

SPB 7082 by **GO**; State-administered Retirement Systems

SPB 7080 by **GO**; OGSR/Agency Personnel Information

SB 318 by **Stargel**; (Compare to CS/H 0115) Public Meetings/University Direct-support Organization

793024 D S RCS GO, Bean Delete everything after 03/13 11:58 AM

SB 520 by **Richter**; (Identical to H 0457) Public Records/Dental Workforce Surveys

SB 694 by **Garcia (CO-INTRODUCERS) Flores**; (Similar to CS/H 0437) Diabetes Advisory Council

235948 A S RCS GO, Bradley Delete L.52 - 55. 03/13 11:58 AM

SB 834 by **Latvala**; (Similar to H 0781) Legal Notices

530578 A S RCS GO, Simmons Delete L.30 - 79: 03/13 11:58 AM

SB 914 by **Latvala**; (Identical to H 0953) State Contracting

CS/SB 198 by **CM, Clemens (CO-INTRODUCERS) Latvala**; (Similar to H 0527) Social Media Privacy

605118 A S RCS GO, Ring btw L.69 - 70: 03/13 11:58 AM
288674 AA S RCS GO, Ring Delete L.7: 03/13 11:58 AM

CS/SB 390 by **HP, Hays**; (Similar to CS/H 0419) Public Records/Identifying Information of Personnel of Department of Health

SB 650 by **JU**; (Similar to H 7101) OGSR/Inventories of an Estate or Elective Estate

471000 A S RCS GO, Bradley Delete L.33: 03/13 11:58 AM

SB 546 by **Simpson (CO-INTRODUCERS) Bean, Bradley**; (Similar to CS/H 0525) Public Records/Personal Identifying Information/License to Carry a Concealed Weapon or Firearm

251632 A S RCS GO, Bean Delete L.92: 03/13 11:58 AM

SB 990 by **Ring**; (Identical to H 1357) Public Officers and Employees

492990 A S RCS GO, Ring Delete L.53 - 57: 03/13 11:58 AM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Hays, Vice Chair

MEETING DATE: Thursday, March 13, 2014
TIME: 9:00 —11:00 a.m.
PLACE: Pat Thomas Committee Room, 412 Knott Building

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bean, Benacquisto, Bradley, Hukill, Montford, Simmons, and Smith

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Consideration of proposed committee bill:			
1	SPB 7082	State-administered Retirement Systems; Increasing the employer contribution to the retiree health insurance subsidy for members of a state-administered plan; increasing the employer contribution to the health insurance subsidy for members of the Elected Officers' Class, members of the Senior Management Service Class, and members of the Regular, Special Risk, and Special Risk Administrative Support Classes; revising the amount of employer contributions for the next fiscal year, etc.	Submitted as Committee Bill Yeas 9 Nays 0
Consideration of proposed committee bill:			
2	SPB 7080	OGSR/Agency Personnel Information; Amending provisions which provide an exemption from public records requirements for social security numbers of current and former agency employees held by an employing agency; saving the exemption from repeal under the Open Government Sunset Review Act; authorizing an employing agency to disclose the social security number of a current or former agency employee under certain circumstances, etc.	Submitted as Committee Bill Yeas 9 Nays 0
3	SB 318 Stargel (Compare CS/H 115)	Public Meetings/University Direct-support Organization; Providing an exemption from public meeting requirements for any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committees of such board, at which the identity of a donor or prospective donor, a proposal seeking research funding from the organization, or a plan or program for initiating or supporting research is discussed; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. ED 01/08/2014 Favorable GO 03/13/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Thursday, March 13, 2014, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 520 Richter (Identical H 457)	Public Records/Dental Workforce Surveys; Providing an exemption from public records requirements for information contained in dental workforce surveys submitted by dentists or dental hygienists to the Department of Health; providing exceptions to the exemption; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 02/04/2014 Favorable GO 03/13/2014 Favorable RC	Favorable Yeas 9 Nays 0
5	SB 694 Garcia (Similar CS/H 437)	Diabetes Advisory Council; Requiring the council, in conjunction with the Department of Health, the Agency for Health Care Administration, and the Department of Management Services, to develop plans to manage, treat, and prevent diabetes; requiring a report to the Governor and Legislature; providing for contents of the report, etc. HP 02/18/2014 Favorable GO 03/13/2014 Fav/CS AHS AP	Fav/CS Yeas 9 Nays 0
6	SB 834 Latvala (Similar H 781)	Legal Notices; Authorizing clerks of court to provide links to legal notices web pages; prohibiting charging a fee or requiring registration for viewing online legal notices; establishing the period for which legal notices are required to be published on the statewide website; requiring that legal notices be archived on the statewide website for a specified period; providing that the printed version of a legal notice prevails if there is a conflict; providing applicability, etc. GO 03/13/2014 Fav/CS JU AP RC	Fav/CS Yeas 9 Nays 0
7	SB 914 Latvala (Identical H 953)	State Contracting; Revising the criteria for evaluating a proposal to include consideration of prior relevant experience of the vendor; revising the criteria for evaluating a response to an agency's invitation to negotiate to include consideration of prior relevant experience of the vendor, etc. GO 03/13/2014 Favorable AGG AP	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Thursday, March 13, 2014, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	CS/SB 198 Commerce and Tourism / Clemens (Similar H 527)	Social Media Privacy; Prohibiting an employer from requesting or requiring access to a social media account of an employee or prospective employee; prohibiting an employer from taking retaliatory personnel action for an employee's failure to provide access to his or her social media account; prohibiting an employer from failing or refusing to hire a prospective employee who does not provide access to his or her social media account, etc. CM 02/17/2014 Fav/CS GO 03/13/2014 Fav/CS JU RC	Fav/CS Yeas 9 Nays 0
9	CS/SB 390 Health Policy / Hays (Similar CS/H 419)	Public Records/Identifying Information of Personnel of Department of Health; Providing an exemption from public records requirements for certain identifying information of specific current and former personnel of the Department of Health and the spouses and children of such personnel, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 02/04/2014 Fav/CS GO 03/13/2014 Favorable RC	Favorable Yeas 9 Nays 0
10	SB 650 Judiciary (Similar H 7101)	OGSR/Inventories of an Estate or Elective Estate; Amending provisions which provide exemptions from public records requirements for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed in an estate proceeding; saving the exemptions from repeal under the Open Government Sunset Review Act, etc. GO 03/13/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
 Thursday, March 13, 2014, 9:00 —11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	SB 546 Simpson (Similar CS/H 525, Compare CS/CS/H 523, Link CS/S 544)	Public Records/Personal Identifying Information/License to Carry a Concealed Weapon or Firearm; Creating an exemption from public records requirements for certain personal identifying information held by the tax collector when an individual applies for a license to carry a concealed weapon or firearm pursuant to specified provisions; providing for retroactive application of the exemption; providing for disclosure of such information under specified conditions; providing for review and repeal of the exemption; providing a statement of public necessity, etc. CJ 02/03/2014 Favorable GO 03/13/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0

12	SB 990 Ring (Identical H 1357)	Public Officers and Employees; Removing an exception from prohibited employment or a prohibited contractual relationship for an officer or employee of certain special tax districts or an agency organized pursuant to ch. 298, F.S.; making technical changes, etc. GO 03/13/2014 Fav/CS CA RC	Fav/CS Yeas 9 Nays 0
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Investment Advisory Council			
13	Elia, MaryEllen (Tampa)	12/12/2016	Recommend Confirm Yeas 9 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
Other Related Meeting Documents			

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7082

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: State-administered Retirement Systems

DATE: March 11, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>McVaney</u>	<u>McVaney</u>	_____	GO Submitted as Committee Bill

I. Summary:

SPB 7082 establishes the contribution rates paid by employers participating in the Florida Retirement System (FRS) beginning July 1, 2014. These rates are intended to fund the full normal cost and the amortization of the unfunded actuarial liability of the FRS. With these increased contributions, the FRS will receive roughly \$131.5 million of additional revenues on an annual basis beginning July 1, 2014.

The bill also increases the contributions paid by employers participating in the retiree health insurance subsidy program. With these increased contributions, the Retiree Health Insurance Trust Fund will receive roughly \$30 million of additional revenues on an annual basis beginning July 1, 2014.

The bill also changes the label of employer-paid contributions to employer assessments for those funds used for education services for all FRS members and to offset the costs of administering the investment plan.

II. Present Situation:

The Florida Retirement System

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

closed group.¹ The FRS is a contributory system, with most members contributing 3 percent of their salaries.²

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2013, the FRS had 621,774 active members, 347,962 retired members and beneficiaries, 16,018 disabled retirees, and 38,724 active participants of the Deferred Retirement Option Program (DROP).³ The FRS consists of 1,000 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 185 cities and 251 special districts that have elected to join the system.⁴

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

- Regular Class⁵ consists of 536,506 active members, plus 6,461 in renewed membership;
- Special Risk Class⁶ includes 68,800 active members;
- Special Risk Administrative Support Class⁷ has 58 active members;
- Elected Officers' Class⁸ has 2,094 active members, plus 152 in renewed membership; and
- Senior Management Service Class⁹ has 7,450 members, plus 210 in renewed membership.¹⁰

Investment Plan

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

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

¹ The Florida Retirement System Annual Report, July 1, 2012 – June 30, 2013, at 16. Available online at: https://www.rol.frs.state.fl.us/forms/2012-13_Annual_Report.pdf

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

³ Florida Retirement System 2012-2013 Annual Report, at 10.

⁴ *Id.*, at 38.

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

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

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

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

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

¹⁰ All figures from Florida Retirement System 2012-2013 Annual Report, at 47.

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

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

Pension Plan

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

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.¹⁹ For members enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁰ Benefits payable under the pension plan are calculated based on years of service x accrual rate x average final compensation.²¹ For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.²² For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²³ Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the

¹¹ Section 121.4501(6)(a), F.S.

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

¹³ Section 121.591, F.S.

¹⁴ See s. 121.4501(16), F.S.

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

¹⁶ Section 121.4501(8), F.S.

¹⁷ Section 4, Art. IV, Fla. Const.

¹⁸ Section 121.025, F.S.

¹⁹ Section 121.021(45)(a), F.S.

²⁰ Section 121.021(45)(b), F.S.

²¹ Section 121.091, F.S.

²² Section 121.021(29)(a)1., F.S.

²³ Section 121.021(29)(b)1., F.S.

member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.²⁴

Optional Retirement Programs

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

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

Contribution Rates

FRS employers are responsible for contributing a set percentage of the member’s monthly compensation to the Division of Retirement to be distributed into the FRS Contributions Clearing Trust Fund. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.²⁸ The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

In the annual actuarial valuation of the Florida Retirement, based on July 1, 2013, plan assets and liabilities, Milliman, Inc., the state actuary, determined the following key data relating to the FRS pension plan.

	Valuation Results		
	July 1, 2011	July 1, 2012	July 1, 2013
Actuarial Liability	\$144.1 b	\$147.2 b	\$153.3 b
Actuarial Value of Assets	\$126.1 b	\$127.9 b	\$131.7 b
Unfunded Actuarial Liability	\$18.0 b	\$19.3 b	\$21.6 b
Funded Percentage	87.5%	86.9%	85.9%

²⁴ Sections 121.021(29)(a)2. and (b)2., F.S.

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

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

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

²⁸ Section 121.70(1), F.S.

The following are the current employer contribution rates for each class and the blended rates recommended by the state actuary beginning in July 2014:²⁹

Membership Class	Effective July 1, 2013		Recommended to be effective July 1, 2014	
	Normal Cost	UAL Rate	Normal Cost	UAL Rate
Regular Class	3.53%	2.19%	3.53%	2.54%
Special Risk Class	11.00%	6.83%	11.01%	7.51%
Special Risk Administrative Support Class	4.17%	30.56%	4.18%	36.59%
Elected Officer's Class				
• Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	6.52%	24.85%	6.30%	38.66%
• Justices and Judges	10.05%	17.00%	10.10%	21.77%
• County Officers	8.44%	23.36%	8.36%	33.58%
Senior Management Service Class	4.81%	12.27%	4.80%	15.04%
Deferred Retirement Option Program	4.63%	7.01%	4.30%	6.72%

For all membership classes, except the DROP and certain members with renewed membership, employees contribute 3 percent of their compensation towards retirement.³⁰

After employer and employee contributions are placed into the FRS Contributions Clearing Trust Fund, the allocations under the investment plan are transferred to third-party administrators to be placed in the employee's individual investment accounts, whereas contributions under the pension plan are transferred into the FRS Trust Fund.³¹

Retiree Health Insurance Subsidy

Section 112.363, Florida Statutes, provides for a retiree health insurance subsidy. This subsidy is paid from the Retiree Health Insurance Subsidy Trust Fund to eligible retirees in the Florida Retirement System (FRS). The amount of the monthly subsidy is \$5 for each year of service in the FRS, but not less than \$30 nor more than \$150.

The subsidy is funded through a contribution by employers participating in the FRS. The current contribution is 1.20% of the employer's monthly payroll. The contribution is paid to the Department of Management Services for deposit in the Retiree Health Insurance Subsidy Trust Fund. This program is funded on a "pay-as-you-go" basis rather than on an actuarial basis. This means that the revenues and expenditures of the trust fund are designed to match each other on an annual basis, with minimal reserves accumulated.

²⁹ Section 121.71(4) and (5), F.S.

³⁰ Section 121.71(3), F.S.

³¹ See sections 121.4503 and 121.72(1), F.S.

Participants of the university, community college, and senior management service defined contribution retirement programs receive contributions directly into their retirement accounts during the years of employment; these participants will not receive the subsidies during retirement. Participants of the FRS investment plan will not receive the health insurance subsidy contributions directly but will be eligible to receive the health insurance subsidy upon retirement.

Sections 121.052, 121.055, and 121.071, F.S., also set forth the employer-paid contributions for the retiree health insurance trust fund for the various FRS membership classes.

A recent cash flow analysis of the Retiree Health Insurance Subsidy Trust Fund indicates the following key cash flow data for FY 2010-11 through FY 2014-15. Under current law and current administration and assuming only 2% payroll growth for FY 2013-14 and FY 2014-15, the trust fund is expected to deplete its reserves by September 2015. After that date, the trust fund may not have sufficient revenues to pay the full monthly benefits to retirees.

Retiree Health Insurance Subsidy Trust Fund				
Changes in Fund Balance				
	FY 2011-12	FY 2012-13	FY 2013-14	FY 2014-15
Fund Balance – beginning of Year	\$271,349,733	\$220,345,962	\$157,929,287	\$91,235,843
Revenues	\$323,439,767	\$328,556,683	\$354,504,733	\$361,165,791
Expenditures	\$374,443,538	\$390,973,358	\$421,198,177	\$438,137,462
Excess of Revenues over Expenditures	(51,003,771)	(62,416,675)	(66,693,444)	(76,971,671)
Fund Balance – end of year	\$220,345,962	\$157,929,287	\$91,235,843	\$14,264,172
Reserves (balance / monthly expenses)	7.1 months	4.8 months	2.6 months	0.4 month

Administrative and educational expenses

Section 121.74, F.S., requires all employers participating in the FRS to pay additional contributions equal to 0.03 percent of the employer’s covered payroll. The required contribution rate is scheduled to increase to 0.04 percent beginning July 1, 2014. The assessment rates have been as high as 0.15 percent in FY 2002-03 (the third year of the investment plan) and were 0.05 percent from FY 2005-06 through FY 2009-10. In FY 2010-11, the Legislature reduced the assessment rate to ensure that the forfeiture account balances were reduced in a timely and appropriate manner to comply with the federal tax code.

These contributions are used to offset a portion of the costs incurred by the State Board of Administration in providing education services to all members of the FRS and in administering the FRS investment plan. The table below shows the assessment rate and the revenues and expenditures associated with the contributions. While the revenues into the Administrative Trust Fund have remained consistent over time, the estimated expenditures from the trust fund appear to grow dramatically in the near future. This is a result of the State Board of Administration spending down monies that have been forfeited by investment plan members. As the forfeiture account balance reaches zero, more of the overall costs incurred by the SBA will be borne by the

Administrative Trust Fund – resulting in the fund experiencing a deficit by the middle of FY 2016-17 based on current law assessment rates.

State Board of Administration Administrative Trust Fund				
Fiscal Year	Assessment Rate	Revenues	Expenditures	End of Year Balance
2011-12	0.03%	\$7.86 m	\$9.94 m	\$36.03 m
2012-13	0.03%	\$7.9 m	\$7.71 m	\$36.65 m
2013-14	0.03%	\$8.06 m	\$16.66 m	\$29.46 m
2014-15	0.04%	\$10.85 m	\$21.64 m	\$19.60 m
2015-16	0.04%	\$10.75 m	\$22.72 m	\$8.01 m
2016-17	0.04%	\$10.64 m	\$23.86 m	(\$5.47) m

III. Effect of Proposed Changes:

The bill increases the employer-paid contributions for the retiree health insurance subsidy program. Also, the bill revises the employer-paid normal cost rates and unfunded actuarial liability (UAL) rates for the FRS, as determined by the July 1, 2013 Annual Valuation as necessary to adequately fund the costs of retirement benefits during Fiscal Year 2014-2015.

Section 1 amends s. 112.363, F.S., beginning July 1, 2014, to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.20% of gross compensation to 1.30% of gross compensation for each member of the Florida Retirement System.

Section 2 amends s. 121.052, F.S., beginning July 1, 2014, to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.20% of gross compensation to 1.30% of gross compensation for each member of the Elected Officers’ Class of Florida Retirement System.

Section 3 amends s. 121.055, F.S., beginning July 1, 2014, to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.20% of gross compensation to 1.30% of gross compensation for each member of the Senior Management Service Class of Florida Retirement System.

Section 4 amends s. 121.071, F.S., beginning July 1, 2014, to increase the employer paid contribution to the Retiree Health Insurance Trust Fund from 1.20% of gross compensation to 1.30% of gross compensation for each member of the Regular, Special Risk, and Special Risk Administrative Support classes of Florida Retirement System.

Section 5 amends s. 121.71, F.S., to set the employer-paid contributions to the Florida Retirement System Trust Fund for each member of the FRS.

Section 6 amends s. 121.74, F.S., to change the label of the employer-paid contributions to “employer assessments” for those funds used for education services for all FRS members and to offset the costs of administering the investment plan.

Sections 7 and 8 provide findings that the bill fulfills important state interests.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Florida Retirement System

With the enactment of this legislation, the revenues expected to flow into the Florida Retirement System Trust Fund in FY 2014-15 will increase by approximately \$131.5 million from employers when compared to the revenues generated in FY 2013-14. The increases by employer group for FY 2014-15 are noted below.

Employer Group	New Contributions
State Agencies	\$29.48 m
Universities	\$12.26 m
Colleges	\$4.14 m
School Boards	\$37.97 m
Counties	\$39.68 m
Other	\$8.00 m
Total	\$131.53 m

Retiree Health Insurance Trust Fund

With the enactment of this legislation, the revenues expected to flow into the Retiree Health Insurance Trust Fund will increase by approximately \$ \$30.1 million annually. The increases by employer group for FY 2014-15 are noted below. With these increased contributions, the trust fund is not expected to deplete its reserves until April 2016.

Employer Group	New Contributions
State Agencies	\$4.67 m
Universities	\$1.29 m
Colleges	\$1.04 m
School Boards	\$13.40 m
Counties	\$8.04 m
Other	\$1.65 m
Total	\$30.09 m

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.363, 121.052, 121.055, 121.071, 121.71, and 121.74.

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.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01721C-14

20147082__

1 A bill to be entitled
 2 An act relating to state-administered retirement
 3 systems; amending s. 112.363, F.S.; increasing the
 4 employer contribution to the retiree health insurance
 5 subsidy for members of a state-administered plan;
 6 amending s. 121.052, F.S.; increasing the employer
 7 contribution to the health insurance subsidy for
 8 members of the Elected Officers' Class; amending s.
 9 121.055, F.S.; increasing the employer contribution to
 10 the health insurance subsidy for members of the Senior
 11 Management Service Class; amending s. 121.071, F.S.;
 12 increasing the employer contribution to the health
 13 insurance subsidy for members of the Regular, Special
 14 Risk, and Special Risk Administrative Support Classes;
 15 amending s. 121.71, F.S.; revising the amount of
 16 employer contributions for the next fiscal year;
 17 amending s. 121.74, F.S.; revising terminology to
 18 refer to an employer assessment to offset the costs of
 19 administering the investment plan and providing
 20 education services; providing findings of important
 21 state interests; providing an effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Paragraph (h) is added to subsection (8) of
 26 section 112.363, Florida Statutes, to read:

27 112.363 Retiree health insurance subsidy.—

28 (8) CONTRIBUTIONS.—For purposes of funding the insurance
 29 subsidy provided by this section:

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30 (h) Beginning July 1, 2014, the employer of each member of
 31 a state-administered plan shall contribute 1.30 percent of gross
 32 compensation each pay period.
 33

34 Such contributions shall be submitted to the Department of
 35 Management Services and deposited in the Retiree Health
 36 Insurance Subsidy Trust Fund.

37 Section 2. Paragraph (d) of subsection (7) of section
 38 121.052, Florida Statutes, is amended to read:

39 121.052 Membership class of elected officers.—

40 (7) CONTRIBUTIONS.—

41 (d) The following table states the required employer
 42 contribution on behalf of each member of the Elected Officers'
 43 Class in terms of a percentage of the member's gross
 44 compensation. Such contribution constitutes the entire health
 45 insurance subsidy contribution with respect to each such member.
 46 A change in the contribution rate is effective with the first
 47 salary paid on or after the beginning date of the change. The
 48 retiree health insurance subsidy contribution rate is as
 49 follows:

Dates of Contribution Rate Changes	Contribution Rate
October 1, 1987, through December 31, 1988	0.24%
January 1, 1989, through December 31, 1993	0.48%

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53	January 1, 1994, through December 31, 1994	0.56%
54	January 1, 1995, through June 30, 1998	0.66%
55	July 1, 1998, through June 30, 2001	0.94%
56	July 1, 2001, through June 30, 2013	1.11%
57	Effective <u>July 1, 2013, through</u> <u>June 30, 2014</u>	1.20%
58	<u>Effective July 1, 2014</u>	<u>1.30%</u>

59 Such contributions and accompanying payroll data are due and
60 payable no later than the 5th working day of the month
61 immediately following the month during which the payroll period
62 ended and shall be deposited by the administrator in the Retiree
63 Health Insurance Subsidy Trust Fund.

