives close on the bill  
4:51:34 PM roll call on SB 666  
4:51:41 PM SB 666 passes  
4:52:14 PM SB 860 by Senator Detert  
4:52:24 PM Charlie Anderson will present the bill for Senator Detert  
4:53:08 PM Charlie Anderson waives close on the bill  
4:53:21 PM roll call SB 860  
4:53:29 PM SB 860 passes  
4:54:00 PM SB 7002 by Senator Simpson  
4:54:11 PM Rachel Rogers will present the bill for Senator Simpson  
4:54:57 PM Rachel Rogers waives close on the bill  
4:55:10 PM roll call on SB 7002  
4:55:18 PM SB 7002 passes  
4:55:38 PM SB 7004 by Senator Simpson  
4:56:10 PM Rachel Rogers presents the bill  
4:56:22 PM Rachel Rogers closes on the bill  
4:56:40 PM roll call on SB 7004  
4:56:45 PM SB 7004 passes  
4:57:21 PM SB 7020 by Health Policy Committee  
4:57:34 PM Jennifer Lloyd will present the bill  
4:58:11 PM Jennifer Lloyd waives close on the bill  
4:58:23 PM roll call on SB 7020  
4:58:30 PM SB 7020 passes  
4:59:06 PM SB 7024 by Health Policy Committee  
4:59:28 PM Daniel Looke will present the bill  
4:59:50 PM Daniel Looke waives close on the bill  
5:00:13 PM roll call on SB 7024  
5:00:21 PM SB 7024 passes  
5:00:48 PM SB 334 by Senator Montford  
5:01:00 PM Senator Montford explains the bill  
5:01:45 PM Emily Buckley Government Affairs Manager of Palm Beach County waives in support  
5:02:01 PM Laura Youmans, Legislative Advocate representing FI Association of Counties waives in support  
5:02:11 PM Carol Roth representing Manatee County waives in support  
5:02:19 PM Senator Montford waives close on the bill  
5:02:31 PM roll call SB 334  
5:02:38 PM SB 334 passes  
5:03:05 PM SB 972 by Senator Lee  
5:03:18 PM Senator Lee explains the bill  
5:05:22 PM Senator Lee closes on the bill  
5:05:29 PM roll call SB 972  
5:05:37 PM SB 972 passes  
5:06:07 PM SB 7032 by Senator Benacquisto  
5:06:23 PM Senator Benacquisto explains the bill  
5:07:35 PM Jamie Champion-Mongiovi representing Florida Office of Financial Regulation waives in support  
5:07:55 PM Senator Benacquisto waives close on the bill  
5:08:08 PM roll call on SB 7032  
5:08:15 PM SB 7032 passes  
5:08:49 PM Senator Soto takes the chair  
5:09:02 PM SB 1042 by Senator Simmons  
5:09:11 PM Senator Simmons explains the bill  
5:10:16 PM Greg Black an attorney representing The Business Law Section of the Florida Bar waives in support  
5:10:29 PM Senator Simmons waives close on the bill  
5:10:37 PM roll call on SB 1042  
5:10:51 PM SB 1042 passes  
5:11:10 PM SB 1038 by Senator Simmons  
5:11:18 PM Senator Simmons explains the bill  
5:11:48 PM amendment 114760  
5:12:38 PM Amendment adopted  
5:12:44 PM Back on the bill as adopted  
5:12:52 PM roll call on SB 1038  
5:13:15 PM SB 1038 passes  
5:13:33 PM SB 1040 by Senator Simmons  
5:13:43 PM Senator Simmons explains the bill  
5:14:03 PM Senator Simmons waives close on the bill  
5:14:22 PM roll call on SB 1040  
5:14:32 PM SB 1040 passes  
5:14:46 PM SB 1032 by Senator Simmons  
5:14:54 PM Senator Simmons explains the bill  
5:15:01 PM Amendment 560448  
5:15:29 PM Amendment adopted  
5:15:56 PM Back on the bill as adopted  
5:16:04 PM Senator Simmons waives close on the bill  
5:16:19 PM roll call on SB 1032  
5:16:25 PM SB 1032 passes

5:16:46 PM

Senator Soto turns the chair back to Senator Simmons

5:21:30 PM

Senator Benacquisto moves the meeting adjourn

5:22:30 PM

without objection the meeting is adjourned