64 Section 3. Paragraph (d) of subsection (3) of section
65 121.055, Florida Statutes, is amended to read:

66 121.055 Senior Management Service Class.—There is hereby
67 established a separate class of membership within the Florida
68 Retirement System to be known as the "Senior Management Service
69
70

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71	Class," which shall become effective February 1, 1987.	
72	(3)	
73	(d) The following table states the required employer	
74	contribution on behalf of each member of the Senior Management	
75	Service Class in terms of a percentage of the member's gross	
76	compensation. Such contribution constitutes the entire health	
77	insurance subsidy contribution with respect to each such member.	
78	A change in the contribution rate is effective with the first	
79	salary paid on or after the beginning date of the change. The	
80	retiree health insurance subsidy contribution rate is as	
81	follows:	
82	Dates of Contribution	Contribution
	Rate Changes	Rate
83		
84	October 1, 1987, through December 31, 1988	0.24%
85	January 1, 1989, through December 31, 1993	0.48%
86	January 1, 1994, through December 31, 1994	0.56%
87	January 1, 1995, through June 30, 1998	0.66%
88		

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	July 1, 1998, through June 30, 2001	0.94%
89	July 1, 2001, through June 30, 2013	1.11%
90	Effective July 1, 2013, through <u>June 30, 2014</u>	1.20%
91	<u>Effective July 1, 2014</u>	<u>1.30%</u>

92
93
94 Such contributions and accompanying payroll data are due and
95 payable no later than the 5th working day of the month
96 immediately following the month during which the payroll period
97 ended and shall be deposited by the administrator in the Retiree
98 Health Insurance Subsidy Trust Fund.

99 Section 4. Subsection (4) of section 121.071, Florida
100 Statutes, is amended to read:

101 121.071 Contributions.—Contributions to the system shall be
102 made as follows:

103 (4) The following table states the required employer
104 contribution on behalf of each member of the Regular Class,
105 Special Risk Class, or Special Risk Administrative Support Class
106 in terms of a percentage of the member's gross compensation.
107 Such contribution constitutes the entire health insurance
108 subsidy contribution with respect to each such member. A change
109 in the contribution rate is effective with the first salary paid
110 on or after the beginning date of the change. The retiree health

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111	insurance subsidy contribution rate is as follows:	
112	Dates of Contribution	Contribution
	Rate Changes	Rate
113	October 1, 1987, through	
	December 31, 1988	0.24%
114	January 1, 1989, through	
	December 31, 1993	0.48%
115	January 1, 1994, through	
	December 31, 1994	0.56%
116	January 1, 1995, through June	
	30, 1998	0.66%
117	July 1, 1998, through June 30,	
	2001	0.94%
118	July 1, 2001, through June 30,	
	2013	1.11%
119	Effective July 1, 2013, through <u>June 30, 2014</u>	1.20%
120	<u>Effective July 1, 2014</u>	<u>1.30%</u>
121		
122		

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123 Such contributions shall be deposited by the administrator in
 124 the Retiree Health Insurance Subsidy Trust Fund.
 125 Section 5. Subsections (4) and (5) of section 121.71,
 126 Florida Statutes, are amended to read:
 127 121.71 Uniform rates; process; calculations; levy.—
 128 (4) Required employer retirement contribution rates for
 129 each membership class and subclass of the Florida Retirement
 130 System for both retirement plans are as follows:
 131

	Percentage of Gross Compensation, Effective July 1, <u>2014</u> 2013
Membership Class	
Regular Class	3.53%
Special Risk Class	<u>11.01%</u> 11.00%
Special Risk Administrative Support Class	<u>4.18%</u> 4.17%
Elected Officers' Class— Legislators, Governor, Lt. Governor, Cabinet Officers,	<u>6.30%</u> 6.52%

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State Attorneys,
Public Defenders

137 Elected Officers' Class—
Justices, Judges 10.10% ~~10.05%~~

138 Elected Officers' Class—
County Elected Officers 8.36% ~~8.44%~~

139 Senior Management Class 4.80% ~~4.81%~~

140 DROP 4.30% ~~4.63%~~

141
 142 (5) In order to address unfunded actuarial liabilities of
 143 the system, the required employer retirement contribution rates
 144 for each membership class and subclass of the Florida Retirement
 145 System for both retirement plans are as follows:
 146

	Percentage of Gross Compensation, Effective July 1, <u>2014</u> 2013
Membership Class	
Regular Class	<u>2.54%</u> 2.19%
Special Risk Class	<u>7.51%</u> 6.83%

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150	Special Risk Administrative Support Class	<u>36.59%</u> 30.56%
151	Elected Officers' Class-- Legislators, Governor, Lt. Governor, Cabinet Officers, State Attorneys, Public Defenders	<u>38.66%</u> 24.85%
152	Elected Officers' Class-- Justices, Judges	<u>21.77%</u> 17.00%
153	Elected Officers' Class-- County Elected Officers	<u>33.58%</u> 23.36%
154	Senior Management Service Class	<u>15.04%</u> 12.27%
155	DROP	<u>6.72%</u> 7.01%
156	Section 6. Section 121.74, Florida Statutes, is amended to	
157	read:	
158	121.74 Administrative and educational expenses.—In addition	
159	to contributions required to fund member accounts under ss.	
160	121.71 and 121.73, effective July 1, 2010, through June 30,	
161	2014, employers participating in the Florida Retirement System	
162		

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163	shall contribute an <u>employer assessment</u> amount equal to 0.03	
164	percent of the payroll reported for each class or subclass of	
165	Florida Retirement System membership. Effective July 1, 2014,	
166	the employer assessment is contribution rate shall be 0.04	
167	percent of the payroll reported for each class or subclass of	
168	membership. The amount assessed contributed shall be transferred	
169	by the Division of Retirement from the Florida Retirement System	
170	Contributions Clearing Trust Fund to the State Board of	
171	Administration's Administrative Trust Fund to offset the costs	
172	of administering the investment plan and the costs of providing	
173	educational services to members of the Florida Retirement	
174	System. Approval of the trustees is required before the	
175	expenditure of these funds. Payments for third-party	
176	administrative or educational expenses shall be made only	
177	pursuant to the terms of the approved contracts for such	
178	services.	
179	Section 7. <u>The Legislature finds that a proper and</u>	
180	<u>legitimate state purpose is served when employees, officers, and</u>	
181	<u>retirees of the state and its political subdivisions, and the</u>	
182	<u>dependents, survivors, and beneficiaries of such employees,</u>	
183	<u>officers, and retirees, are extended the basic protections</u>	
184	<u>afforded by governmental retirement systems. These persons must</u>	
185	<u>be provided benefits that are fair and adequate and that are</u>	
186	<u>managed, administered, and funded in an actuarially sound</u>	
187	<u>manner, as required by s. 14, Article X of the State</u>	
188	<u>Constitution and part VII of chapter 112, Florida Statutes.</u>	
189	<u>Therefore, the Legislature determines and declares that this act</u>	
190	<u>fulfills an important state interest.</u>	
191	Section 8. <u>The Legislature finds that a proper and</u>	

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192 legitimate state purpose is served when employees, officers, and
193 retirees of the state and its political subdivisions, and the
194 dependents, survivors, and beneficiaries of such employees,
195 officers, and retirees, are extended the basic protections
196 afforded by governmental retirement systems that provide fair
197 and adequate benefits, including health insurance subsidies, and
198 that are managed, administered, and funded in a sustainable
199 manner. Therefore, the Legislature determines and declares that
200 this act fulfills an important state interest.

201 Section 9. This act shall take effect July 1, 2014.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7080

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: OGSR/Agency Personnel Information

DATE: March 11, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Kim _____	McVaney _____	_____	GO Submitted as Committee Bill

I. Summary:

SPB 7080 continues the existing public records exemption for former and current agency employees' social security numbers under s. 119.071(4)(a), F.S. This bill provides that an agency may disclose an employee's social security number if required by law, a court order, if another agency needs the social security number in order to perform its duties, or if an employee consents to the release of his or her social security number. This bill eliminates the sunset date of the exemption, thus continuing the current public records exemption.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies requirements for public access to government records and meetings. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public records" 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

at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or open meetings requirements.⁹ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

Open Government Sunset Review Act

The Open Government Sunset Review Act, s. 119.15, F.S., prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴

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.” The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1)(a), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁴ Section 119.15(3), F.S.

Section 119.15, F.S., provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹⁵ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is expanded.¹⁸ A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception¹⁹ to the exemption is created.²⁰

Exemption Under Review: Agency Personnel Social Security Numbers

Section 119.071(4)(a), F.S., provides that the social security numbers of all current and former agency employees are confidential and exempt from public disclosure under s. 119.071(1), F.S. and s. 24, Art. 1 of the Florida Constitution. Section 119.071(4)(a), F.S., currently does not contain any means for agencies to disclose employee social security numbers.²¹ This exemption will stand repealed on October 2, 2014, unless saved from repeal by the legislature.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ Section 119.15(6)(a), F.S. The specified questions are:

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

¹⁸ An exemption is expanded when it is amended to include more records, information, or meetings or to include meetings as well as records, or records as well as meetings.

¹⁹ An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

²⁰ See *State of Florida v. Ronald Knight*, 661 So.2d 344 (Fla. 4th DCA 1995) (holding that nothing in s. 24, art. I of the Florida Constitution requires exceptions to a public records exemption to contain a public necessity statement).

²¹ Agencies can use s. 119.071(5), F.S., when disclosure is required.

Review Findings and Recommendations

On August 16, 2013, the Senate Governmental Oversight and Accountability Committee and the House Government Oversight Subcommittee surveyed state agencies regarding the need to keep agency personnel social security numbers exempt from public disclosure under s. 119.071(4)(a), F.S. Twenty-five agencies responded, and all of the agencies stated that s. 119.071(4)(a), F.S. should not be repealed. Several agencies cited the potential for identity theft and criminal activity as the rationale for keeping employees' social security numbers exempt from public disclosure. Agencies reported that they currently release social security numbers to government entities in order to perform background checks, to process payroll information, or if their employees are the subject of criminal investigations. None of the agencies reported that this exemption had been the subject of litigation.

III. Effect of Proposed Changes:

This bill will provide agencies the ability to keep employee social security numbers confidential and exempt from public disclosure while permitting employing agencies to release social security numbers when necessary.

This bill clarifies the law by incorporating provisions for release within s. 119.071(4)(a), F.S. Agencies will be permitted to release employee social security numbers under the following conditions: as required by state or federal law or court order; to another agency or governmental entity when it is necessary for the receiving agency or entity to perform its duties; and when an employee gives his or her written consent.

This bill removes the October 2, 2014, repeal date of this public records exemption.

If enacted, the bill becomes effective on October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

This bill does not expand or create a public records exemption and therefore it is not subject to the Open Government Sunset Review Act, s. 119.15, F.S. This bill requires a simple majority vote for passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None expected.

C. Government Sector Impact:

None expected.

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.)

None.

B. Amendments:

None.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., which
 4 provides an exemption from public records requirements
 5 for social security numbers of current and former
 6 agency employees held by an employing agency; saving
 7 the exemption from repeal under the Open Government
 8 Sunset Review Act; authorizing an employing agency to
 9 disclose the social security number of a current or
 10 former agency employee under certain circumstances;
 11 providing an effective date.

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

15 Section 1. Paragraph (a) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:

17 119.071 General exemptions from inspection or copying of
 18 public records.—

19 (4) AGENCY PERSONNEL INFORMATION.—

20 (a)1. The social security numbers of all current and former
 21 agency employees which ~~numbers~~ are held by the employing agency
 22 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 23 I of the State Constitution.

24 2. The social security numbers of current and former agency
 25 employees may be disclosed by the employing agency:

26 a. If disclosure of the social security number is expressly
 27 required by federal or state law or a court order.

28 b. To another agency or governmental entity if disclosure
 29 of the social security number is necessary for the receiving

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

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30 agency or entity to perform its duties and responsibilities.
 31 c. If the current or former agency employee expressly
 32 consents in writing to the disclosure of his or her social
 33 security number ~~This paragraph is subject to the Open Government~~
 34 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
 35 ~~repealed on October 2, 2014, unless reviewed and saved from~~
 36 ~~repeal through reenactment by the Legislature.~~

37 Section 2. This act shall take effect October 1, 2014.

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The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 318

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Stargel

SUBJECT: Public Meetings/University Direct-support Organization

DATE: March 14, 2014

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 318 exempts portions of meetings of university direct-support organizations (DSO) from public meeting laws when confidential information and documents are discussed.

Specifically, the bill exempts from public meetings requirements a portion of a meeting of a university DSO board of directors, or the board's executive committee or other committees of the board, at which research funding proposals, or plans or programs for research are discussed.

The bill provides for repeal of the public meetings exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and saved from repeal by the Legislature. Additionally, the bill provides a statement of public necessity justifying the exemption as required by the Florida Constitution.

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

The effective date of the bill is October 1, 2014.

II. Present Situation:

Public records and meetings law

Article I, s. 24(a) of the Florida Constitution sets forth the state law regarding access to public records. Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf.¹

Article I, s. 24(b) of the Florida Constitution sets forth the state law regarding access to public meetings. All meetings of any collegial public body of the executive branch of state government or of local governments, school districts, or special districts, at which public business of such body is transacted or discussed must be open and noticed to the public. Meetings of the Legislature must also be open and noticed to the public.²

Current law also requires all meetings of any board or commission of any agency or authority of the state or of any county, municipal corporation, or political subdivision at which official acts are to be taken are declared to be public meetings. Such meetings must be open to the public at all times and that no resolution, rule, or formal action is binding except as taken or made at an open meeting. The board or commission is responsible for providing reasonable notice of all such meetings.³

However, the Legislature has the authority to exempt records and meetings from the requirements of Article I, s. 24(a) and (b) of the Florida Constitution. The Legislature may provide by general law passed by a two-thirds vote of each house for the exemption of records and meetings. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose.⁴

Pursuant to the Open Government Sunset Review Act, in the fifth year after enactment of a new exemption or substantial amendment of an existing exemption, the exemption must be repealed on October 2 of the fifth year, unless the Legislature acts to reenact the exemption.⁵

University direct-support organizations

A university direct-support organization (DSO) is a Florida not-for-profit corporation which is organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of a state university.⁶ In addition, a university DSO may also be operated for the benefit of a research and development park or research and development authority affiliated with a state university. The DSO must be certified by a state university board of trustees to operate in a manner consistent with the goals of the university and in the best

¹ Art. I, s. 24(a), Fla. Const.

² Art. I, s. 24(b), Fla. Const.

³ Section 286.011(1), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ Section 119.15(1)-(3), F.S.

⁶ Section 1004.28(1)(a)1.-2., F.S.

interest of the state.⁷ DSOs assist the state universities “achieve excellence by providing supplemental resources from private gifts and bequests, and valuable education support services.”⁸

State universities are considered agencies of the state. As a result, state universities are subject to public records and public meetings laws.⁹ DSO boards are also subject to public records and public meetings laws.¹⁰

A university DSO must provide for an annual financial audit of the organization’s accounts and records which must be conducted by an independent certified public accountant pursuant to rules adopted by the Auditor General in accordance with current law¹¹ and by the university board of trustees.¹²

Current law provides a public records exemption for the identity of a donor who desires to remain anonymous and for all records of a university DSO *except* any:¹³

- Audit report prepared by the independent auditor during the annual audit process under current law;¹⁴
- Management letter; or
- Supplemental data requested by the Board of Governors of the State University System of Florida (Florida Board of Governors), the university’s board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability (OPPAGA).

Therefore, all other records are confidential and exempt from public records requirements.

Current law does not provide a comparable public meetings exemption for a portion of a university DSO meeting at which confidential and exempt information is discussed.

III. Effect of Proposed Changes:

CS/SB 318 creates a public meetings exemption for portions of a meeting of the university DSO board of directors, or the board’s executive committee or other committees of the board, at which a proposal seeking research funding from the DSO, or a plan or program for either initiating or supporting research is discussed.

⁷ Section 1004.28(1)(a)2.-3., F.S.

⁸ Board of Governors of the State University System of Florida, *State University System of Florida Consolidated Financial Statements* (Fiscal Year June, 30, 2010), at 10, available at <http://filbog.edu/about/budget/docs/2012-SUS-Consolidated-Financial-Statement-Manual.pdf>.

⁹ Chapters 119 and 286, F.S. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida’s Sunshine Law).

¹⁰ Section 1004.28, F.S.; see also *Palm Beach Community College Foundation, INC., v. WFTV, INC.*, 611 So.2nd 588 (4th DCA 1993); Op. Att’y Gen. Fla. 05-27 (2005); Op. Att’y Gen. Fla. 92-53 (1992) (providing that John and Mable Ringling Museum of Art Foundation, Inc., established pursuant to statute as a not-for-profit corporation to assist the museum in carrying out its functions by raising funds for the museum, is subject to Sunshine Law by virtue of its substantial ties with the museum).

¹¹ Section 11.45(8), F.S.

¹² Section 1004.28(5), F.S.

¹³ Section 1004.28(5), F.S.

¹⁴ Section 1004.28(5), F.S.

The bill provides a statement of public necessity, as required by the Florida Constitution, and establishes October 2, 2019 as the date for repeal of the public meetings exemption, unless the exemption is reviewed and reenacted by the Legislature, pursuant to the Open Government Sunset Review Act.

The bill's effective date is October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public records or public meetings exemption. This bill creates a new public meetings exemption; therefore, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records or public meetings exemption to contain a public necessity statement justifying the exemption. This bill creates a new public meetings exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Florida Board of Governors reported that if a state university receives funding for a research project or program from both state and private sources, it may be challenging to determine if the exemption from public meetings will apply.¹⁵

VIII. Statutes Affected:

This bill substantially amends section 1004.28 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 13, 2014:

The CS removes a provision exempting portions of meetings when the identity of a donor or a prospective donor is discussed.

- B. **Amendments:**

None.

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

¹⁵ Board of Governors of the State University System of Florida, *2014 Agency Bill Analysis for SB 318* (Nov. 20, 2013), at 2.



793024

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (5) of section 1004.28, Florida
Statutes, is amended to read:

1004.28 Direct-support organizations; use of property;
board of directors; activities; audit; facilities.—

(5) ANNUAL AUDIT; PUBLIC RECORDS EXEMPTION; PUBLIC MEETINGS
EXEMPTION.—



793024

11 (a) Each direct-support organization shall provide for an
12 annual financial audit of its accounts and records to be
13 conducted by an independent certified public accountant in
14 accordance with rules adopted by the Auditor General pursuant to
15 s. 11.45(8) and by the university board of trustees. The annual
16 audit report shall be submitted, within 9 months after the end
17 of the fiscal year, to the Auditor General and the Board of
18 Governors for review. The Board of Governors, the university
19 board of trustees, the Auditor General, and the Office of
20 Program Policy Analysis and Government Accountability shall have
21 the authority to require and receive from the organization or
22 from its independent auditor any records relative to the
23 operation of the organization. The identity of donors who desire
24 to remain anonymous shall be protected, and that anonymity shall
25 be maintained in the auditor's report.

26 (b) All records of the organization other than the
27 auditor's report, management letter, and any supplemental data
28 requested by the Board of Governors, the university board of
29 trustees, the Auditor General, and the Office of Program Policy
30 Analysis and Government Accountability shall be confidential and
31 exempt from ~~the provisions of~~ s. 119.07(1).

32 (c) Any portion of a meeting of the board of directors of
33 the organization, or of the executive committee or other
34 committees of such board, at which any proposal seeking research
35 funding from the organization or a plan or program for either
36 initiating or supporting research is discussed is exempt from s.
37 286.011 and s. 24(b), Art. I of the State Constitution. This
38 paragraph is subject to the Open Government Sunset Review Act in
39 accordance with s. 119.15 and shall stand repealed on October 2,



793024

40 2019, unless reviewed and saved from repeal through reenactment
41 by the Legislature.

42 Section 2. The Legislature finds that it is a public
43 necessity that any portion of a meeting of the board of
44 directors of a direct-support organization established under s.
45 1004.28, Florida Statutes, or of the executive committee or
46 other committees of such board, at which any proposal seeking
47 research funding from the organization or a plan or program for
48 either initiating or supporting research is discussed should be
49 held exempt from s. 286.011, Florida Statutes, and s. 24(b),
50 Article I of the State Constitution. The resources raised by
51 direct-support organizations are frequently used to initiate,
52 develop, and fund plans and programs for research that routinely
53 contain sensitive proprietary information, including university-
54 connected research projects, which provide valuable
55 opportunities for faculty and students and may lead to future
56 commercial applications. This activity requires the direct-
57 support organization to develop research strategies and evaluate
58 proposals for research grants that routinely contain sensitive
59 or proprietary information, including specific research
60 approaches and targets of investigation, the disclosure of which
61 could injure those conducting the research. Maintaining the
62 confidentiality of research strategies, plans, and proposals is
63 a hallmark of a responsible funding process, is practiced by the
64 National Science Foundation and the National Institutes of
65 Health, and allows for candid exchanges among reviewers. The
66 state has recognized these realities by expressly making most of
67 the records of direct-support organizations confidential and
68 exempt from the state's public records requirements, including



793024

69 proposals seeking research funding. Failure to close meetings in
70 which these activities are discussed would significantly
71 undermine the confidentiality of the strategies, plans, and
72 proposals themselves. Without the exemption from public meeting
73 requirements, the release during a public meeting of a proposal
74 seeking research funding from the direct-support organization or
75 a plan or program for either initiating or supporting research
76 would defeat the purpose of the public records exemption. It is
77 therefore the finding of the Legislature that the exemption from
78 public meeting requirements is a public necessity.

79 Section 3. This act shall take effect October 1, 2014.

80

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

82 And the title is amended as follows:

83 Delete everything before the enacting clause

84 and insert:

85

A bill to be entitled

86

An act relating to public meetings; amending s.

87

1004.28, F.S.; providing an exemption from public

88

meeting requirements for any portion of a meeting of

89

the board of directors of a university direct-support

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organization, or of the executive committee or other

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committees of such board, at which any proposal

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seeking research funding from the organization or a

93

plan or program for either initiating or supporting

94

research is discussed; providing for review and repeal

95

of the exemption; providing a statement of public

96

necessity; providing an effective date.

By Senator Stargel

15-00312-14

2014318__

A bill to be entitled

An act relating to public meetings; amending s. 1004.28, F.S.; providing an exemption from public meeting requirements for any portion of a meeting of the board of directors of a university direct-support organization, or of the executive committee or other committees of such board, at which the identity of a donor or prospective donor, a proposal seeking research funding from the organization, or a plan or program for initiating or supporting research is discussed; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (5) of section 1004.28, Florida Statutes, is amended to read:

1004.28 Direct-support organizations; use of property; board of directors; activities; audit; facilities.—

(5) ANNUAL AUDIT; PUBLIC RECORDS EXEMPTION; PUBLIC MEETINGS EXEMPTION.—

(a) Each university direct-support organization shall provide for an annual financial audit of its accounts and records to be conducted by an independent certified public accountant in accordance with rules adopted by the Auditor General pursuant to s. 11.45(8) and by the university board of trustees. The annual audit report shall be submitted, within 9

Page 1 of 5

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

15-00312-14

2014318__

months after the end of the fiscal year, to the Auditor General and the Board of Governors for review. The Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability ~~may shall have the authority to~~ require and receive from the organization or from its independent auditor any records relative to the operation of the organization. The identity of donors who desire to remain anonymous shall be protected, and that anonymity shall be maintained in the auditor's report.

(b) All records of the university direct-support organization other than the auditor's report, management letter, and any supplemental data requested by the Board of Governors, the university board of trustees, the Auditor General, and the Office of Program Policy Analysis and Government Accountability shall be confidential and exempt from ~~the provisions of~~ s. 119.07(1).

(c) Any portion of a meeting of the board of directors of the university direct-support organization, or of the executive committee or other committees of such board, at which the identity of a donor or prospective donor, a proposal seeking research funding from the organization, or a plan or program for initiating or supporting research is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that any portion of a meeting of the board of

Page 2 of 5

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

15-00312-14 2014318__
 59 directors of a university direct-support organization
 60 established under s. 1004.28, Florida Statutes, or of the
 61 executive committee or other committees of such board, at which
 62 the identity of a donor or prospective donor, a proposal seeking
 63 research funding from the organization, or a plan or program for
 64 initiating or supporting research is discussed be exempt from s.
 65 286.011, Florida Statutes, and s. 24(b), Article I of the State
 66 Constitution.

67 (2) For the benefit of state universities and ultimately
 68 all the people of Florida, university direct-support
 69 organizations serve a vital role in raising donations from
 70 private sources. This undertaking demands great sensitivity and
 71 discretion, as donors frequently request anonymity and are
 72 concerned about the potential release of sensitive financial
 73 information. If a direct-support organization cannot honor those
 74 requests and protect such information from public disclosure, a
 75 potential donor may decline to contribute, thus hampering the
 76 ability of the direct-support organization to carry out its
 77 activities. The state has recognized these realities by making
 78 most of the records of direct-support organizations confidential
 79 and exempt from public records requirements, including the
 80 identity of donors and prospective donors. However, without the
 81 exemption from public meeting requirements, release of the
 82 identity of donors or prospective donors via a public meeting
 83 would defeat the purpose of the public records exemption.

84 (3) The Legislature also finds that the resources raised by
 85 university direct-support organizations are frequently used to
 86 initiate, develop, and fund plans and programs for research,
 87 including university-connected research projects that provide

15-00312-14 2014318__
 88 valuable opportunities for faculty and students and may lead to
 89 future commercial applications. Raising these resources for
 90 research projects requires university direct-support
 91 organizations to develop research strategies and evaluate
 92 proposals for research grants which routinely contain sensitive
 93 or proprietary information, including specific research
 94 approaches and areas of investigation, the disclosure of which
 95 could affect the integrity of those conducting the research. The
 96 ability to retain the confidentiality of research strategies,
 97 plans, and proposals is a hallmark of a responsible funding
 98 process and assures candid exchanges among peer and technical
 99 reviewers as practiced by the National Science Foundation and
 100 the National Institutes of Health. The state has recognized
 101 these realities by expressly making most of the records of the
 102 direct-support organizations in this state confidential and
 103 exempt from public records requirements, including proposals
 104 seeking research funding. Failure to close a meeting during
 105 which research strategies, plans, and proposals are discussed
 106 would significantly undermine the confidentiality of the
 107 strategies, plans, and proposals. Without the exemption from
 108 public meeting requirements, the release during a public meeting
 109 of a proposal seeking research funding from a university direct-
 110 support organization or of a plan or program for initiating or
 111 supporting research would defeat the purpose of the public
 112 records exemption.

113 (4) The Legislature therefore declares that it is a public
 114 necessity that any portion of a meeting of the board of
 115 directors of a university direct-support organization, or of the
 116 executive committee or other committees of such board, at which

15-00312-14

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117 the identity of a donor or prospective donor, a proposal seeking
118 research funding from the organization, or a plan or program for
119 initiating or supporting research is discussed be exempt from
120 public meeting requirements.

121 Section 3. This act shall take effect October 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/13/14

Meeting Date

Topic Public Records / OSOs

Bill Number 318
(if applicable)

Name Warren Husband

Amendment Barcode _____
(if applicable)

Job Title _____

Address PO Box 10909
Street

Phone 850 205 9000

Tallahassee FL 32302
City State Zip

E-mail _____

Speaking: For Against Information

Representing Harbor Branch Oceanographic Institute Foundation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

3/13/14
Meeting Date

Topic Public Records Exemption

Bill Number 318
(if applicable)

Name Rick Maxey

Amendment Barcode _____
(if applicable)

Job Title Director Government Relations

Address 439 S. Florida Ave

Phone 863-583-9050

Lakeland FL 33801
City State Zip

E-mail rmaxey@floridapolytechnic.edu
212

Speaking: For Against Information

Representing Florida Polytechnic University

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)

3/13/14

Meeting Date

Topic Public Records Exempt

Bill Number SB 318

Name Kathleen Daly

Amendment Barcode 793024
(if applicable)

Job Title ASSIST VP - GOV. REL

Address Westcott

Phone _____

Street

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing Florida State Univ

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 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

January 17, 2014

The Honorable Jeremy Ring
Senate Governmental Oversight and Accountability Committee, Chair
405 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

I am respectfully requesting that SB 318, related to *Public Meetings/University Direct-Support Organizations*, 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,

Kelli Stargel
Senator, District 15

Cc: Joe McVaney/ Staff Director
Bethany Jones/ AA

REPLY TO:

- 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

DON GAETZ
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.)

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

BILL: SB 520

INTRODUCER: Senator Richter

SUBJECT: Public Records/Dental Workforce Surveys

DATE: March 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 520 creates a public records exemption for personal identifying information provided by dentists or dental hygienists to the Department of Health (DOH) in their responses to dental workforce surveys. The information is designated confidential and exempt but must be disclosed by the DOH when authorized by the person who is identified or pursuant to court order. The bill allows the DOH to release the information for research purposes subject to specific conditions.

This bill exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

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

Because this bill creates a new public records exemption, it requires a two-thirds vote of each house of the Legislature for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Workforce Surveys

The DOH currently administers two optional workforce surveys—one for dentists and one for dental hygienists—which may be completed as part of licensure renewal. The DOH first offered the survey to dentists in 2009 and 89 percent of all dentists with active licenses responded.¹³ The DOH offered the survey to dental hygienists in 2011 and 87.9 percent responded.¹⁴ The data from both surveys are analyzed by the DOH Public Health Dental Program. The Public Health Dental Program disseminates the workforce reports on dentists and dental hygienists in two primary ways—by posting on the DOH website and through the Oral Health Florida Coalition, which is a broad-based organization of local stakeholders committed to improving oral health in Florida.¹⁵

Unlike dentists and dental hygienists, medical and osteopathic physicians are *required* to respond to a workforce survey as a condition of license renewal.¹⁶ Findings from the survey are used by the Physician Workforce Advisory Council, which provides advice and recommendations to the DOH on issues related to physician workforce planning.¹⁷ All personal identifying information contained in records provided by physicians in response to the survey is confidential and exempt.¹⁸

III. Effect of Proposed Changes:

The bill creates a public records exemption for dental workforce surveys that is similar to the exemption currently in law for physician workforce surveys. The exemption for physician workforce surveys makes disclosure of the information to research entities mandatory when the research entity has complied with the specified conditions. By contrast, SB 520 makes disclosure permissive.¹⁹ In addition, SB 520 provides that research entities holding dental workforce survey information will be “prohibited” from releasing identifying information, while research entities holding physician workforce surveys must “restrict” the release of identifying information.²⁰

Specifically, the bill provides that all personal identifying information contained in records provided by dentists or dental hygienists licensed under ch. 466, F.S., in response to a dental workforce survey and held by the DOH, is confidential and exempt²¹ from public records

¹³ Florida Department of Health, *Report on the 2009-2010 Workforce Survey of Dentists* (March 2011) (on file with the Senate Health Policy Committee).

¹⁴ Florida Department of Health, *2013 Bill Analysis, Economic Statement, and Fiscal Note for SB 1066*, on file with the Senate Health Policy Committee.

¹⁵ E-mail from Katherine Kamaya, Florida Department of Health (Jan. 23, 2014) (on file with the Senate Committee on Health Policy). Oral Health Florida, under the facilitation of the Florida Public Health Institute, is working with national, state, and local stakeholders to improve oral health in Florida. The coalition’s mission is to increase public understanding of and public support for programs and policies that aim to improve oral health in Florida.

¹⁶ See ss. 458.3191 and 459.0081, F.S.

¹⁷ Section 381.4018, F.S.

¹⁸ See ss. 458.3193 and 459.0083, F.S.

¹⁹ SB 520 is the substance of bills that have either passed, or been considered by, the Senate in each of the following Sessions: 2010, 2011, 2012, and 2013. All prior bills made disclosure of the information to research entities mandatory when the research entity complied with the required conditions for disclosure.

²⁰ Section 458.3193(3), F.S.

²¹ There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. See *supra* note 6.

requirements. However, the DOH must disclose the information under the following circumstances:

- With the express written consent of the person who is identified or the person's legally authorized representative; or
- By court order upon a showing of good cause.

In addition, the DOH may disclose the information to a research entity, if the entity:

- Seeks the record or data pursuant to a research protocol approved by the DOH;
- Maintains the records in accordance with the protocol; and
- Enters into a purchase and data-use agreement with DOH. The agreement must restrict the release of information that would identify individuals, limit the use of records or data to the approved research protocol, and prohibit any other use of the records or data.

The bill authorizes the DOH to deny a research entity's request if the protocol provides for intrusive follow-back contacts, does not plan for the destruction of confidential records after the research is concluded, is administratively burdensome, or does not have scientific merit.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and saved from repeal by the Legislature. It also provides a statement of public necessity as required by the Florida Constitution.²² The statement finds that preserving the confidentiality of the information will result in more candid responses to the surveys, which, in turn, are important to addressing the availability of the dental workforce in Florida.

The bill will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Section 24(c), Art. I of the Florida Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Section 24(c), Art. I of the Florida Constitution requires a public necessity statement for a newly created public records or public meetings exemption. Because this bill creates a new public records exemption, it includes a public necessity statement.

²² Section 24(c), Art. I of the Florida Constitution.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

SB 520 may create a minimal fiscal impact for the DOH because staff responsible for complying with public records requests may need training related to the new public records exemption. In addition, the DOH may incur costs associated with redacting the confidential and exempt information prior to releasing a record. These costs, however, can be absorbed by the DOH as part of current operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 466.051 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Richter

23-00421-14

2014520__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 466.051, F.S.; providing an exemption from public
 4 records requirements for information contained in
 5 dental workforce surveys submitted by dentists or
 6 dental hygienists to the Department of Health;
 7 providing exceptions to the exemption; providing for
 8 future legislative review and repeal of the exemption
 9 under the Open Government Sunset Review Act; providing
 10 a statement of public necessity; providing an
 11 effective date.

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

15 Section 1. Section 466.051, Florida Statutes, is created to
 16 read:

17 466.051 Confidentiality of certain information contained in
 18 dental workforce surveys.-

19 (1) Personal identifying information that is contained in a
 20 record provided by a dentist or dental hygienist licensed under
 21 this chapter in response to a dental workforce survey and held
 22 by the Department of Health is confidential and exempt from s.
 23 119.07(1) and s. 24(a), Art. I of the State Constitution.

24 Personal identifying information in such a record:

25 (a) Shall be disclosed with the express written consent of
 26 the individual to whom the information pertains or the
 27 individual's legally authorized representative.

28 (b) Shall be disclosed by court order upon a showing of
 29 good cause.

Page 1 of 3

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

23-00421-14

2014520__

30 (c) May be disclosed to a research entity, if the entity
 31 seeks the records or data pursuant to a research protocol
 32 approved by the Department of Health, maintains the records or
 33 data in accordance with the approved protocol, and enters into a
 34 purchase and data-use agreement with the department, the fee
 35 provisions of which are consistent with s. 119.07(4). The
 36 department may deny a request for records or data if the
 37 protocol provides for intrusive follow-back contacts, does not
 38 plan for the destruction of the confidential records after the
 39 research is concluded, is administratively burdensome, or does
 40 not have scientific merit. The agreement must prohibit the
 41 release of information by the research entity which would
 42 identify individuals, limit the use of records or data to the
 43 approved research protocol, and prohibit any other use of the
 44 records or data. Copies of records or data issued pursuant to
 45 this paragraph remain the property of the department.

46 (2) This section is subject to the Open Government Sunset
 47 Review Act in accordance with s. 119.15 and shall stand repealed
 48 on October 2, 2019, unless reviewed and saved from repeal
 49 through reenactment by the Legislature.

50 Section 2. The Legislature finds that it is a public
 51 necessity that personal identifying information that is
 52 contained in a record provided by a dentist or dental hygienist
 53 licensed under chapter 466, Florida Statutes, who responds to a
 54 dental workforce survey be made confidential and exempt from
 55 disclosure. Candid and honest responses by licensed dentists or
 56 dental hygienists to the workforce survey will ensure that
 57 timely and accurate information is available to the Department
 58 of Health. The Legislature finds that the failure to maintain

Page 2 of 3

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

23-00421-14

2014520__

59 the confidentiality of such personal identifying information
60 would prevent the resolution of important state interests to
61 ensure the availability of dentists or dental hygienists in this
62 state.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/13/14
Meeting Date

Topic Public Records Exemption Dentists

Bill Number SB 520
(if applicable)

Name Casey Stautamire

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 118 E Jefferson St.

Phone 850-224-1089

Street

Tallahassee

FL

32309

City

State

Zip

E-mail cstautamire@floridadental.org

Speaking: For Against Information

Representing Florida Dental 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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

March 11, 2014

The Honorable Jeremy Ring, Chair
Committee on Government Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

Thank you for scheduling Senate Bill 520, a Public Records bill related to the Dental Workforce Survey, for hearing in your committee on Thursday, March 13, 2014.

Like many members I am experiencing scheduling problems. I respectfully request that my legislative assistant, Becky Kokkinos, be allowed to present my bill on my behalf.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR GARRETT RICHTER

President Pro Tempore
23rd District

COMMITTEES:

Gaming, *Chair*
Appropriations
Appropriations Subcommittee on Education
Appropriations Subcommittee on Health
and Human Services
Banking and Insurance
Commerce and Tourism
Judiciary
Rules
Transportation

JOINT COMMITTEE:

Joint Legislative Budget Commission

February 5, 2014

The Honorable Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Ring:

Senate Bill 520, Public Records to a Dental Workforce Survey, has been referred to the Committee on Governmental Oversight and Accountability. I would appreciate the placing of this bill on the committee's agenda at your earliest convenience.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Garrett Richter".

Garrett Richter

cc: Joe McVaney, Staff Director

REPLY TO:

- 3299 E. Tamiami Trail, Suite 203, Naples, Florida 34112-4961 (239) 417-6205
- 404 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5023
- 25 Homestead Road North, Suite 42 B, Lehigh Acres, Florida 33936 (239) 338-2777

Senate's Website: www.flsenate.gov

DON GAETZ
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.)

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

BILL: CS/SB 694

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Garcia and Flores

SUBJECT: Diabetes Advisory Council

DATE: March 14, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Favorable
2.	<u>McVaney/Jones</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 694 directs the Diabetes Advisory Council, in conjunction with the Department of Health (DOH), the Agency for Health Care Administration (AHCA), and the Department of Management Services (DMS), to prepare a report regarding the impact of diabetes on state-funded or operated programs, including Medicaid, the State Group Insurance Program, and public health programs. Required components of the report include: the health consequences and financial impact of diabetes; the effectiveness of diabetes programs implemented by each agency; a description of the coordination among the agencies; and development and ongoing revision of an action plan for reducing and controlling the incidence of diabetes.

The report is due to the Governor, the President of the Senate, and the Speaker of the House of Representatives by January 10 of each odd-numbered year.

II. Present Situation:

Diabetes is a group of diseases in which the body produces too little insulin,¹ is unable to use the insulin efficiently, or both. When diabetes is not controlled, glucose and fats remain in the blood and, over time, damage vital organs.

¹ Insulin is a hormone that allows glucose (sugar) to enter cells and be converted to energy.

The most common forms of diabetes are:

- **Type 1:** usually first diagnosed in children and young adults and accounts for about 5 percent of all diagnosed cases. Type 1 diabetes is an autoimmune disease that may be caused by genetic, environmental, or other risk factors. At this time, there are no known ways to prevent type 1 diabetes and treatment requires the use of insulin by injection or pump.
- **Type 2:** accounts for about 95 percent of diagnosed diabetes in adults and is usually associated with older age, obesity and physical inactivity, family history, or a personal history of gestational diabetes. Studies have shown that healthy eating, regular physical activity, and weight loss can prevent or delay the onset of type 2 diabetes.
- **Gestational diabetes:** develops and is diagnosed as a result of pregnancy in 2 to 10 percent of pregnant women. Gestational diabetes can cause health problems during pregnancy for both the child and mother. Children whose mothers have gestational diabetes have an increased risk of developing obesity and type 2 diabetes.

Complications of diabetes include: heart disease and stroke, high blood pressure (hypertension), blindness and eye problems, kidney disease, nervous system disease, and amputations. Death rates for heart disease and the risk of stroke are about two to four times higher among adults with diabetes than among those without diabetes. However, diabetes and its potential health consequences can be managed through physical activity and diet, self-management training, and, when necessary, medication.

People with “prediabetes” are at high risk of developing type 2 diabetes, heart disease, and stroke. Their blood glucose levels are higher than normal, but not high enough to be classified as diabetes. Although an estimated 33 percent of U.S. adults have prediabetes, less than 10 percent of them report having been told they have the condition. Thus, awareness of the risk is low. People with prediabetes who lose 5 to 7 percent of their body weight and get at least 150 minutes per week of moderate physical activity can reduce the risk of developing type 2 diabetes by 58 percent.²

Minorities have a higher prevalence of diabetes than whites, and some minorities have higher rates of diabetes-related complications and death. Studies have found that African Americans are from 1.4 to 2.2 times more likely to have diabetes than whites. Hispanic Americans have a higher prevalence of diabetes than non-Hispanic people, with the highest rates for type 2 diabetes among Puerto Ricans and Hispanic people living in the Southwest and the lowest rate among Cubans.³

Currently, 25.8 million people in the United States (8.3 percent of the population) have diabetes. Of these, 7.0 million have undiagnosed diabetes. The CDC estimates that if current trends continue, one in three adults in the United States will have diabetes by 2050.⁴ According to the

² U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Diabetes Report Card* (2012), available at <http://www.cdc.gov/diabetes/pubs/reportcard.htm> (last visited March 10, 2014).

³ Agency for Healthcare Research and Quality, *Diabetes Disparities Among Racial and Ethnic Minorities* <http://www.ahrq.gov/research/findings/factsheets/diabetes/diabdsp/index.html>.

⁴ *Supra* note 2.

DOH, 10.4 percent of adults with diabetes living in Florida have received a diagnosis. Approximately 767,666 are undiagnosed.⁵

In 1994, 25 states had prevalence⁶ of diagnosed diabetes among adults aged 18 years of age or older of less than 4.5 percent, 24 states, including Florida, had prevalence of 4.5 to 6.0 percent, and only one state had prevalence greater than 6.0 percent. In 2010, all states had prevalence greater than 6.0 percent, 15 of these exceeded 9.0 percent.⁷ In 2012, prevalence of diagnosed diabetes in Florida adults is estimated at 11.4 percent, or 1.7 million people.⁸ Diabetes is the sixth leading cause of death in Florida.⁹

The American Diabetes Association has recently released a report updating its earlier studies (2002, 2007) estimating the economic burden of diagnosed diabetes. In 2012, the total estimated cost of diagnosed diabetes in the United States was \$245 billion, including \$176 billion in direct medical costs and \$69 billion in reduced productivity. This represents a 41 percent increase over the 2007 estimate. The largest components of these costs are hospital inpatient care (43 percent) and medications to treat complications (18 percent). People with diagnosed diabetes incur average medical costs of about \$13,700 per year, of which about \$7,900 is attributed to diabetes. Care for people with diagnosed diabetes accounts for more than one in five dollars spent on health care in the United States, and more than half of that is attributable to diabetes. Overall, average medical expenses for a person with diabetes are 2.3 times higher than they are for a person without diabetes.¹⁰

Diabetes Advisory Council

The Diabetes Advisory Council (Council) was created to guide statewide policy on diabetes prevention, diagnosis, education, care, treatment, impact, and costs. It serves in an advisory capacity to the DOH, other agencies, and the public. The Council consists of 26 members appointed by the Governor who have experience related to diabetes. Twenty-one of the members are representatives of a broad range of health and public health-related interests. The remaining five members are representatives of the general public, at least three of whom are affected by diabetes. The Council meets annually with the Surgeon General to make recommendations regarding the public health aspects of the prevention and control of diabetes.¹¹

⁵ Florida Department of Health, *Florida State Health Improvement Plan 2012 – 2015* (April 2012), available at: <http://www.floridahealth.gov/public-health-in-your-life/about-the-department/documents/state-health-improvement-plan.pdf> (last visited March 10, 2014).

⁶ Percentage of the specified population with the condition.

⁷ U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, *Maps of Trends in Diagnosed Diabetes* (Nov. 2011), available at http://www.cdc.gov/diabetes/statistics/slides/maps_diabetesobesity_trends.pdf (last visited March 10, 2014).

⁸ E-mail from Trina Thompson, Florida Department of Health, to Bryan Wendel, Government Analyst, Florida Department of Health (Feb. 12, 2014) (on file with the Senate Health Policy Committee). County-level data, including information about risk factors, is posted on *Florida Charts*, <http://www.floridacharts.com/charts/ChronicDiseases/> (last visited March 10, 2014).

⁹ *Florida Mortality Atlas*, <http://www.floridacharts.com/charts/MortAtlas.aspx> (last visited March 10, 2014).

¹⁰ American Diabetes Association, *Economic Costs of Diabetes in the U.S. in 2012*, *Diabetes Care* 36: 1033 – 146, 2013, available at <http://care.diabetesjournals.org/content/36/4/1033.full.pdf+html> (last visited March 10, 2014).

¹¹ Section 385.203, F.S. The 2013 recommendations of the Council are on file with the Senate Health Policy Committee.

Florida Diabetes Prevention and Control

The Bureau of Chronic Disease Prevention and Health Promotion (Bureau) within the DOH was established in 1998 to improve individual and community health by preventing and reducing the impact of chronic diseases and disabling conditions, including diabetes. Diabetes-related activities of the Bureau include:

- Providing support to the Diabetes Advisory Council and the Florida Alliance for Diabetes Prevention and Care.
- Compiling, analyzing, translating, and distributing diabetes data.
- Increasing access to diabetes self-management education.
- Increasing access to diabetes medical care by advocating for the use of community health workers.
- Preventing diabetes in populations disproportionately affected by diabetes.
- Increasing diagnosis and treatment for prediabetes.
- Managing the Insulin Distribution Program.¹²

The Office of Minority Health administers the Closing the Gap grant program, which seeks to improve health outcomes and eliminate racial and ethnic health disparities in Florida by providing grants to increase community-based health promotion and disease prevention activities, including diabetes prevention.¹³

Medicaid

Medicaid is a joint federal and state funded program that provides health care for low income Floridians. The program is administered by the AHCA and financed with federal and state funds. Over 3.3 million Floridians are currently enrolled in Medicaid and the program's estimated expenditures for the 2012-2013 fiscal year were approximately \$21 billion.¹⁴ The statutory authority for the Medicaid program is contained in ch. 409, F.S.

In 2011, the Legislature passed HB 7107, creating the Statewide Medicaid Managed Care (SMMC) program as part IV of ch. 409, F.S.¹⁵ The program has two primary components: Managed Medical Assistance Program (MMAP) and Long Term Care Program. To implement MMAP, the law requires the AHCA to create an integrated managed care program for Medicaid enrollees that incorporates all of the minimum benefits for the delivery of primary and acute care.¹⁶ The enabling statute requires statewide implementation of MMAP to be completed by October 1, 2014.

¹² Florida Department of Health, *Resource Manual for the Florida Department of Health* (fiscal year 2012-2013) (on file with the Senate Health Policy Committee).

¹³ Sections 381.7353 – 381.7356, F.S.

¹⁴ Agency for Health Care Administration, *Florida Medicaid*, <http://ahca.myflorida.com/Medicaid/index.shtml> (last visited March 10, 2014).

¹⁵ See ch. 2011-134, L.O.F.

¹⁶ Health and Human Services Committee, Fla. House of Representatives, *PCB HHSC 11-01 Staff Analysis*, 25 (March 25, 2011).

State Group Insurance Program

Section 110.123, Florida Statutes, creates the State Group Insurance Program. As implemented by the DMS, the program offers four types of health plans from which an eligible employee may choose: a standard statewide Preferred Provider Organization (PPO) Plan, a Health Investor PPO Plan, a standard Health Maintenance Organization (HMO) Plan, or a Health Investor HMO Plan. In the 2012-2013 fiscal year, the State Group Insurance Program covered 169,804 members at a cost of \$1.85 billion.¹⁷

III. Effect of Proposed Changes:

The bill directs the Diabetes Advisory Council, in conjunction with the DOH, the AHCA, and the DMS, to submit a report by January 10 in each odd-numbered year to the Governor, the President of the Senate, and the Speaker of the House of Representatives, regarding the impact of diabetes on state funded or operated programs. Specifically, the report must include:

- Information on the public health consequences and financial impact of diabetes and its complications on the state, including the number of persons covered by Medicaid and the State Group Insurance Program, and the number of persons impacted by state diabetes programs and activities;
- A description and assessment of the effectiveness of diabetes programs and activities implemented by the agencies, the amount and source of their funding, and the cost savings they achieve;
- A description of the coordination among the agencies of programs, activities, and communications related to diabetes prevention and treatment;
- A detailed action plan for reducing and controlling the number of new cases of diabetes, including action steps to reduce its impact, expected outcomes of the plan, and benchmarks;

The bill has an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

¹⁷ Florida Department of Management Services, Division of State Group Insurance, *State Employees' Group Health Self-Insurance Trust Fund, Report on the Financial Outlook* (Dec. 13, 2013), available at <http://edr.state.fl.us/Content/conferences/healthinsurance/HealthInsuranceOutlook.pdf> (last visited March 8, 2014).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

This bill will have an indeterminate fiscal impact on the DOH in its capacity as staff support to the Diabetes Advisory Council, and a lesser, but still indeterminate, impact on the DOH, the AHCA and the DMS, in staff time needed to collect the data required by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 385.203 of the Florida Statutes.

IX. Additional Information: Florida Statutes:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 13, 2014:

The CS deletes from the bill a requirement that the Diabetes Advisory Council develop a detailed budget request.

B. Amendments:

None.



235948

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

- 1 **Senate Amendment**
- 2
- 3 Delete lines 52 - 55.

By Senator Garcia

38-00863-14

2014694__

1 A bill to be entitled
 2 An act relating to the Diabetes Advisory Council;
 3 amending s. 385.203, F.S.; requiring the council, in
 4 conjunction with the Department of Health, the Agency
 5 for Health Care Administration, and the Department of
 6 Management Services, to develop plans to manage,
 7 treat, and prevent diabetes; requiring a report to the
 8 Governor and Legislature; providing for contents of
 9 the report; providing an effective date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Present paragraph (c) of subsection (1) of
 14 section 385.203, Florida Statutes, is redesignated as paragraph
 15 (d), and a new paragraph (c) is added to that subsection, to
 16 read:

17 385.203 Diabetes Advisory Council; creation; function;
 18 membership.—

19 (1) To guide a statewide comprehensive approach to diabetes
 20 prevention, diagnosis, education, care, treatment, impact, and
 21 costs thereof, there is created a Diabetes Advisory Council that
 22 serves as the advisory unit to the Department of Health, other
 23 governmental agencies, professional and other organizations, and
 24 the general public. The council shall:

25 (c) In conjunction with the department, the Agency for
 26 Health Care Administration, and the Department of Management
 27 Services, submit by January 10 of each odd-numbered year to the
 28 Governor, the President of the Senate, and the Speaker of the
 29 House of Representatives a report containing the following

Page 1 of 2

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

38-00863-14

2014694__

30 information:
 31 1. The public health consequences and financial impact on
 32 the state from all types of diabetes and resulting health
 33 complications, including the number of persons with diabetes
 34 covered by Medicaid, the number of persons with diabetes who are
 35 insured by the Division of State Group Insurance, and the number
 36 of persons with diabetes who are impacted by state agency
 37 diabetes programs and activities.
 38 2. A description and an assessment of the effectiveness of
 39 the diabetes programs and activities implemented by each state
 40 agency, the amount and source of funding for such programs and
 41 activities, and the cost savings realized as a result of the
 42 implementation of such programs and activities.
 43 3. A description of the coordination among state agencies
 44 of programs, activities, and communications designed to manage,
 45 treat, and prevent all types of diabetes.
 46 4. The development of and revisions to a detailed action
 47 plan for reducing and controlling the number of new cases of
 48 diabetes and identification of proposed action steps to reduce
 49 the impact of all types of diabetes, identification of expected
 50 outcomes if the plan is implemented, and establishment of
 51 benchmarks for preventing and controlling diabetes.
 52 5. A detailed budget request that identifies the needs,
 53 costs, and resources required to implement the action plan,
 54 including a list of actionable items for consideration by the
 55 Governor and Legislature.
 56 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures

SENATOR RENE GARCIA

38th District

March 13, 2014

The Honorable Jeremy Ring
Chair, Governmental Oversight and Accountability Committee
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring:

Due to a scheduling conflict, I will not be able to present my bill *SB 694 Diabetes Advisory* at your committee meeting on Thursday, March 13, 2014. I ask that you allow a member of my staff *Jesus Tundidor* to present the bill on my behalf. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 38
RG:dm

CC: Joe McVaney, Staff Director

REPLY TO:

- 2100 Coral Way, Suite 505, Miami, Florida 33145 (305) 643-7200
- 312 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5040

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Communications, Energy, and Public Utilities, Vice
Chair
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and Human
Services
Transportation
Health Policy
Agriculture
Transportation

JOINT COMMITTEE:

Joint Committee on Administrative Procedures, Chair

SENATOR RENE GARCIA

38th District

February 18, 2014

The Honorable Jeremy Ring
Chair, Governmental Oversight and Accountability Committee
405 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Ring:

This letter should serve as a request to have my bill *SB 694 Diabetes Advisory Council* heard at the next possible committee meeting. If there is any other information needed please do not hesitate to contact me. Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "René García".

State Senator René García
District 38
RG:dm

CC: Joe McVaney, Staff Director

REPLY TO:

- 1490 West 68 St., Suite 201 Hialeah, FL 33014 (305) 364-3100
- 310 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

Senate's Website: www.flsenate.gov

DON GAETZ
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.)

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

BILL: CS/SB 834

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Latvala

SUBJECT: Legal Notices

DATE: March 14, 2014

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 834 makes internet access to legal notices free and more user friendly. A newspaper's legal notice webpage must be clearly titled, free, and may not require registration. The statewide website for legal notices will be free, searchable by case name and number, and keep legal notices on-line for certain periods of time. This bill repeals a provision which states that an error in a legal notice appearing on a newspaper's website or on the statewide website is harmless if the legal notice was correctly published in the print version of the newspaper.

II. Present Situation:

The publication of legal notices in newspapers is a long established practice. Legal notices and publication in newspapers occur for a variety of cases, such as when the government is taking an action¹ or when a plaintiff has not been able to serve a defendant.² In most civil cases, notice

¹ There are many types of situations where legal notices are required, and the publication requirements for those situations are particular to each law. An example would be a judicial sale, when there is a court order or judgment for the sale of real or personal property, pursuant to Chapter 45, F.S.

² In general, laws addressing constructive service of process by publication are located in chapter 49, Florida Statutes. Section 49.011, F.S., provides that service of process by publication is permitted in the following types of cases:

- (1) To enforce any legal or equitable lien or claim to any title or interest in real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.
- (2) To quiet title or remove any encumbrance, lien, or cloud on the title to any real or personal property within the jurisdiction of the court or any fund held or debt owing by any party on whom process can be served within this state.

must be published in a newspaper in the county where the lawsuit is filed once a week for four consecutive weeks.³ Foreclosure proceedings are published once a week for two weeks.⁴

The requirements for legal publication are located in Chapter 50, F.S. The law requires that publication must be in a newspaper that is printed and published at least once a week and that contains at least 25 percent of its words in the English language.⁵ The newspaper must qualify or be entered to qualify as a periodical at the post office in the county where it is published, and be generally available to the public for the purpose of publication of notices.⁶ All official notices and legal advertisements must be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified in statute.⁷

The amount a newspaper can charge for publication is standardized at 70 cents per square inch for the first insertion, and 40 cents per square inch for each subsequent insertion.⁸ Where the regular established minimum commercial rate per square inch of the newspaper publishing the official notice or legal advertisement is greater than the per square inch rate established in statute, the minimum commercial rate may be charged.⁹ If the government is required to publish a notice multiple times, a newspaper can only charge 85 percent of the allowable rate for the subsequent publications.¹⁰ The government can also procure publication through bids.¹¹

-
- (3) To partition real or personal property within the jurisdiction of the court.
 - (4) For dissolution or annulment of marriage.
 - (5) For the construction of any will, deed, contract, or other written instrument and for a judicial declaration or enforcement of any legal or equitable right, title, claim, lien, or interest thereunder.
 - (6) To reestablish a lost instrument or record which has or should have its situs within the jurisdiction of the court.
 - (7) In which a writ of replevin, garnishment, or attachment has been issued and executed.
 - (8) In which any other writ or process has been issued and executed which places any property, fund, or debt in the custody of a court.
 - (9) To revive a judgment by motion or scire facias.
 - (10) For adoption.
 - (11) In which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.
 - (12) In probate or guardianship proceedings in which personal service of process or notice is not required by the statutes or constitution of this state or by the Constitution of the United States.
 - (13) For termination of parental rights pursuant to part VIII of chapter 39 or chapter 63.
 - (14) For temporary custody of a minor child, under chapter 751.
 - (15) To determine paternity, but only as to the legal father in a paternity action in which another man is alleged to be the biological father, in which case it is necessary to serve process on the legal father in order to establish paternity with regard to the alleged biological father.

³ Section 49.10(1)(b), F.S.

⁴ Section 49.10(1)(b), F.S.

⁵ Section 50.011, F.S.

⁶ Section 50.011, F.S.

⁷ Section 50.061(4), F.S.

⁸ Section 50.061(2), F.S.

⁹ Section 50.061(3), F.S.

¹⁰ Section 50.061(1) and (2), F.S.

¹¹ Section 50.061(4), F.S.

The law requires that the following legal actions must be published on a newspaper's website at the same time that they appear in print:

constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof.¹²

Legal notices must be placed on a newspaper's website on the same day the notice appears in print and the front page of a newspaper's website must have a link to the legal notices webpage.¹³ The legal notices webpage must be searchable and free to the public.¹⁴ If there are size requirements for a printed legal notice, then the newspaper's website is required to optimize online visibility of the legal notice; in addition, the legal notices must be the dominant feature of the webpage.¹⁵ Effective July 1, 2013, a newspaper was required to provide free e-mail notification of publication of new legal notices.¹⁶

A newspaper is also required to place a legal notice on a statewide website maintained by the Florida Press Association.¹⁷ Finally, any error in the legal notice published on a newspaper's webpage or the statewide website is considered harmless if the printed legal notice was correct.¹⁸

III. Effect of Proposed Changes:

Newspaper Websites

Legal notices webpages will be titled "Legal Notices," "Legal Advertising" or use similar language. The legal notices webpages must also be the "leading" as well as dominant subject of the page.

If the legal notice is published in a newspaper, newspapers will be prohibited from charging a fee or requiring a person to register with the newspaper in order to view or search a legal notice webpage.

Statewide Website

The statewide legal notice website will be searchable by name and case number and legal notices will be posted for at least 90 days. Effective October 1, 2014, the statewide website will keep a legal notice posted for 18 months, be searchable, and free to the public.

¹² Section 50.031, F.S.

¹³ Section 50.0211(2), F.S.

¹⁴ Id.

¹⁵ Id.

¹⁶ Section 50.0211(4), F.S.

¹⁷ Section 50.0211(3), F.S. See www.floridapublicnotices.com.

¹⁸ Section 50.0211(5), F.S.

Conflicting Notices

The bill deletes s. 50.0211(5), F.S., which provides that an error in the internet version of a legal notice is harmless if the printed version is correct.¹⁹

The act is effective October 1, 2014.

Technical changes

Obsolete effective date clauses are removed from s. 50.0211, F.S., and editorial changes are made to ss. 50.0211 and 50.061, F.S.

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:

This bill prohibits newspapers and the Florida Press Association from charging fees for viewing legal notices on their websites. It is unknown if newspapers and the Florida Press Association are currently charging the public for viewing their legal notices websites and if this bill will stanch existing or potential revenue streams.

The Florida Press Association estimates that the cost associated with making changes to their website to conform to this bill is \$3,600.00, but may increase. The Florida Press Association did not have an estimate for the financial impact this bill will have on newspapers, but did state that only a few newspapers would be affected.²⁰

¹⁹ Section 50.0211(5), F.S. provides that “[a]n error in the notice placed on the newspaper or statewide website shall be considered a harmless error and proper legal notice requirements shall be considered met if the notice published in the newspaper is correct.”

²⁰ An e-mail dated March 7, 2014, from Sam Morley, General Counsel for the Florida Press Association, is on file with the Senate Government Operations and Accountability Committee.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 50.0211, F.S.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 13, 2014:

The CS removes clauses which permit, but do not require, a clerk of court to link his or her website to a newspaper's legal notices website.

The CS also removes a provision stating that if there is a conflict between the electronic and the printed versions of a legal notice, the printed version controls. The CS also deletes a provision stating that a person adversely affected by a mistake in a judicial sale notice is permitted to seek relief if the error is in the printed legal notice or appears on the statewide website.

- B. Amendments:

None.



530578

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 30 - 79

and insert:

~~charge~~. If there is a specified size and placement required for
a printed legal notice, the size and placement of the notice on
the newspaper's website must ~~should~~ optimize its online
visibility in keeping with the print requirements. The
newspaper's web pages that contain legal notices must ~~shall~~
present the legal notices as the dominant and leading subject



530578

11 matter of those pages. The newspaper's website must ~~shall~~
12 contain a search function to facilitate searching the legal
13 notices. A fee may not be charged, and registration may not be
14 required, for viewing or searching legal notices on a
15 newspaper's website if the legal notice is published in a
16 newspaper ~~This subsection shall take effect July 1, 2013.~~

17 (3) (a) If a legal notice is published in a newspaper, the
18 newspaper publishing the notice shall place the notice on the
19 statewide website established and maintained as an initiative of
20 the Florida Press Association as a repository for such notices
21 located at the following address: www.floridapublicnotices.com.

22 (b) A legal notice placed on the statewide website created
23 under this subsection must be:

- 24 1. Accessible and searchable by party name and case number.
25 2. Posted for a period of at least 90 consecutive days
26 after the first day of posting.

27 (c) The statewide website created under this subsection
28 shall maintain a searchable archive of all legal notices posted
29 on the publicly accessible website on or after October 1, 2014,
30 for 18 months after the first day of posting. Such searchable
31 archive shall be provided and accessible to the general public
32 without charge.

33 (4) Newspapers that publish legal notices shall, upon
34 request, provide e-mail notification of new legal notices when
35 they are printed in the newspaper and added to the newspaper's
36 website. Such e-mail notification shall be provided without
37 charge, and notification for such an e-mail registry shall be
38 available on the front page of the legal notices section of the
39 newspaper's website. ~~This subsection shall take effect July 1,~~



530578

40 ~~2013.~~

41 ~~(5) An error in the notice placed on the newspaper or~~
42 ~~statewide~~

43

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

45 And the title is amended as follows:

46 Delete lines 3 - 12

47 and insert:

48 F.S.; requiring legal notices to be posted on a
49 newspaper's website on web pages with specified
50 titles; prohibiting charging a fee or requiring
51 registration for viewing online legal notices;
52 establishing the period for which legal notices are
53 required to be published on the statewide website;
54 requiring that legal notices be archived on the
55 statewide website for a specified period; deleting a
56 provision relating to harmless error; amending s.
57 50.061, F.S.; clarifying

By Senator Latvala

20-01410-14

2014834__

A bill to be entitled

An act relating to legal notices; amending s. 50.0211, F.S.; authorizing clerks of court to provide links to legal notices web pages; prohibiting charging a fee or requiring registration for viewing online legal notices; establishing the period for which legal notices are required to be published on the statewide website; requiring that legal notices be archived on the statewide website for a specified period; providing that the printed version of a legal notice prevails if there is a conflict; providing applicability; amending s. 50.061, F.S.; clarifying payment provisions; providing an effective date.

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

Section 1. Section 50.0211, Florida Statutes, is amended to read:

50.0211 Internet website publication.—

(1) This section applies to legal notices that must be published in accordance with this chapter unless otherwise specified.

(2) Each legal notice must be posted ~~placed~~ on the newspaper's website on the same day that ~~the~~ printed notice appears in the newspaper, at no additional charge, in a separate web page titled "Legal Notices," "Legal Advertising," or comparable identifying language. A link to the legal notices web page shall be provided on the front page of the newspaper's website that provides access to the legal notices ~~without~~

Page 1 of 4

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

20-01410-14

2014834__

~~charge~~. A clerk of court may provide a link to a newspaper's legal notices web page but is not required to do so. Furthermore, a clerk of court is not required to provide a link to a newspaper's website that publishes legal notices if the clerk's web page where such links are posted identifies the links as a nonexhaustive list of links to legal notices. If there is a specified size and placement required for a printed legal notice, the size and placement of the notice on the newspaper's website must ~~should~~ optimize its online visibility in keeping with the print requirements. The newspaper's web pages that contain legal notices must ~~shall~~ present the legal notices as the dominant and leading subject matter of those pages. The newspaper's website must ~~shall~~ contain a search function to facilitate searching the legal notices. A fee may not be charged, and registration may not be required, for viewing or searching legal notices on a newspaper's website if the legal notice is published in a newspaper ~~This subsection shall take effect July 1, 2013.~~

(3) (a) If a legal notice is published in a newspaper, the newspaper publishing the notice shall place the notice on the website established and maintained as an initiative of the Florida Press Association as a repository for such notices located at the following address: www.floridapublicnotices.com.

(b) A legal notice placed on the statewide website created under this subsection must be:

1. Accessible and searchable by party name and case number.
2. Posted for a period of at least 90 consecutive days after the first day of posting.

(c) The statewide website created under this subsection

Page 2 of 4

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

20-01410-14 2014834__
 59 shall maintain a searchable archive of all legal notices posted
 60 on the publicly accessible website on or after October 1, 2014,
 61 for 18 months after the first day of posting. Such searchable
 62 archive shall be provided and accessible to the general public
 63 without charge.

(4) Newspapers that publish legal notices shall, upon
 64 request, provide e-mail notification of new legal notices when
 65 they are printed in the newspaper and added to the newspaper's
 66 website. Such e-mail notification shall be provided without
 67 charge, and notification for such an e-mail registry shall be
 68 available on the front page of the legal notices section of the
 69 newspaper's website. ~~This subsection shall take effect July 1,~~
 70 ~~2013.~~

(5) If there is a conflict or difference between a legal
 72 notice printed in a newspaper and the version posted on the
 73 statewide website, the version printed in the newspaper shall be
 74 used for purposes of meeting legal requirements. However, this
 75 subsection does not affect the right of a person to relief from
 76 a judicial sale based upon an error or omission in a legal
 77 notice printed in a newspaper or posted on the statewide website
 78 ~~An error in the notice placed on the newspaper or statewide~~
 79 ~~website shall be considered a harmless error and proper legal~~
 80 ~~notice requirements shall be considered met if the notice~~
 81 ~~published in the newspaper is correct.~~

Section 2. Subsections (2) and (3) of section 50.061,
 83 Florida Statutes, are amended to read:

50.061 Amounts chargeable.—

(2) The charge for publishing each such official public
 86 notice or legal advertisement shall be 70 cents per square inch
 87

20-01410-14 2014834__
 88 for the first insertion and 40 cents per square inch for each
 89 subsequent insertion, except that government notices required to
 90 be published more than once, ~~the cost of which whose cost~~ is
 91 paid for by the government and not paid in advance by or allowed
 92 to be recouped from private parties, may not be charged for the
 93 second and successive insertions at a rate greater than 85
 94 percent of the original rate.

(3) Where the regular established minimum commercial rate
 96 per square inch of the newspaper publishing such official public
 97 notices or legal advertisements is in excess of the rate herein
 98 stipulated, said minimum commercial rate per square inch may be
 99 charged for all such legal advertisements or official public
 100 notices for each insertion, except that government notices
 101 required to be published more than once, ~~the cost of which whose~~
 102 ~~cost~~ is paid for by the government and not paid in advance by or
 103 allowed to be recouped from private parties, may not be charged
 104 for the second and successive insertions at a rate greater than
 105 85 percent of the original rate.

Section 3. This act shall take effect October 1, 2014.
 106

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-13-14

Meeting Date

Topic _____

Bill Number SB 834
(if applicable)

Name Pete Dunbar

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe, #815

Phone 999-4100

Street

Tallahassee

City

State

Zip

E-mail pdunbar@deanward.com

Speaking: For Against Information

Representing Real Property Section, 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.

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

MAR. 13, '14

Meeting Date

Topic LEGAL NOTICES

Bill Number SB 834
(if applicable)

Name DEAN RIDINGS

Amendment Barcode 530578
(if applicable)

Job Title PRESIDENT

Address 336 E. COLLEGE AVE., STE 201
Street

Phone 850 212 8895

TALLAHASSEE
City State Zip

E-mail deanr@flpress.com

Speaking: For Against Information

Representing FLORIDA PRESS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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)

3.13.14

Meeting Date

Topic LEGAL NOTICE

Bill Number 834
(if applicable)

Name WAYNE MALANEY

Amendment Barcode 530578
(if applicable)

Job Title _____

Address P.O. Box 1254

Phone 933-7001

~~Street~~

TALLAHASSEE FL

E-mail _____

City

State

Zip

Speaking: For Against Information

Representing ALM + BAILEY PUBLISHING

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 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA

20th District

February 10, 2014

The Honorable Jeremy Ring
Senate Governmental Oversight and Accountability Committee
404 S. Monroe St., 525 K
Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully request that my bill, SB 834/Legal Notices, be placed on the agenda of the Senate Governmental Oversight and Accountability Committee at the earliest possible time.

This bill authorizes of the clerks of courts to provide legal notices on websites for 90 days at no cost to the public for viewing the website. It also eliminates the harmless error clause in the statute to satisfy due process concerns. In the event of a conflict between the printed version and the website version, the printed version prevails.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

JL:tc

CC: Joe McVaney, Staff Director

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 914

INTRODUCER: Senator Latvala

SUBJECT: State Contracting

DATE: March 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	Favorable
2.			AGG	
3.			AP	

I. Summary:

SB 914 requires state agencies to consider the prior relevant experience of a vendor when evaluating the responses to a request for proposal or invitation to negotiate. Currently, state agencies may consider prior relevant experience but are not required by law to do so.

II. Present Situation:

State Procurement of and Contracts for Personal Property and Services

Chapter 287, F.S., regulates state agency¹ procurement of personal property² and services.³ The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and contractual services as well as commodities needed to support agency activities, such as office supplies, vehicles, and information technology.⁴ The Division of State Purchasing in the DMS establishes statewide purchasing rules and negotiates contracts and purchasing agreements that are intended to leverage the state's buying power.

¹ As defined in s. 287.012(1), F.S., "agency" means any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however designated, of the executive branch of state government. "Agency" does not include the university and college boards of trustees or the state universities and colleges.

² Personal property" is not independently defined for purposes of ch. 287, F.S., but the chapter title for Chapter 287, F.S., is "Procurement of Personal Property and Services." Additionally, the definition of "commodity" in s. 287.012(5), F.S., is "any of the various supplies, materials, goods, merchandise, food, equipment, information technology, and other personal property, including a mobile home, trailer, or other portable structure that has less than 5,000 square feet of floor space, purchased, leased, or otherwise contracted for by the state and its agencies." This definition is used in Part I of Ch. 287, F.S., "Commodities, Insurance, and Contractual Services."

³ Local governments are not subject to the provisions of ch. 287, F.S. Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.

⁴ See ss. 287.032 and 287.042, F.S.

Agencies may use a variety of procurement methods, depending on the cost and characteristics of the needed good or service, the complexity of the procurement, and the number of available vendors. These include the following:

- Single source contracts, which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid, which are used when an agency determines that standard services or goods will meet needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals (RFP), which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN), which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.⁵

Criteria used to evaluate proposals received pursuant to a request for proposals must include, but are not limited to:

- Price;
- Renewal price, if renewal is contemplated; and
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor.⁶

In invitations to negotiate, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN.⁷

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.⁸ However, specified contractual services and commodities are not subject to competitive solicitation requirements.⁹

The chapter establishes a process by which a person may file an action protesting a decision or intended decision pertaining to contracts administered by the DMS, a water management district, or certain other agencies.¹⁰

⁵ See ss. 287.012(6) and 287.057, F.S.

⁶ Section 287.057(1)(b)3., F.S.

⁷ Section 287.057(1)(c)3., F.S.

⁸ Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

⁹ See s. 287.057(3)(f), F.S.

¹⁰ See s. 287.042(2)(c), F.S.

III. Effect of Proposed Changes:

The bill amends existing agency competitive procurement law in ch. 287, F.S., to require agencies to consider the prior relevant experience of a vendor when evaluating responses to a request for proposal or invitation to negotiate. Currently, agencies may consider prior relevant experience of a vendor but are not required by law to do so.

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

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 287.057 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By Senator Latvala

20-01398-14

2014914__

1 A bill to be entitled
 2 An act relating to state contracting; amending s.
 3 287.057, F.S.; revising the criteria for evaluating a
 4 proposal to include consideration of prior relevant
 5 experience of the vendor; revising the criteria for
 6 evaluating a response to an agency's invitation to
 7 negotiate to include consideration of prior relevant
 8 experience of the vendor; providing an effective date.
 9
 10 Be It Enacted by the Legislature of the State of Florida:
 11
 12 Section 1. Subsection (1) of section 287.057, Florida
 13 Statutes, is amended to read:
 14 287.057 Procurement of commodities or contractual
 15 services.—
 16 (1) The competitive solicitation processes authorized in
 17 this section shall be used for procurement of commodities or
 18 contractual services in excess of the threshold amount provided
 19 for CATEGORY TWO in s. 287.017. Any competitive solicitation
 20 shall be made available simultaneously to all vendors, must
 21 include the time and date for the receipt of bids, proposals, or
 22 replies and of the public opening, and must include all
 23 contractual terms and conditions applicable to the procurement,
 24 including the criteria to be used in determining acceptability
 25 and relative merit of the bid, proposal, or reply.
 26 (a) *Invitation to bid.*—The invitation to bid shall be used
 27 when the agency is capable of specifically defining the scope of
 28 work for which a contractual service is required or when the
 29 agency is capable of establishing precise specifications

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

20-01398-14

2014914__

30 defining the actual commodity or group of commodities required.
 31 1. All invitations to bid must include:
 32 a. A detailed description of the commodities or contractual
 33 services sought; and
 34 b. If the agency contemplates renewal of the contract, a
 35 statement to that effect.
 36 2. Bids submitted in response to an invitation to bid in
 37 which the agency contemplates renewal of the contract must
 38 include the price for each year for which the contract may be
 39 renewed.
 40 3. Evaluation of bids must include consideration of the
 41 total cost for each year of the contract, including renewal
 42 years, as submitted by the vendor.
 43 4. The contract shall be awarded to the responsible and
 44 responsive vendor who submits the lowest responsive bid.
 45 (b) *Request for proposals.*—An agency shall use a request
 46 for proposals when the purposes and uses for which the
 47 commodity, group of commodities, or contractual service being
 48 sought can be specifically defined and the agency is capable of
 49 identifying necessary deliverables. Various combinations or
 50 versions of commodities or contractual services may be proposed
 51 by a responsive vendor to meet the specifications of the
 52 solicitation document.
 53 1. Before issuing a request for proposals, the agency must
 54 determine and specify in writing the reasons that procurement by
 55 invitation to bid is not practicable.
 56 2. All requests for proposals must include:
 57 a. A statement describing the commodities or contractual
 58 services sought;

Page 2 of 4

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

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2014914__

- 59 b. The relative importance of price and other evaluation
60 criteria; and
- 61 c. If the agency contemplates renewal of the contract, a
62 statement to that effect.
- 63 3. Criteria that will be used for evaluation of proposals
64 ~~must shall~~ include, but are not limited to:
- 65 a. Price, which must be specified in the proposal;
- 66 b. If the agency contemplates renewal of the contract, the
67 price for each year for which the contract may be renewed; ~~and~~
68 c. Consideration of the total cost for each year of the
69 contract, including renewal years, as submitted by the vendor;
70 ~~and-~~
- 71 d. Consideration of prior relevant experience of the
72 vendor.
- 73 4. The contract shall be awarded by written notice to the
74 responsible and responsive vendor whose proposal is determined
75 in writing to be the most advantageous to the state, taking into
76 consideration the price and other criteria set forth in the
77 request for proposals. The contract file shall contain
78 documentation supporting the basis on which the award is made.
- 79 (c) *Invitation to negotiate.*—The invitation to negotiate is
80 a solicitation used by an agency which is intended to determine
81 the best method for achieving a specific goal or solving a
82 particular problem and identifies one or more responsive vendors
83 with which the agency may negotiate in order to receive the best
84 value.
- 85 1. Before issuing an invitation to negotiate, the head of
86 an agency must determine and specify in writing the reasons that
87 procurement by an invitation to bid or a request for proposal is

Page 3 of 4

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

20-01398-14

2014914__

- 88 not practicable.
- 89 2. The invitation to negotiate must describe the questions
90 being explored, the facts being sought, and the specific goals
91 or problems that are the subject of the solicitation.
- 92 3. The criteria that will be used for determining the
93 acceptability of the reply and guiding the selection of the
94 vendors with which the agency will negotiate must be specified.
95 The evaluation criteria must include consideration of prior
96 relevant experience of the vendor.
- 97 4. The agency shall evaluate replies against all evaluation
98 criteria set forth in the invitation to negotiate in order to
99 establish a competitive range of replies reasonably susceptible
100 of award. The agency may select one or more vendors within the
101 competitive range with which to commence negotiations. After
102 negotiations are conducted, the agency shall award the contract
103 to the responsible and responsive vendor that the agency
104 determines will provide the best value to the state, based on
105 the selection criteria.
- 106 5. The contract file for a vendor selected through an
107 invitation to negotiate must contain a short plain statement
108 that explains the basis for the selection of the vendor and that
109 sets forth the vendor's deliverables and price, pursuant to the
110 contract, along with an explanation of how these deliverables
111 and price provide the best value to the state.
- 112 Section 2. This act shall take effect July 1, 2014.

Page 4 of 4

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Appropriations
Appropriations Subcommittee on General
Government
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Environmental Preservation and Conservation
Gaming
Judiciary
Rules

SENATOR JACK LATVALA

20th District

February 11, 2014

The Honorable Jeremy Ring
Senate Governmental Oversight and Accountability Committee
404 S. Monroe St., 525 K
Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully request that my bill, SB 914/State Contracting, be placed on the agenda of the Senate Governmental Oversight and Accountability Committee at the earliest possible time.

This bill will revise the criteria for evaluating a proposal for a state contract to include consideration of prior relevant experience of the vendor.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

JL:tc

CC: Joe McVaney, Staff Director

REPLY TO:

28133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 198

INTRODUCER: Governmental Oversight and Accountability Committee, Commerce and Tourism Committee, and Senators Clemens and Latvala

SUBJECT: Social Media Privacy

DATE: March 14, 2014

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 198 prohibits employers from requiring or requesting an employee or a prospective employee to provide a user name, password, or other means of accessing a social media account, unless it is an account used for business purposes. An employer may not take an adverse employment action against an employee or refuse to hire a prospective employee based on a refusal to provide such access. Employers who violate these provisions may be subject to a civil action, and if the employee or prospective employee prevails, he or she may be granted injunctive relief or may recover actual damages or \$500 for each violation, whichever is greater. A prevailing employee or prospective employee may also recover court costs and reasonable attorney fees. The bill provisions do not apply to: an employer complying with a duty to monitor or retain employee communications pursuant to state or federal law; a self-regulatory organization defined in the Securities Exchange Act; or law enforcement agencies screening prospective employees or investigating employees.

II. Present Situation:

Federal and State Employee Protections

Under current law, employers are prohibited from discriminating against applicants or employees on the basis of disabilities, race or color, gender, national origin, religion, age, or genetic

information.¹ These prohibitions can be found in the Americans with Disabilities Act,² the Civil Rights Act of 1964,³ the Age Discrimination in Employment Act of 1967,⁴ and the Genetic Information Nondiscrimination Act of 2008.⁵ Additionally, the federal bankruptcy law makes it illegal for an employer to discriminate against an individual based on bankruptcy.⁶

Florida law also provides similar protections from discrimination on the basis of race, color, religion, sex, national origin, age, handicap, or marital status.⁷ Florida law also provides protection from employment discrimination on the basis of sickle-cell trait.⁸

Employers may not ask job applicants about the existence, nature, or severity of a disability. Applicants may be asked about their ability to perform specific job functions. In some cases a job offer may be conditioned on the results of a medical examination, but only if the examination is required for all entering employees in similar jobs. Medical examinations of employees must be job related and consistent with the employer's business needs.

Employers are not specifically prohibited from asking an employee or applicant his or her age or date of birth, race, national origin, gender, or status of pregnancy. In fact, it can be necessary for employers to track information about race for affirmative action purposes or applicant flow; the U.S. Equal Employment Opportunity Commission (EEOC) suggests the use of separate forms to keep information about race separate from the application. However, in general, with regard to interview questions, requests for certain information will be closely scrutinized to ensure that the inquiry was made for a lawful purpose, rather than for a purpose prohibited by a federal law. If the information is used in the selection decision and members of particular groups are excluded from employment, the inquiries can constitute evidence of discrimination. For example, unless the information is for such a legitimate purpose, pre-employment questions about race can suggest that race will be used as a basis for making selection decisions.

Social Media and Employment

In recent years, the use of social media by individuals has become widespread and pervasive. The largest websites boasts monthly average users of over 1.5 billion.⁹ Social media refers to

¹ More information is available on the U.S. Equal Employment Opportunity Commission website, "Discrimination by Type," available at <http://www.eeoc.gov/laws/types/index.cfm> (last visited Feb. 5, 2014). Gender discrimination also includes issues related to pregnancy, childbirth, related medical conditions, sexual harassment, and equal pay.

² 42 U.S.C. s. 12101 et. seq.

³ 42 U.S.C. s. 2000e et. seq.

⁴ 29 U.S.C. s. 621 et. seq.

⁵ 29 U.S.C. s. 1635 et. seq.

⁶ 11 U.S.C. s. 525.

⁷ Chapter 760, F.S., Florida Civil Rights Act.

⁸ Section 448.075, F.S.

⁹ Facebook reports the number of average monthly active users of 1.23 billion as of December 31, 2013 ("Facebook Reports Fourth Quarter and Full Year 2013 Results," available at <http://investor.fb.com/releasedetail.cfm?ReleaseID=821954> (last visited February 5, 2014)); Twitter reports the number of average monthly users of 241 million in October 2013 ("Twitter Reports Fourth Quarter and Fiscal Year 2013 Results," available at <https://investor.twitterinc.com/releasedetail.cfm?releaseid=823321> (last visited February 5, 2014)); LinkedIn reports a membership of 259 million members ("LinkedIn Announces Third Quarter 2013 Financial Results," available at <http://press.linkedin.com/News-Releases/319/LinkedIn-Announces-Third-Quarter-2013-Financial-Results> (last visited February 5, 2014)).

electronic communication through which users may create online communities to share information, ideas, personal messages, and other content.¹⁰ Social media is used for both personal and commercial purposes, with businesses primarily using the platform to interact with consumers. Individuals may use the platform for a variety of reasons, including social, business, and educational uses.

Increasingly, employers have used social media to monitor employees' behavior outside the workplace and to screen applicants for employment.¹¹ Employers indicate that reviewing information about prospective employees available online helps reduce legal liability associated with negligent hiring or may be used to discover or investigate otherwise impermissible behavior such as harassment of a co-worker.¹² However, access to social media accounts may also provide the employer information that it would not legally be permissible to inquire of an employee or an applicant, such as the nature of an individual's disability.¹³

Also, as part of the terms of use for many social networking websites, the user agrees not to disclose the user name and password information. Failure to adhere to the terms of use may result in the user account being limited, suspended, or terminated.¹⁴

Since 2012, several states have introduced legislation or enacted laws that limit an employer's or prospective employer's ability to require access to the social media accounts of its employees or applicants.¹⁵ A few states have also passed laws that provide protection for students by limiting the ability of educational institutions to require access to social media accounts.

Federal Law and Social Media

National Labor Relations Act

The National Labor Relations Board (NLRB) has issued guidance that certain work-related conversations may be protected concerted activity under the National Labor Relations Act (NLRA). The NLRA protects the rights of certain employees to organize into labor organizations and engage in concerted activity for the purposes of collective bargaining.¹⁶ The law prohibits

¹⁰Merriam-Webster definition, available at <http://www.merriam-webster.com/dictionary/social%20media> (last visited February 4, 2014).

¹¹ Sprague, Robert, *Invasion of the Social Networks: Blurring the Line Between Personal Life and the Employment Relationship*, 50 U. Louisville L. Rev. 1, 4 (2011). One study found that nearly 80 percent of those involved in hiring and recruiting individuals research the candidates on the Internet.

¹² Id. at 7-9, 19-27.

¹³ Id. at 11-12.

¹⁴ For more information, see Facebook. "Statement of Rights and Responsibilities," available at <http://www.facebook.com/terms.php> (last visited Feb. 17, 2014); LinkedIn, "User Agreement," available at http://www.linkedin.com/legal/user-agreement?trk=hb_ft_userag (last visited Feb. 17, 2014); and Instagram, "Terms of Use," available at <http://instagram.com/legal/terms/> (last visited Feb. 17, 2014).

¹⁵ The states who have enacted laws include Arkansas, California, Colorado, Illinois, Maryland, Michigan, Nevada, New Jersey, New Mexico, Oregon, Utah, and Washington. National Conference of State Legislatures, "Employer Access to Social Media Usernames and Passwords," available at <http://www.ncsl.org/research/telecommunications-and-information-technology/employer-access-to-social-media-passwords-2013.aspx> (last visited February 5, 2014). Links are available for legislation considered in 2012, 2013, and 2014.

¹⁶ 29 U.S.C. s. 181 et. seq. The NLRA does not apply to the federal government or any wholly owned government corporation, federal reserve banks, state government or its political divisions, those subject to the Railway Labor Act, agricultural laborers, independent contractors, or those employed by either a parent or spouse.

employers from interfering or restraining this activity. The guidance from the NLRB, provided in a series of memos from its General Counsel, advises that activity of social media in which terms and conditions of employment were addressed with other employees, is protected as “protected concerted activity.” The General Counsel also advises that social media policies should not be so broad as to prohibit activities that would be protected under federal law, and that an employee’s “gripes” are not protected activity if they are not made in relation to group activity among employees.¹⁷

Stored Communications Act

Some courts have found some privacy right exists under the Stored Communications Act (SCA). The SCA, enacted in 1986, makes it unlawful for anyone who “intentionally accesses without authorization a facility through which an electronic communications service is provided; or intentionally exceeds an authorization to access such facility and thereby obtains, alters, or prevents authorized access to a wire or electronic communication while it is in the electronic storage in such system...”¹⁸ The SCA includes some exceptions to its provisions, including conduct authorized by the person or entity providing the electronic communications service, by a user of that service, or certain governmental agencies with specific authorization.

A few courts have found that the SCA provides individuals with some privacy rights. For example, *Ehling v. Monmouth-Ocean Hospital Service Corp.*, involved screenshots of an employee’s Facebook wall that were provided to a supervisor by a co-worker. Based on the information provided in these screenshots, the employer took adverse employment action against the employee, and the employee brought suit alleging violations of the Stored Communications Act and invasion of privacy, among other claims. The court held that a Facebook wall post met the definition of an electronic communication and is held in electronic storage on the Facebook servers.¹⁹ If a user chooses to make posts on her or his Facebook wall private, meaning that it is not publicly available, then it would be protected under the SCA.²⁰

Social Networking Online Protection Act

The Social Networking Online Protection Act was introduced in the U.S. House of Representatives in 2013. It prohibits employers from requiring or requesting employees or applicants to provide a user name, password, or any other means of accessing a private email or social networking account. It also provides for civil penalties and injunctive relief for violations of its provisions.²¹

III. Effect of Proposed Changes:

Section 1 creates s. 448.077, F.S., to limit an employer’s access to employees’ social media accounts.

¹⁷ The NLRB and Social Media, available at <http://www.nlr.gov/news-outreach/fact-sheets/nlr-and-social-media> (last visited February 10, 2014).

¹⁸ 18 U.S.C. s. 2701

¹⁹ 2013 WL 4436539 (D.N.J. Aug. 20, 2013).

²⁰ Id. citing *Viacom Int’l Inc. v. YouTube, Inc.* 253 F.R.D. 256, 265 (S.D.N.Y. 2008); *Crispin v. Christian Audiger, Inc.* 717 F.Supp.2d 965, 991 (C.D. Cal 2010); cf. *Snow v. DirecTV, Inc.* 450 F.3d 1314, 1321 (11th Cir. 2006).

²¹ H.R. 537 (113th Congress). The bill was referred to the Subcommittee on Workplace Protections on April 23, 2013.

“Social media account” is defined as an interactive account or profile that an individual establishes through an electronic application, service, or platform that is used to generate or store content, such as blogs, instant messages, or e-mail not generally available to the public.

The bill provides that an employer²² may not require or request an employee or prospective employee to disclose the username, password, or other means of access to a social media account maintained by the employee or prospective employee. The employer may not require or request an employee or prospective employee to provide the employer access to the employee or prospective employee’s social media account if its contents are not available to the general public. Nothing in the bill prevents an employer from accessing and viewing publicly available information on an employee’s social media account. However, an employer may request or require access to social media accounts used for “business purposes.” The term “business purpose” is not defined, and the application of the term is unclear. For example, it is unknown if a court would interpret the term to apply only to a social media account used *exclusively* for “business purposes” or if a single posting about an employer on an account would allow the employer to request or require access.

The bill prohibits the employer from taking any retaliatory personnel action against an employee for refusing to allow access to his or her social media account.²³ An employer may not refuse or fail to hire an individual based on a refusal to allow access to his or her social media account.

The bill provides a private right of action against an employer who violates the provisions of the bill. The action must be brought within two years of occurrence of the violation. An employee or prospective employee may recover damages in the amount of actual damages or \$500 per violation, whichever is greater, and may seek injunctive relief to enjoin the employer from continued violations. The bill provides that a prevailing plaintiff may recover court costs and reasonable attorney fees. Civil actions may be brought in a court in the county in which the employee or prospective employee resides or where the alleged violation occurred.

The bill provisions do not apply to:

- an employer complying with a duty to monitor or retain employee communications pursuant to state or federal law;
- a self-regulatory organization defined in the Securities Exchange Act;²⁴ or
- law enforcement agencies screening prospective employees or investigating employees.

Section 2 provides an effective date of October 1, 2014.

²² “Employer” is not defined in the bill.

²³ “Retaliatory personnel action” has the same meaning as provided in s. 448.101, F.S., which is the discharge, suspension, demotion, or any other adverse employment action in the terms and conditions of employment taken by an employer against an employee.

²⁴ 15 U.S.C. s. 78c(a)(26) defines “self-regulatory organization” as any national securities exchange, registered securities association, or registered clearing agency, or (solely for purposes of sections [78s \(b\)](#), [78s \(c\)](#), and [78w \(b\)](#) of Title 15 of the U.S. Code) the Municipal Securities Rulemaking Board established by section [78o-4](#) of Title 15.

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:

Businesses may incur costs in defending lawsuits alleging violations of these provisions.

C. Government Sector Impact:

CS/CS/SB 198 may have some indeterminate impact on the State Court System due to the availability of a new cause of action.

If the employers impacted by the bill include all public employers, all levels of government in Florida could incur costs in defending lawsuits alleging violations of these provisions.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not provide a definition of “employer.” Without a definition, the bill appears to apply to employers of every size, whether public or private.

VIII. Statutes Affected:

This bill creates section 448.077 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 March 13, 2014:

The committee substitute added a section specifying that the bill provisions do not apply to: an employer complying with a duty to monitor or retain employee communications pursuant to state or federal law; a self-regulatory organization defined in the Securities Exchange Act; or law enforcement agencies screening prospective employees or investigating employees.

CS by Commerce and Tourism on Feb. 17, 2014:

The committee substitute provides that an employer may request or require disclosure of the username, password, or other means of access to a social media account used for business purposes.

B. Amendments:

None.



605118

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 69 and 70
insert:

(5) This section does not prohibit or restrict an employer from complying with a duty to monitor or retain employee communications which is established under federal law, by a self-regulatory organization, as defined in the Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(26), or from screening



605118

10 a prospective employee who completes an application for
11 employment at a law enforcement agency or an employee who is the
12 subject of a conduct investigation performed by a law
13 enforcement agency.

14
15 ===== T I T L E A M E N D M E N T =====

16 And the title is amended as follows:

17 Delete line 15

18 and insert:

19 social media accounts under certain circumstances;
20 providing an effective



288674

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (605118)

Delete line 7
and insert:
communications which is established under state or federal law
or by a

By the Committee on Commerce and Tourism; and Senators Clemens
and Latvala

577-01845A-14

2014198c1

A bill to be entitled

An act relating to social media privacy; creating s.
448.077, F.S.; providing definitions; prohibiting an
employer from requesting or requiring access to a
social media account of an employee or prospective
employee; prohibiting an employer from taking
retaliatory personnel action for an employee's failure
to provide access to his or her social media account;
prohibiting an employer from failing or refusing to
hire a prospective employee who does not provide
access to his or her social media account; authorizing
civil actions for violations; providing for recovery
of attorney fees and court costs; specifying that an
employer is not prohibited from seeking access to
certain social media accounts; providing an effective
date.

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

Section 1. Section 448.077, Florida Statutes, is created to
read:

448.077 Employer access to employee social media accounts
prohibited.

(1) As used in this section, the term:

(a) "Electronic communications device" means a device that
uses electronic signals to create, transmit, or receive
information, including computers, telephones, personal digital
assistants, and other similar devices.

(b) "Retaliatory personnel action" has the same meaning as

Page 1 of 3

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577-01845A-14

2014198c1

in s. 448.101.

(c) "Social media account" means an interactive personal
account or profile that an individual establishes and uses
through an electronic application, service, or platform used to
generate or store content, including, but not limited to,
videos, still photographs, blogs, video blogs, instant messages,
audio recordings, or e-mail that is not available to the general
public.

(2) An employer may not do any of the following:

(a) Request or require an employee or prospective employee
to disclose a username, password, or other means of accessing a
social media account through an electronic communications
device.

(b) Request or require an employee or prospective employee
to take an action that allows the employer to gain access to the
employee's or prospective employee's social media account if the
account's contents are not available to the general public.

(c) Take retaliatory personnel action against an employee
for refusing to give the employer access to the employee's
social media account.

(d) Fail or refuse to hire a prospective employee as a
result of the prospective employee's refusal to allow the
employer access to the prospective employee's social media
account.

(3) An employee or prospective employee may bring a civil
action against an employer who violates this section in a court
located in the county in which the employee or prospective
employee resides or where the alleged violation occurred. Such
action must be brought within 2 years after the violation

Page 2 of 3

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577-01845A-14

2014198c1

59 occurred. The employee or prospective employee may seek
60 injunctive relief to restrain the employer from continuing to
61 act in violation of this section and may recover damages in an
62 amount equal to the actual damages arising from the violation or
63 \$500 per violation, whichever is greater. An employee or
64 prospective employee who prevails is entitled to recover court
65 costs and reasonable attorney fees.

66 (4) This section does not prevent an employer from
67 requesting or requiring an employee to disclose a username,
68 password, or other means of accessing a social media account
69 used for business purposes.

70 Section 2. This act shall take effect October 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic PRIVACY

Bill Number 198
(if applicable)

Name GAIL MARIE PERRY

Amendment Barcode _____
(if applicable)

Job Title CHAIR

Address PO Box 1766

Phone 954/850-4055

Street
Pompano Beach FL 33061
City State Zip

E-mail workingfolk.com

Speaking: For Against Information

Representing COMMUNICATIONS WORKERS of AMERICA COUNCIL of FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/13/14
Meeting Date

Topic SOCIAL MEDIA PRIVACY - Amendment 605¹¹⁸ Bill Number SB 198
(if applicable)

Name CARY HESTER Amendment Barcode 605118
(if applicable)

Job Title Chief of Police (Winter Haven)

Address P.O. Box 2026
Street

Phone 863-287-8438

Haines city FL 33845
City State Zip

E-mail ghester@mywinterhavan.com

Speaking: For Against Information

Representing Florida Police Chiefs Assn.

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 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/13/14
Meeting Date

Topic Social Media

Bill Number SB 198
(if applicable)

Name Brewster Bevis

Amendment Barcode _____
(if applicable)

Job Title Senior Vice President

Address 516 W. Adam St
Street

Phone 284-7173

Tallahassee FL 32301
City State Zip

E-mail bbevis@aib.com

Speaking: For Against Information

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/13/14

Meeting Date

Topic Social Media Privacy

Bill Number 198
(if applicable)

Name Samantha Pudgett

Amendment Barcode _____
(if applicable)

Job Title General Counsel

Address 227 South Adams St.
Street

Phone 222-4082

Tallahassee, FL 32301
City State Zip

E-mail Samantha@frf.org

Speaking: For Against Information

Representing Florida Retail Federation

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)

3/13/2014

Meeting Date

Topic Social Media Privacy

Bill Number 198
(if applicable)

Name Erin Hellkamp

Amendment Barcode 605118
(if applicable)

Job Title Associate Lobbyist

Address 225 South Adams Street, Suite 250

Phone 850-222-7718

Street

Tallahassee

FL

32301

City

State

Zip

E-mail guy@guyspearman.com

Speaking: For Against Information

Representing Florida Sheriffs 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 (10/20/11)



February 24, 2014

Editorials: Social-media privacy ought to be the law

- Pensacola News Journal

Pensacola News Journal -- Last week the Senate Commerce and Tourism Committee approved a proposal that would prevent employers from making workers or job applicants disclose their usernames and passwords to private social-media accounts. Under current state law, a person can be fired or denied employment if he refuses to do so, according to Sen. Jeff Clemens, a Democrat from Lake Worth.

That's why Clemens wants to make it illegal for bosses to force their way into your private online life. In these days, where the rules to protect digital privacy are largely unwritten, we applaud the state's initiative. But not everyone in Florida does.

Clemens told The News Service of Florida that big business is lobbying against the proposal.

A representative for the Florida Retail Foundation told legislators that employers need to be able to know when private messages are posted on company time and equipment. The group's concern is that an employer could be potentially liable for an employee's private post.

That doesn't justify the password snatching. It is, and shall remain, completely legal for an employer to look at all public postings made by an employee or applicant. And they should certainly do so. What a person deems appropriate to post for all the public to see is a legitimate gauge of a person's professionalism, or lack thereof. If a Starbucks barista is featured in a YouTube video twerking in green apron, his employer should probably know about it.

But it is the obligation of a conscientious employer to properly and intuitively vet a potential hire and then to evaluate that individual's professional performance once he or she is on the job. There's no need to reinvent the wheel when it comes to that evaluation. It goes without saying, employee misconduct is a phenomenon that predates the Internet.

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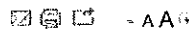
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What Others Say: Privacy matters

On social media, bosses must built out

Feb. 21, 2014 | Comments



This editorial also was published in the Pensacola News Journal.

FILED UNDER

Opinion
Editorials

Just when you thought your digital privacy rights were forever lost in some NSA database, guess who's coming to the rescue?

A bird? A plane? The Obama administration? (Fat chance!) No — it's the Florida Legislature.

Last week, the Senate commerce and tourism committee approved a proposal that would prevent employers from making workers or job applicants disclose their user names and passwords to private social-media accounts. Under current state law, a person can be fired or denied employment for refusing to do so, according to Sen. Jeff Clemens, a Democrat from Lake Worth.

That's why Mr. Clemens wants to make it illegal for bosses to force their way into your private online life. In these days, where the rules to protect digital privacy are largely unwritten, we applaud the state's initiative. But not everyone in Florida does.

Mr. Clemens told the News Service of Florida that big business is lobbying against the proposal. A representative of the Florida Retail Foundation told legislators that employers need to be able to know when private messages are posted on company time and equipment. The group's concern is that an employer could be liable for an employee's private post.

That doesn't justify the password snatching. It is — and shall remain — completely legal for an employer to look at all public postings made by an employee or applicant.

But it is the obligation of a conscientious employer to properly and intuitively vet a potential hire and then to evaluate that individual's professional performance once he or she is on the job. There's no need to reinvent the wheel when it comes to that evaluation. It goes without saying, employee misconduct is a phenomenon that predates the Internet.

As committee Chairwoman Nancy Detert, R-Venice, pointed out, employers are already allowed to conduct background checks, pull

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fingerprints, check credit reports and do independent Google checks, and businesses already have rules in place for misuse of company equipment. Employers have plenty of tools at their disposal.

But if a person makes the conscious decision to keep a portion of his or her online presence private, that privacy must be protected. An employer has no more right to intrude on that digital privacy than it does watching you shower, shave and get dressed for work. Now if someone would just tell that to the NSA.

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Forbid bosses from demanding Facebook passwords

February 24, 2014 | Sun Sentinel Editorial Board

The Internet is abuzz about whether Florida should pass a bill that bans employers from demanding access to their employees' Facebook, Twitter and social media accounts. Current state law allows employers to fire employees who don't comply.

Today, you can't throw a rock without hitting someone who has a social media account. Millions of us like to tweet, like, poke, post and provide daily, even up-to-the-minute online status updates.

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And most of do so — perhaps naively — without expecting the prying eyes of bosses, job recruiters or a sleuth from human resources.

Facebook was invented for people to display photos of their cats, for proud parents to record the silly faces their children make and for people to share information about momentous times in their lives and their communities. Some folks also like to post endless selfies, pictures snapped at wild parties and even photos of themselves in alluring attire.

Whatever their schtick, social media is where people go to express themselves about their lives, their loves and, yes, their job experiences.

Unless someone is posting on behalf of a business, what right — or compelling need — does a supervisor have to demand log-in or password information to an employee's personal life on social media? It's like having to hand over photo albums, love letter boxes and personal diaries.

"It's a matter of where we draw the line," Sen. Jeff Clemens, the Lake Worth Democrat sponsoring SB 198, told the News Service of Florida. "I've chosen to draw it at, you can't ask for somebody's password."

Sixteen other states, including New Jersey, Illinois and California, have enacted similar legislation.

The Florida bill prohibits an employer from requiring access to a social media account of an employee or job prospect. It also bans an employer from retaliating against an employee for not going along with such a request or using non-compliance as a reason not to hire. If an employer breaks the law, the bill would clear the way for workers to sue.

Don't expect the business community to hit the "like" button on this one.

Tallahassee lobbyists are trying to quash the effort to protect online privacy. The strongest argument fielded so far is that some companies need access to Facebook, Twitter and other accounts to conduct investigations, and limiting that ability could lead them to getting sued in connection to offensive or illegal content posted by someone on the payroll.

However, the bill allows employers to access and view public social media accounts. It just keeps them from demanding the keys to the car.

To cover employees who mix personal with professional, a Senate committee this week amended SB 198 so that companies can demand access when an employee's social media account is used for a business purpose. That's fair and reasonable.

The notion is not to block access to employee social media accounts when it makes sense — but to prevent bosses and businesses from poking around in your most personal photos, posts and tweets when they have nothing to do with your professional life.

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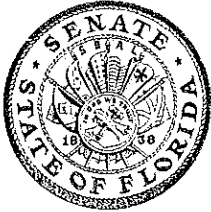
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SENATOR JEFF CLEMENS

27th District

February 17, 2014

Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Ring:

I respectfully request that SB 198 – Social Media Privacy be added to the agenda for the next Committee on Governmental Oversight and Accountability meeting.

Senate Bill 198 will make it illegal for an employer to request or require passwords to personal internet and social networking accounts as a condition of employment. The bill will also protect the privacy of current employees against employers demanding passwords to social media accounts.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Clemens".

Senator Jeff Clemens
Florida Senate District 27

cc: Joe McVaney, Staff Director

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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DON GAETZ
President of the Senate

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President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 390

INTRODUCER: Health Policy Committee and Senator Hays

SUBJECT: Public Records/Identifying Information of Personnel of Department of Health

DATE: March 11, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 390 creates a public records exemption for certain personal identification and location information of the Department of Health (DOH) personnel, their spouses, and children. The exemption applies to records of personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

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

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

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Public Records Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for identification and location information of certain current or former agency personnel and their spouses and children.¹³ Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;¹⁴
- Firefighters;¹⁵
- Justices and judges;¹⁶
- Local and statewide prosecuting attorneys;¹⁷
- Magistrates, administrative law judges, and child support hearing officers;¹⁸
- Local government agency and water management district human resources administrators;¹⁹
- Code enforcement officers;²⁰
- Guardians ad litem;²¹
- Specified Department of Juvenile Justice personnel;²²
- Public defenders and criminal conflict and civil regional counsel;²³
- Investigators or inspectors of the Department of Business and Professional Regulation;²⁴ and,
- County tax collectors.²⁵

Although the types of exempt information vary, the following information is exempt²⁶ from public records requirements for all personnel listed above:

- Home addresses and telephone numbers²⁷ of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and,
- Names and locations of schools and day care facilities attended by their children.

¹³ See s. 119.071(4)(d), F.S.

¹⁴ See s. 119.071(4)(d)2.a., F.S.

¹⁵ See s. 119.071(4)(d)2.b., F.S.

¹⁶ See s. 119.071(4)(d)2.c., F.S.

¹⁷ See s. 119.071(4)(d)2.d., F.S.

¹⁸ See s. 119.071(4)(d)2.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

¹⁹ See s. 119.071(4)(d)2.f., F.S.

²⁰ See s. 119.071(4)(d)2.g., F.S.

²¹ See s. 119.071(4)(d)2.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. A guardian ad litem may be a public employee, volunteer, or contract or appointed attorney. See s. 39.820(1), F.S.

²² See s. 119.071(4)(d)2.i., F.S.

²³ See s. 119.071(4)(d)2.j., F.S.

²⁴ See s. 119.071(4)(d)2.k., F.S.

²⁵ See s. 119.071(4)(d)2.l., F.S.

²⁶ See *supra* note 6.

²⁷ The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

If exempt information is held by an agency²⁸ that is not the employer of the protected person, he or she must submit a written request to that agency to maintain the public records exemption.²⁹

Department of Health

Regulation of Professions

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.³⁰ Practitioner regulation is conducted by the Division of Medical Quality (MQA) Assurance and includes the following professions:

- Emergency Medical Technicians and Paramedics (part III of ch. 401, F.S.)
- Acupuncture (ch. 457, F.S.)
- Allopathic Medicine, (ch. 458, F.S.)
- Osteopathic Medicine, (ch. 459, F.S.)
- Chiropractic Medicine, (ch. 460, F.S.)
- Podiatric Medicine (ch. 461, F.S.)
- Naturopathy (ch. 462, F.S.)
- Optometry (ch. 463, F.S.)
- Nursing, including Certified Nursing Assistants (ch. 464, F.S.)
- Pharmacy (ch. 465, F.S.)
- Dentistry (ch. 466, F.S.)
- Midwifery (ch. 467, F.S.)
- Speech-Language Pathology and Audiology (part I of ch. 468, F.S.)
- Nursing Home Administration (part II of ch. 468, F.S.)
- Occupational Therapy (part III of ch. 468, F.S.)
- Radiology (part IV of ch. 468, F.S.)
- Respiratory Therapy (part V of ch. 468, F.S.)
- Dietetics and Nutrition (part X of ch. 468, F.S.)
- Athletic Training (part XIII of ch. 468, F.S.)
- Orthotics, Prosthetics, and Pedorthics (part XIV of ch. 468, F.S.)
- Electrolysis (ch. 478, F.S.)
- Massage Therapy, (ch. 480, F.S.)
- Clinical Laboratory Personnel (part III of ch. 483, F.S.)
- Medical Physicists (part IV of ch. 483, F.S.)
- Opticianry (part I of ch. 484, F.S.)
- Hearing Aid Specialists (part II of ch. 484, F.S.)
- Physical Therapy Practice (ch. 486, F.S.)
- Psychology (ch. 490, F.S.)
- Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (ch. 491, F.S.)

²⁸ 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.

²⁹ Section 119.071(4)(d)3., F.S.

³⁰ Section 20.43(1)(g), F.S.

The following facilities are also regulated or inspected by MQA:³¹

- Body Piercing Establishments (s. 381.0075, F.S.)
- Brain and Spinal Cord Injury Programs (ss. 381.739 - 381.79, F.S.)
- Counterfeit-proof Prescription Vendors (s. 456.42(2), F.S.)
- Dental Laboratories (ch. 466, F.S.)
- Electrology Facilities (ch. 478, F.S.)
- Electrolysis Training Programs (ch. 478, F.S.)
- EMS Education Programs (ch. 401, F.S.)
- EMS Vehicle Permittees (ch. 401, F.S.)
- Environmental Testing Laboratories (s. 403.0625, F.S.)
- Massage Establishments (ch. 480, F.S.)
- Massage Schools (ch. 480, F.S.)
- Nursing Education Programs (ch. 464, F.S.)
- Office Surgery Sites (ch. 458 and ch. 459, F.S.)
- Optical Establishments (part I of ch. 484, F.S.)
- Pain Management Clinics (ch. 458 and ch. 459, F.S.)
- Pharmacies (ch. 465, F.S.)
- Trauma Centers (part II of ch. 395, F.S.)

As part of its enforcement responsibilities, the DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant,³² and legally sufficient,³³ and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.³⁴ The DOH also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.³⁵

The Consumer Services Unit (CSU) is the central intake for all complaints. The CSU includes investigators and analysts assigned to specific professions. Staff reviews each complaint for

³¹ Other entities regulated by the DOH, although not the MQA, include tanning facilities, X-ray sites, and radioactive materials users, among others.

³² The DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. *See* s. 456.073(1), F.S.

³³ A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred. *See* s. 456.073(1), F.S.

³⁴ Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board. *See* s. 456.073(2), F.S. If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee. If the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. *See* s. 456.073(4), F.S.

³⁵ Section 456.066, F.S.

possible violations of laws and rules and forwards only those complaints that are legally sufficient for investigation.³⁶

The Investigative Services Unit (ISU) is the investigative arm of MQA. Generally, steps in an investigation include:

- Obtaining medical records, documentation, and evidence related to the complaint;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses;
- Drafting and serving subpoenas for necessary information; and
- Drafting the investigative report.

The ISU also conducts health care facility inspections required before beginning practice and on a periodic basis.³⁷

Disability Determinations

The Division of Disability Determinations (DDD) is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). It is also responsible for the periodic Continuing Disability Review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.

Applications for Social Security disability benefits are filed at the claimant's local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant's medical sources. If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant's alleged disability. The claimant is also contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information. After the claim file is documented and a determination of medical eligibility is made, DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due the claimant.³⁸

Personal Identification and Location Information of DOH Personnel

Currently, the personal identification and location information of current or former employees or contractors³⁹ of the DOH whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the DOH, and that of their spouses and children, is not exempt from public

³⁶ Fla. Dept. of Health, *Consumer Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Dec. 17, 2013).

³⁷ Fla. Dept. of Health, *Investigative Services Unit Brochure*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/isu-brochure.pdf> (last visited Dec. 13, 2013).

³⁸ E-mail from Rhonda J. Wilson, Director, Division of Disability Determinations, Fla. Dept. of Health, to Bryan Wendel, Fla. Dept. of Health (Feb. 3, 2014) (on file with the Senate Health Policy Committee).

³⁹ Section 456.009(2), F.S., authorizes the DOH to contract with outside counsel and outside personnel for the investigation and prosecution of complaints.

records requirements, unless the information is subject to another exemption, e.g. former law enforcement officers.

III. Effect of Proposed Changes:

The bill expands the current public records exemptions for identification and location information of certain agency personnel to include current and former DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the DOH, and their spouses and children.⁴⁰ The bill makes the following information exempt from public records requirements:

- The home addresses, telephone numbers, dates of birth, and photographs of the DOH personnel;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by the children of the DOH personnel.

The bill provides that the exemption may be maintained only if the DOH personnel have made reasonable efforts to protect such information from being accessible through other means available to the public.

The exemption is subject to an existing general requirement that if exempt information is held by an agency that is not the employer of the protected agency personnel, then the protected agency personnel must submit to that agency a written request to maintain the public records exemption.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. Specifically, the statement indicates that the exemption is needed to protect the covered personnel from potential risk of harm resulting when individuals who are subject to investigation or inspection react negatively to an adverse outcome or decision.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁰ The personal identifying information of approximately 1,296 current or former DOH personnel and that of their families would be exempt. E-mail from Bryan Wendel, Fla. Dept. of Health, (Feb. 4, 2014) (on file with the Senate Health Policy Committee).

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

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill creates a new public records exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 390 may create a minimal fiscal impact on agencies, due to training staff on the new public records exemption and additional administrative costs to comply with the new public records exemption.

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

CS by Health Policy on February 4, 2014:

The CS expands the exemption to include personnel of the Department of Health whose duties include, or result in, the adjudication of eligibility for social security disability benefits.

- B. **Amendments:**

None.

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

By the Committee on Health Policy; and Senator Hays

588-01647-14

2014390c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for certain identifying
 5 information of specific current and former personnel
 6 of the Department of Health and the spouses and
 7 children of such personnel, under specified
 8 circumstances; providing for future legislative review
 9 and repeal of the exemption under the Open Government
 10 Sunset Review Act; providing a statement of public
 11 necessity; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:
 17 119.071 General exemptions from inspection or copying of
 18 public records.—
 19 (4) AGENCY PERSONNEL INFORMATION.—
 20 (d)1. For purposes of this paragraph, the term “telephone
 21 numbers” includes home telephone numbers, personal cellular
 22 telephone numbers, personal pager telephone numbers, and
 23 telephone numbers associated with personal communications
 24 devices.
 25 2.a.(I) The home addresses, telephone numbers, social
 26 security numbers, dates of birth, and photographs of active or
 27 former sworn or civilian law enforcement personnel, including
 28 correctional and correctional probation officers, personnel of
 29 the Department of Children and Families whose duties include the

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

588-01647-14

2014390c1

30 investigation of abuse, neglect, exploitation, fraud, theft, or
 31 other criminal activities, personnel of the Department of Health
 32 whose duties are to support the investigation of child abuse or
 33 neglect, and personnel of the Department of Revenue or local
 34 governments whose responsibilities include revenue collection
 35 and enforcement or child support enforcement; the home
 36 addresses, telephone numbers, social security numbers,
 37 photographs, dates of birth, and places of employment of the
 38 spouses and children of such personnel; and the names and
 39 locations of schools and day care facilities attended by the
 40 children of such personnel are exempt from s. 119.07(1).
 41 (II) The names of the spouses and children of active or
 42 former sworn or civilian law enforcement personnel and the other
 43 specified agency personnel identified in sub-sub-subparagraph
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 45 State Constitution.
 46 (III) Sub-sub-subparagraph (II) is subject to the Open
 47 Government Sunset Review Act in accordance with s. 119.15, and
 48 shall stand repealed on October 2, 2018, unless reviewed and
 49 saved from repeal through reenactment by the Legislature.
 50 b. The home addresses, telephone numbers, dates of birth,
 51 and photographs of firefighters certified in compliance with s.
 52 633.408; the home addresses, telephone numbers, photographs,
 53 dates of birth, and places of employment of the spouses and
 54 children of such firefighters; and the names and locations of
 55 schools and day care facilities attended by the children of such
 56 firefighters are exempt from s. 119.07(1).
 57 c. The home addresses, dates of birth, and telephone
 58 numbers of current or former justices of the Supreme Court,

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59 district court of appeal judges, circuit court judges, and
 60 county court judges; the home addresses, telephone numbers,
 61 dates of birth, and places of employment of the spouses and
 62 children of current or former justices and judges; and the names
 63 and locations of schools and day care facilities attended by the
 64 children of current or former justices and judges are exempt
 65 from s. 119.07(1).

66 d.(I) The home addresses, telephone numbers, social
 67 security numbers, dates of birth, and photographs of current or
 68 former state attorneys, assistant state attorneys, statewide
 69 prosecutors, or assistant statewide prosecutors; the home
 70 addresses, telephone numbers, social security numbers,
 71 photographs, dates of birth, and places of employment of the
 72 spouses and children of current or former state attorneys,
 73 assistant state attorneys, statewide prosecutors, or assistant
 74 statewide prosecutors; and the names and locations of schools
 75 and day care facilities attended by the children of current or
 76 former state attorneys, assistant state attorneys, statewide
 77 prosecutors, or assistant statewide prosecutors are exempt from
 78 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

79 (II) The names of the spouses and children of current or
 80 former state attorneys, assistant state attorneys, statewide
 81 prosecutors, or assistant statewide prosecutors are exempt from
 82 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

83 (III) Sub-sub-subparagraph (II) is subject to the Open
 84 Government Sunset Review Act in accordance with s. 119.15, and
 85 shall stand repealed on October 2, 2018, unless reviewed and
 86 saved from repeal through reenactment by the Legislature.

87 e. The home addresses, dates of birth, and telephone

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88 numbers of general magistrates, special magistrates, judges of
 89 compensation claims, administrative law judges of the Division
 90 of Administrative Hearings, and child support enforcement
 91 hearing officers; the home addresses, telephone numbers, dates
 92 of birth, and places of employment of the spouses and children
 93 of general magistrates, special magistrates, judges of
 94 compensation claims, administrative law judges of the Division
 95 of Administrative Hearings, and child support enforcement
 96 hearing officers; and the names and locations of schools and day
 97 care facilities attended by the children of general magistrates,
 98 special magistrates, judges of compensation claims,
 99 administrative law judges of the Division of Administrative
 100 Hearings, and child support enforcement hearing officers are
 101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 102 Constitution if the general magistrate, special magistrate,
 103 judge of compensation claims, administrative law judge of the
 104 Division of Administrative Hearings, or child support hearing
 105 officer provides a written statement that the general
 106 magistrate, special magistrate, judge of compensation claims,
 107 administrative law judge of the Division of Administrative
 108 Hearings, or child support hearing officer has made reasonable
 109 efforts to protect such information from being accessible
 110 through other means available to the public.

111 f. The home addresses, telephone numbers, dates of birth,
 112 and photographs of current or former human resource, labor
 113 relations, or employee relations directors, assistant directors,
 114 managers, or assistant managers of any local government agency
 115 or water management district whose duties include hiring and
 116 firing employees, labor contract negotiation, administration, or

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117 other personnel-related duties; the names, home addresses,
 118 telephone numbers, dates of birth, and places of employment of
 119 the spouses and children of such personnel; and the names and
 120 locations of schools and day care facilities attended by the
 121 children of such personnel are exempt from s. 119.07(1) and s.
 122 24(a), Art. I of the State Constitution.

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

131 h. The home addresses, telephone numbers, places of
 132 employment, dates of birth, and photographs of current or former
 133 guardians ad litem, as defined in s. 39.820; the names, home
 134 addresses, telephone numbers, dates of birth, and places of
 135 employment of the spouses and children of such persons; and the
 136 names and locations of schools and day care facilities attended
 137 by the children of such persons are exempt from s. 119.07(1) and
 138 s. 24(a), Art. I of the State Constitution, if the guardian ad
 139 litem provides a written statement that the guardian ad litem
 140 has made reasonable efforts to protect such information from
 141 being accessible through other means available to the public.

142 i. The home addresses, telephone numbers, dates of birth,
 143 and photographs of current or former juvenile probation
 144 officers, juvenile probation supervisors, detention
 145 superintendents, assistant detention superintendents, juvenile

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146 justice detention officers I and II, juvenile justice detention
 147 officer supervisors, juvenile justice residential officers,
 148 juvenile justice residential officer supervisors I and II,
 149 juvenile justice counselors, juvenile justice counselor
 150 supervisors, human services counselor administrators, senior
 151 human services counselor administrators, rehabilitation
 152 therapists, and social services counselors of the Department of
 153 Juvenile Justice; the names, home addresses, telephone numbers,
 154 dates of birth, and places of employment of spouses and children
 155 of such personnel; and the names and locations of schools and
 156 day care facilities attended by the children of such personnel
 157 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 158 Constitution.

159 j. The home addresses, telephone numbers, dates of birth,
 160 and photographs of current or former public defenders, assistant
 161 public defenders, criminal conflict and civil regional counsel,
 162 and assistant criminal conflict and civil regional counsel; the
 163 home addresses, telephone numbers, dates of birth, and places of
 164 employment of the spouses and children of such defenders or
 165 counsel; and the names and locations of schools and day care
 166 facilities attended by the children of such defenders or counsel
 167 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 168 Constitution.

169 k. The home addresses, telephone numbers, and photographs
 170 of current or former investigators or inspectors of the
 171 Department of Business and Professional Regulation; the names,
 172 home addresses, telephone numbers, and places of employment of
 173 the spouses and children of such current or former investigators
 174 and inspectors; and the names and locations of schools and day

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175 care facilities attended by the children of such current or
 176 former investigators and inspectors are exempt from s. 119.07(1)
 177 and s. 24(a), Art. I of the State Constitution if the
 178 investigator or inspector has made reasonable efforts to protect
 179 such information from being accessible through other means
 180 available to the public. This sub-subparagraph is subject to the
 181 Open Government Sunset Review Act in accordance with s. 119.15
 182 and shall stand repealed on October 2, 2017, unless reviewed and
 183 saved from repeal through reenactment by the Legislature.

184 1. The home addresses and telephone numbers of county tax
 185 collectors; the names, home addresses, telephone numbers, and
 186 places of employment of the spouses and children of such tax
 187 collectors; and the names and locations of schools and day care
 188 facilities attended by the children of such tax collectors are
 189 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 190 Constitution if the county tax collector has made reasonable
 191 efforts to protect such information from being accessible
 192 through other means available to the public. This sub-
 193 subparagraph is subject to the Open Government Sunset Review Act
 194 in accordance with s. 119.15 and shall stand repealed on October
 195 2, 2017, unless reviewed and saved from repeal through
 196 reenactment by the Legislature.

197 m. The home addresses, telephone numbers, dates of birth,
 198 and photographs of current or former personnel of the Department
 199 of Health whose duties include, or result in, the determination
 200 or adjudication of eligibility for social security disability
 201 benefits, the investigation or prosecution of complaints filed
 202 against health care practitioners, or the inspection of health
 203 care practitioners or health care facilities licensed by the

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204 Department of Health; the names, home addresses, telephone
 205 numbers, dates of birth, and places of employment of the spouses
 206 and children of such personnel; and the names and locations of
 207 schools and day care facilities attended by the children of such
 208 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 209 the State Constitution if the personnel have made reasonable
 210 efforts to protect such information from being accessible
 211 through other means available to the public. This sub-
 212 subparagraph is subject to the Open Government Sunset Review Act
 213 in accordance with s. 119.15 and shall stand repealed on October
 214 2, 2019, unless reviewed and saved from repeal through
 215 reenactment by the Legislature.

216 3. An agency that is the custodian of the information
 217 specified in subparagraph 2. and that is not the employer of the
 218 officer, employee, justice, judge, or other person specified in
 219 subparagraph 2. shall maintain the exempt status of that
 220 information only if the officer, employee, justice, judge, other
 221 person, or employing agency of the designated employee submits a
 222 written request for maintenance of the exemption to the
 223 custodial agency.

224 4. The exemptions in this paragraph apply to information
 225 held by an agency before, on, or after the effective date of the
 226 exemption.

227 5. Except as otherwise expressly provided in this
 228 paragraph, this paragraph is subject to the Open Government
 229 Sunset Review Act in accordance with s. 119.15, and shall stand
 230 repealed on October 2, 2017, unless reviewed and saved from
 231 repeal through reenactment by the Legislature.

232 Section 2. The Legislature finds that it is a public

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233 necessity that the home addresses, telephone numbers, dates of
234 birth, and photographs of current or former personnel of the
235 Department of Health whose duties include, or result in, the
236 determination or adjudication of eligibility for social security
237 disability benefits, the investigation or prosecution of
238 complaints filed against health care practitioners, or the
239 inspection of health care practitioners or health care
240 facilities licensed by the Department of Health; that the names,
241 home addresses, telephone numbers, dates of birth, and places of
242 employment of the spouses and children of such personnel; and
243 that the names and locations of schools and day care facilities
244 attended by the children of such personnel be made exempt from
245 public record requirements. The Legislature finds that the
246 release of such identifying and location information might place
247 these current or former personnel of the Department of Health
248 and their family members in danger of physical and emotional
249 harm from disgruntled individuals who have contentious reactions
250 to actions carried out by such personnel of the Department of
251 Health, or whose business or professional practices have come
252 under the scrutiny of investigators and inspectors of the
253 Department of Health. The Legislature further finds that the
254 harm that may result from the release of such personal
255 identifying and location information outweighs any public
256 benefit that may be derived from the disclosure of the
257 information.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 13, 2014
Meeting Date

Topic Dolt Public Record Exemption

Bill Number SB 390
(if applicable)

Name Bryan Wendel

Amendment Barcode _____
(if applicable)

Job Title Governmental Analyst II

Address 2585 Merchants Row Blvd
Street

Phone 245-4006

Tallahassee FL 32399
City State Zip

E-mail Bryan.Wendel@FLHealth.gov

Speaking: For Against Information

Representing Florida Department of Health

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

Tallahassee, Florida 32399-1100

SENATOR ALAN HAYS
11th District

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:

Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

MEMORANDUM

To: Senator Jeremy Ring, Chair
Governmental Oversight and Accountability
CC: Joe McVaney, Staff Director
Bethany Jones, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 390 – Public Records/Identifying Information of Personnel of Department of Health

Date: February 4, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

DON GAETZ
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.)

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

BILL: CS/SB 650

INTRODUCER: Governmental Oversight and Accountability Committee and Judiciary Committee

SUBJECT: OGSR/Inventories of an Estate or Elective Estate

DATE: March 14, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Munroe	Cibula		JU SPB 7018 as introduced
1.	McVaney	McVaney	GO	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 650 removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result, the documents will remain confidential and exempt from disclosure requirements under the public records laws when filed with the clerk of court.

II. Present Situation:

The Florida Probate Code makes the following records filed in probate proceedings confidential and exempt from disclosure requirements under the public records laws:

- Estate inventories;
- Any inventory of an elective estate; and
- Any accounting of an estate.¹

These exemptions will be repealed on October 2, 2014, unless they are reenacted by the Legislature.² In 2009, when the exemptions were enacted, the Legislature found that the exemptions were necessary because the “public disclosure of estate inventories and accountings . . . would produce undue harm to the heirs of the decedent or beneficiaries of the decedent’s estate.”³

¹ Section 733.604(1)(b), F.S.

² Chapter 2009-230, Laws of Fla.

³ *Id.*

Personal Representative of an Estate

Subject to certain limitations, any person who is able to manage his or her own affairs and is a resident of Florida at the time of the death of the person whose estate is to be administered is qualified to act as personal representative in Florida.⁴ A person who is not qualified to act as a personal representative is a person who has been convicted of a felony, is mentally or physically unable to perform the duties, or is under 18 years of age.⁵ A person who does not live in Florida may qualify as a personal representative if certain requirements are met.⁶

Estate Inventories

Within 60 days after issuance of letters of administration of an estate, a personal representative must file an inventory of the property of the estate.⁷ The inventory of property must be verified, and an estimated fair market value of the items at the date of death of the decedent must be included.⁸ The inventory may be disclosed only to the personal representative, the personal representative's attorney, other interested persons, or by court order upon a showing of good cause.⁹ The personal representative must file a verified amended or supplementary inventory if he or she learns that property was left out of the original inventory or learns that the estimated value or description was erroneous or misleading.¹⁰

Elective Share of a Surviving Spouse

Unless waived, a surviving spouse may elect to take the elective share of a decedent's estate instead of assets provided to a surviving spouse through the decedent's will. The elective share generally includes 30 percent of the fair market value of all assets subject to the administration of the estate except for real property not located in Florida.¹¹

⁴ Section 733.302, F.S.

⁵ Section 733.303(1), F.S.

⁶ See s. 733.304, F.S.

⁷ Fla. Prob. R. 5.340; *see s. 733.604*, F.S. In general, a personal representative of an estate is appointed upon the filing of letters of administration with the court. *See* 31 AM. JUR. 2D *Executors and Administrators* s. 237. As a prerequisite to the issuance of letters of administration in a probate proceeding, the following pleadings and papers must be filed with the court: petition for administration, will (if any), proof of will (if applicable), order appointing personal representative, oath of the representative, any required bond, and designation of and acceptance by a resident agent, are filed. *See* Henry P. Trawick, Jr., REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, 2010, s. 5:6 *Issuance of letters of administration* (2009-10 ed.).

⁸ Section 733.604(2), F.S.

⁹ *Id.*

¹⁰ Section 733.604(2), F.S.

¹¹ Section 732.2065, F.S.; *see* Henry P. Trawick, Jr., Trawick, REDFEARN: WILLS AND ADMINISTRATION IN FLORIDA, s. 5:6 *Elective Share* (2009-10 ed.).

Estate Accountings

The Florida Probate Rules specify requirements for the contents and accounting standards for a fiduciary accounting that must be verified and filed in a probate proceeding.¹² The content includes:

- All cash and property transactions since the date of the last accounting or, if none, from the commencement of administration, and
- A schedule of assets at the end of the accounting period.

Public Records Requirements

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹³ The records of the legislative, executive, and judicial branches are specifically included.¹⁴

Only the Legislature may create an exemption to public records requirements.¹⁵ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁶ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹⁷ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹⁸

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁹ provides for the systematic review of an exemption from the Public Records Act in the 5th year after its enactment. The act states that an exemption may be maintained only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.²⁰

An identifiable public purpose is served if the exemption meets one of three specified criteria and if the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption.²¹ An exemption meets the statutory criteria if it:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;

¹² Fla. Prob. R. 5.346.

¹³ FLA. CONST. art. I, s. 24(a).

¹⁴ *Id.*

¹⁵ FLA. CONST. art. I, s. 24(c).

¹⁶ FLA. CONST. art. I, s. 24(c).

¹⁷ The bill, however, may contain multiple exemptions that relate to one subject.

¹⁸ FLA. CONST. art. I, s. 24(c).

¹⁹ Section 119.15, F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ *Id.*

- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals; or
- Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.²²

The act also requires the Legislature in reviewing an exemption to consider several questions that go to the scope, public purpose, and necessity of the exemption.²³

Exemptions Under Review

During the interim before the 2014 Session, the staff of the Judiciary Committee reviewed the exemptions for estate inventories, inventories of elective estates, and estate accountings. The review was conducted by a series of questions to and responses from the Real Property, Probate, and Trust Law Section of The Florida Bar.

The questions that committee staff submitted to the section included:

- What specific records are affected by the exemptions?
- Who do the exemptions uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemptions?
- Can the information contained in the confidential records be readily obtained by alternative means?
- What is the continued necessity for the exemptions?
- Were any particular incidents the impetus for the creation of the exemptions? If yes, what type of information was disclosed, and how did the disclosure cause harm to another person? If no particular incidents were the impetus, please explain how the disclosure of the information could be used to harm another.
- Has anything changed since the exemptions were adopted which diminishes the need for their continued existence?
- Can an exemption be narrowed to disclose more information without affecting the identifiable purpose or goal of the exemption?
- Is there any reason to believe that the general public has a need to access the information protected by an exemption?

As a result of the review, committee staff found that a public purpose will be served by saving the exemptions from repeal.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal of the public records exemptions for the inventory of an estate or elective estate or an accounting of an estate filed in a probate proceeding. As a result,

²² *Id.*

²³ Section 119.15(6)(a), F.S.

the documents will remain confidential and exempt from disclosure requirements under the public records laws when filed with the clerk of court.

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, therefore, it does not require a two-thirds vote for final passage.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The continued existence of the public records exemptions reenacted by the bill may protect heirs or beneficiaries of a decedent's estate from being targeted for fraud or theft.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 733.604, Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 13, 2014:

The CS clarifies that the financial accountings filed with the clerk of court in a probate proceeding are confidential and exempt from disclosure requirements under public records laws.

- B. **Amendments:**

None.

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



471000

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 33
and insert:
supplementary, filed with the clerk of court in an estate
proceeding is confidential and

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

And the title is amended as follows:

Delete line 6



11 and insert:
12 filed with the clerk of court or the accountings filed
13 with the clerk of court

By the Committee on Judiciary

590-01069-14

2014650__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 733.604, F.S., which provides exemptions from public records requirements for the inventories of an estate or elective estate filed with the clerk of court or the accountings filed in an estate proceeding; saving the exemptions 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 (1) of section 733.604, Florida Statutes, is amended to read:

733.604 Inventories and accountings; public records exemptions.—

(1) (a) Unless an inventory has been previously filed, a personal representative shall file a verified inventory of property of the estate, listing it with reasonable detail and including for each listed item its estimated fair market value at the date of the decedent's death.

(b)1. Any inventory of an estate, whether initial, amended, or supplementary, filed with the clerk of the court in conjunction with the administration of an estate is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Any inventory of an elective estate, whether initial, amended, or supplementary, filed with the clerk of the court in conjunction with an election made in accordance with part II of

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2014650__

chapter 732 is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

3. Any accounting, whether interim, final, amended, or supplementary, filed in an estate proceeding is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

4. Any inventory or accounting made confidential and exempt by subparagraph 1., subparagraph 2., or subparagraph 3. shall be disclosed by the custodian for inspection or copying:

a. To the personal representative;

b. To the personal representative's attorney;

c. To an interested person as defined in s. 731.201; or

d. By court order upon a showing of good cause.

5. These exemptions apply to any inventory or accounting filed before, on, or after July 1, 2009.

~~6. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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.)

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

BILL: CS/SB 546

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Simpson

SUBJECT: Public Records/Personal Identifying Information/License to Carry a Concealed Weapon or Firearm

DATE: March 14, 2014 **REVISED:** _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 546 amends s. 790.0601, F.S., to expand the current confidential and exempt status of personal identifying information collected from a person applying for a license to carry a concealed weapon or firearm, or the renewal of a license, and held by the Department of Agriculture and Consumer Services (DACS).

Companion bill SB 544 authorizes DACS to enter into a Memorandum of Understanding with county tax collectors to accept concealed weapon or firearm license or renewal applications and fees at the local level.

CS/SB 546 expands an existing public records exemption so that personal identifying information held by county tax collectors on behalf of DACS will maintain their confidential and exempt status. CS/SB 546 provides for an Open Government Sunset Review of this exemption and repeal on October 2, 2019, if the exemption is not reenacted.

This bill includes a statement of public necessity consistent with the findings related to the current exemption being expanded. The inference that can be drawn from the statement of public purpose is that it is a matter of personal safety that an individual who carries a concealed firearm or weapon keep the weapon's presence out of the public view or scrutiny, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

Because this bill expands a public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

The Open Government Sunset Review Act¹⁰ requires a newly created or expanded public records exemption to be repealed on October 2nd of the fifth year after enactment, unless reviewed and reenacted by the Legislature.¹¹ It further provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet the public purpose it serves.¹²

Concealed Weapon or Firearm Licensure

The Department of Agriculture and Consumer Services (DACS) is responsible for issuing concealed weapon licenses to those applicants who qualify.¹³ DACS has received 96,840 new license applications and 2,153 applications for license renewal since July 1, 2013.¹⁴ During the same time period, DACS issued 99,606 new concealed weapon licenses and 2,239 renewals.¹⁵ As of December 31, 2013, there were 1,215,708 valid Florida concealed weapon licenses.¹⁶

To obtain a concealed weapons license, a person must complete, under oath, an application that includes:

- The name, address, place and date of birth, race, and occupation of the applicant;
- A full frontal view color photograph of the applicant which must be taken within the preceding 30 days;
- A statement that the applicant has been furnished with a copy of ch. 790, F.S., relating to weapons and firearms and is knowledgeable of its provisions;
- A warning that the application is executed under oath with penalties for falsifying or substituting false documents;
- A statement that the applicant desires a concealed weapon or firearms license as a means of lawful self-defense;
- A full set of fingerprints;
- Documented proof of completion of a firearms safety and training course; and
- A nonrefundable license fee no greater than \$70 for a new license or no greater than \$60 for a renewal.¹⁷

Existing Exemption for Concealed Weapon Applicants' Personal Identifying Information

Current law provides that personal identifying information of an individual who has applied for or received a license to carry a concealed weapon or firearm pursuant to s. 790.061, F.S., held by the Division of Licensing of the Department of Agriculture and Consumer Services, is confidential and exempt from s. 119.071(1), F.S., and s. 24(a), Art. I of the State Constitution.

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(5)(b), F.S.

¹³ s. 790.06(1), F.S.

¹⁴ Applications and Dispositions by County, July 1, 2013-June 30, 2014. Statistic found at www.freshfromflorida.com, last visited January 15, 2014.

¹⁵ Summary Report, October 1987-June 2014. www.freshfromflorida.com, last visited January 15, 2014.

¹⁶ Number of Valid Florida Concealed Licenses as of December 31, 2013. www.freshfromflorida.com, last visited January 15, 2014.

¹⁷ s. 790.06(1)-(5), F.S.

The exemption applies to such information held by the division before, on, or after the effective date of the exemption.¹⁸ Such information shall be disclosed:

- With the express written consent of the applicant or licensee or his or her legally authorized representative;
- By court order upon a showing of good cause; or
- Upon request by a law enforcement agency in connection with the performance of lawful duties, which includes access to any automated database containing such information maintained by the Department of Agriculture and Consumer Services.¹⁹

In Chapter 2006-102, Laws of Florida, in which the exemption was created, the Legislature found that an identifiable public purpose existed for the creation of the exemption under review, and that it is no more broad than necessary to meet the public purpose it serves. Section 2 of the 2006 chapter law, the statement of public purpose, invokes personal safety issues tied to the Department of Agriculture and Consumer Services divulging the personal information of concealed weapons permit applicants and holders.

Specifically, the statement speaks of the contradiction between a person carrying a concealed firearm or weapon and making public that individual's personally identifying information. The inference that can be drawn from the statement of public purpose is that it is a matter of personal safety that an individual who carries a concealed firearm or weapon keep the weapon's presence out of the public view or scrutiny, and that public access to the individual's identity circumvents the "concealment" purpose of the concealed weapon permit.

The public records exemption created in s. 790.0601, F.S., was reenacted in 2011 pursuant to the Open Government Sunset Review Act.²⁰

Senate Bill 544 is linked to Senate Bill 546

Linked SB 544 creates a new section of law within Chapter 790, F.S., to allow DACS to appoint county tax collectors for the purpose of accepting applications for concealed weapon or firearm licenses or renewals on behalf of the Division of Licensing (the Division).

County tax collectors who are interested in the appointment by DACS will submit a request to the Division. The Division then has the discretion to enter into a Memorandum of Understanding (MOU) with the tax collector. Both the DACS and the Division have the authority to rescind the MOU.

Regardless of the passage of SB 544, appointed tax collectors may not maintain a list of persons who own firearms. Maintaining such a list makes the person subject to the provisions of s. 790.335, F.S.²¹

¹⁸ s. 790.0601(1), F.S.

¹⁹ s. 790.0601(2), F.S.

²⁰ Ch. 2011-136, L.O.F.

²¹ Section 790.335, F.S. states: "PROHIBITIONS.—No state governmental agency or local government, special district, or other political subdivision or official, agent, or employee of such state or other governmental entity or any other person, public or private, shall knowingly and willfully keep or cause to be kept any list, record, or registry of privately owned

Any personal identifying information provided for the license or renewal that is contained in a tax collector's records as a result of the MOU arrangement with DACS does not currently have confidential and exempt status.

III. Effect of Proposed Changes:

Linked SB 544 authorizes DACS to enter into a Memorandum of Understanding with county tax collectors to provide the service of accepting concealed weapon or firearm license or license renewal applications and fees at the local level.

CS/SB 546 amends s. 790.0601, F.S., to expand the current confidential and exempt status of the personal identifying information collected from a person applying for a license to carry a concealed weapon or firearm, or the renewal of a license, and held by DACS to the county tax collectors who will be collecting and holding the same information pursuant to the authorization in SB 544.

CS/SB 546 provides for an Open Government Sunset Review of the exemption and repeal on October 2, 2019, if the exemption is not reenacted.

Section 2 of the bill includes a statement of public necessity which makes many of the same Legislative findings as those set forth in Chapter 2006-102, L.O.F., the law that created the exemption that is being expanded by this bill. The statement of public necessity in CS/SB 546 finds that:

The knowledge that an individual has applied for a license to carry a concealed weapon or firearm may logically lead to the conclusion that he or she is carrying a concealed weapon or firearm. This defeats the purpose of carrying a concealed weapon or firearm. The Legislature has found in past legislative sessions and has expressed in s. 790.335(1)(a)3., Florida Statutes, that a record of legally owned firearms or law-abiding firearm owners is "an instrument that can be used as a means to profile innocent citizens and to harass and abuse American citizens based solely on their choice to own firearms and exercise their Second Amendment right to keep and bear arms as guaranteed under the United States Constitution." Release of personal identifying information of an individual who has applied for a license to carry a concealed weapon or firearm could be used to harass an innocent individual based solely on his or her exercised right to carry a concealed weapon or firearm.

The exemption expanded by this bill applies to personal identifying information held by a county tax collector appointed by DACS to receive that information from a person who is applying through the county tax collector to DACS for a concealed weapon or firearm license or renewal. It applies to such information held by the tax collector before, on, or after the effective date of the bill.

firearms or any list, record, or registry of the owners of those firearms." Such conduct is subject to third degree felony penalties and a \$5 million dollar fine.

This act will take effect on the same date as SB 544 or similar legislation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. Because this bill expands a public records exemption, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain a public necessity statement. Because this bill expands a public records exemption, it contains a public necessity statement.

Single Subject Requirement

Article I, s. 24(c) of the Florida Constitution requires a bill creating or expanding a public records or open meetings exemption to contain no other substantive provisions. Because this bill expands a public records exemption, it does not contain other substantive provisions.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill expands a public records exemption by including a concealed weapon or firearm license applicant's personal identifying information to that information which is held by a county tax collector who is acting under linked SB 544.

Currently this same personal identifying information has confidential and exempt status if the applicant files their application directly with DACS. This bill expands the confidential and exempt status not to a greater amount or different type of information, but rather to the same information held by a different agency (county tax collectors) pursuant to an agreement with DACS.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

As set forth in the linked bill, SB 544, a convenience fee of \$22 may be charged by the county tax collector to perform the services agreed upon with DACS. This fee will only be incurred if a person chooses to avail him or herself of the tax collector's service.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:**VII. Related Issues:**

CS/SB 546 currently provides that information held by tax collectors will be confidential and exempt from public disclosure and that information may be released by the written consent, by court order and to law enforcement upon request. This bill does not include a provision which explicitly states that tax collectors can release confidential and exempt information to DACS.²² It is unclear if taken as a whole, CS/SB 546's expansion of DACS's current public records exemption to include tax collectors as appointees is sufficient to allow tax collectors to release confidential and exempt information to DACS without a separate statutory provision.

VIII. Statutes Affected:

This bill amends section 790.0601 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 March 13, 2014:

The CS adds a missing bill number in the enactment clause. CS/SB 546 now states that this act will take effect on the same date as SB 544, or similar legislation.

B. Amendments:

None.

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

²² See footnote 6.



251632

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 92
and insert:
SB 544 or similar legislation takes effect, if such legislation

By Senator Simpson

18-00435A-14

2014546__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 790.0601, F.S.; creating an exemption from public
 4 records requirements for certain personal identifying
 5 information held by the tax collector when an
 6 individual applies for a license to carry a concealed
 7 weapon or firearm pursuant to s. 790.06, F.S.;

8 providing for retroactive application of the
 9 exemption; providing for disclosure of such
 10 information under specified conditions; providing for
 11 review and repeal of the exemption; providing a
 12 statement of public necessity; providing a conditional
 13 effective date.

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

16
 17 Section 1. Section 790.0601, Florida Statutes, is amended
 18 to read:

19 790.0601 Public records exemption for concealed weapons.—

20 (1) Personal identifying information of an individual who
 21 has applied for or received a license to carry a concealed
 22 weapon or firearm pursuant to s. 790.06 held by the Division of
 23 Licensing of the Department of Agriculture and Consumer Services
 24 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 25 I of the State Constitution. This exemption applies to such
 26 information held by the division before, on, or after the
 27 effective date of this section.

28 (2) Personal identifying information of an individual who
 29 has applied for a license to carry a concealed weapon or firearm

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

18-00435A-14

2014546__

30 pursuant to s. 790.0625 which is held by a tax collector
 31 appointed by the Department of Agriculture and Consumer Services
 32 to receive applications and fees is confidential and exempt from
 33 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
 34 This exemption applies to such information held by the tax
 35 collector before, on, or after the effective date of this
 36 section.

37 ~~(3)(2)~~ Information made confidential and exempt by this
 38 section shall be disclosed:

39 (a) With the express written consent of the applicant or
 40 licensee or his or her legally authorized representative.

41 (b) By court order upon a showing of good cause.

42 (c) Upon request by a law enforcement agency in connection
 43 with the performance of lawful duties, which shall include
 44 access to any automated database containing such information
 45 maintained by the Department of Agriculture and Consumer
 46 Services.

47 (4) Subsection (2) is subject to the Open Government Sunset
 48 Review Act in accordance with s. 119.15 and shall stand repealed
 49 on October 2, 2019, unless reviewed and saved from repeal
 50 through reenactment by the Legislature.

51 Section 2. (1) The Legislature finds that, with certain
 52 exceptions, it is a public necessity that personal identifying
 53 information of an individual who has applied for a license to
 54 carry a concealed weapon or firearm which is held by a tax
 55 collector be made confidential and exempt from public records
 56 requirements. The carrying of a concealed weapon or firearm in
 57 this state by members of the general public requires an
 58 individual to file an application containing personal

Page 2 of 4

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

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59 identifying information. The Legislature has made the Department
 60 of Agriculture and Consumer Services the responsible agency for
 61 collecting this information and issuing the concealed weapon or
 62 firearm license. The collected information must include a
 63 statement from the applicant that he or she seeks a concealed
 64 weapon or firearm license as a means of lawful self-defense.
 65 (2) There has been substantial demand for the concealed
 66 weapon or firearm license. The availability of additional
 67 licensure locations would benefit individuals who require self-
 68 protection.
 69 (3) The potential addition of licensure locations raises
 70 issues of confidentiality. The knowledge that an individual has
 71 applied for a license to carry a concealed weapon or firearm may
 72 logically lead to the conclusion that he or she is carrying a
 73 concealed weapon or firearm. This defeats the purpose of
 74 carrying a concealed weapon or firearm. The Legislature has
 75 found in past legislative sessions and has expressed in s.
 76 790.335(1)(a)3., Florida Statutes, that a record of legally
 77 owned firearms or law-abiding firearm owners is "an instrument
 78 that can be used as a means to profile innocent citizens and to
 79 harass and abuse American citizens based solely on their choice
 80 to own firearms and exercise their Second Amendment right to
 81 keep and bear arms as guaranteed under the United States
 82 Constitution." Release of personal identifying information of an
 83 individual who has applied for a license to carry a concealed
 84 weapon or firearm could be used to harass an innocent individual
 85 based solely on his or her exercised right to carry a concealed
 86 weapon or firearm. Therefore, the Legislature finds that the
 87 personal identifying information of an individual who has

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

18-00435A-14 2014546__

88 applied for a license to carry a concealed weapon or firearm
 89 pursuant to chapter 790, Florida Statutes, must be held
 90 confidential and exempt from public records requirements.
 91 Section 3. This act shall take effect on the same date that
 92 SB ___ or similar legislation takes effect, if such legislation
 93 is adopted in the same legislative session or an extension
 94 thereof and becomes a law.

Page 4 of 4

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/13/14

Meeting Date

Topic Public Record Exemption

Bill Number 546 (if applicable)

Name Tim Qualls

Amendment Barcode (if applicable)

Job Title Executive Director

Address 215 S. Monroe St Str 802

Phone 850 - ~~222-7206~~ 222-7206

Street

Tallahassee, FL

32302

City

State

Zip

E-mail TQUALLS@YULAW.NET

Speaking: [X] For [] Against [] Information

Representing Florida Tax Collectors Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] 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)

3/13/14

Meeting Date

Topic PUBLIC RECORDS/CW LICENSES

Bill Number SB-546 (if applicable)

Name MARION HAMMER

Amendment Barcode (if applicable)

Job Title

Address P.O. Box 1387

Phone 850-222-9518

Street

TALLAHASSEE

FL

32302

City

State

Zip

E-mail

Speaking: [X] For [] Against [] Information

Representing NATIONAL RIFLE ASSOCIATION & USF

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] 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

Tallahassee, Florida 32399-1100

SENATOR WILTON SIMPSON

18th District

COMMITTEES:

Community Affairs, *Chair*
Appropriations Subcommittee on General Government
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Commerce and Tourism
Communications, Energy, and Public Utilities
Environmental Preservation and Conservation

JOINT COMMITTEE:

Joint Legislative Auditing Committee

February 3, 2014

Senator Jeremy Ring, Chairman
Senate Committee on Governmental Oversight and Accountability
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399

Senator Ring,

Please place Senate Bill 546 relating to public records, on the next Committee on Governmental Oversight and Accountability agenda.

Please contact my office with any questions.

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

Wilton Simpson
Senator, 18th District

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

DON GAETZ
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.)

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

BILL: CS/SB 990

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Ring

SUBJECT: Public Officers and Employees

DATE: March 14, 2014 REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 990 deletes a limited exception to a general prohibition in the Code of Ethics for public officers and employees. As a result, (1) special tax districts created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, and (2) drainage and water control districts, will be subject to the same conflicting employment or contractual relationship prohibition that applies to all other agencies. That prohibition provides that a public officer or employee may not hold any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between the official's private interests and public duties or which will impede the full and faithful discharge of the official's public duties.

II. Present Situation:

Code of Ethics: Conflicting Employment or Contractual Relationship

Section 112.313, F.S., specifies standards of conduct for public officers¹, employees of agencies², and local government attorneys. Pursuant to s. 112.313(7), F.S., a public officer or employee is prohibited from holding any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between the official’s private interests and public duties or which will impede the full and faithful discharge of the official’s public duties.³

There is an exception to the above prohibitions in s. 112.313(7)(a)1., which provides that when the agency referred to is that certain kind of special tax district created by general or special law and is limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, or when the agency has been organized pursuant to chapter 298, then employment with, or entering into a contractual relationship with, such business entity by a public officer or employee of such agency shall not be prohibited by this subsection or be deemed a conflict per se. However, conduct by such officer or employee that is prohibited by, or otherwise frustrates the intent of, this section shall be deemed a conflict of interest in violation of the standards of conduct set forth by s. 112.313, F.S.

Special Districts

“Special tax district” is not defined in ch. 112, F.S., or ch. 189, F.S., which provides the general provisions for special districts. Section 189.403(1), F.S., defines a “special district” as a local unit of special purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers.

According to the Special District Information Program at the Florida Department of Economic Opportunity (DEO), there are currently 1,637 special districts.⁴ Not all of these are special *tax* districts, but the DEO data does not break out districts with taxation authority as a subset of all the special districts. The table below summarizes the top five specialized functions out of the 74 specialized functions of the 1,637 special districts:

Special District Function	Number
Community development	575

¹ Pursuant to s. 112.313(1), F.S., the term “public officer” includes any person elected or appointed to hold office in any agency, including any person serving on an advisory body.

² Pursuant to s. 112.312(2), F.S., “agency” means any state, regional, county, local, or municipal government entity of this state, whether executive, judicial, or legislative; any department, division, bureau, commission, authority, or political subdivision of this state therein; or any public school, community college, or state university.

³ See also the Florida Commission on Ethics’ GUIDE to the SUNSHINE AMENDMENT and CODE of ETHICS for Public Officers and Employees, p.4, located at <http://www.ethics.state.fl.us/publications/2014%20Guide.pdf>.

⁴ Information available at <http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/StateTotals.cfm>

Community redevelopment	213
Housing authorities	93
Drainage and water control	86
Fire control and rescue	65

III. Effect of Proposed Changes:

The bill deletes s. 112.313(7)(a)1., F.S., which provides a limited exemption from the conflicting employment or contractual relationship prohibition in s.112.313(7)(a), F.S. As a result, the 1) special tax districts created by general or special law and limited specifically to constructing, maintaining, managing, and financing improvements in the land area over which the agency has jurisdiction, and 2) drainage and water control districts, will be subject to the same conflicting employment or contractual relationship prohibition that applies to all other agencies. That prohibition provides that a public officer or employee may not hold any employment or contract with any business entity or agency regulated by or doing business with his or her public agency. A public officer or employee also is prohibited from holding any employment or having a contractual relationship which will pose a frequently recurring conflict between the official’s private interests and public duties or which will impede the full and faithful discharge of the official’s public duties.

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:

Indeterminate, depending on whether the existing limited exemption is enabling employment or contractual relationships that will be prohibited by the repeal of that exemption.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill does not apply retroactively, which would transform existing employment or contractual relationships, which were not unethical when initiated, into a violation of the ethics code. In a criminal law context, such an ex post facto law might be unconstitutional. The legislature may wish to clarify whether the bill only applies to employment or contractual relationships entered into after the effective date of the bill.

VIII. Statutes Affected:

This bill substantially amends s. 112.313 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 March 13, 2013:

The CS reverts some grammatical changes made in the original filed bill back to existing statutory language.

B. Amendments:

None.



492990

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/13/2014	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 53 - 57
and insert:

(b) This subsection shall not prohibit a public officer or
employee from practicing in a particular profession or
occupation when such practice by persons holding such public
office or employment is required or permitted by law or
ordinance.

By Senator Ring

29-01054-14

2014990__

1 A bill to be entitled
 2 An act relating to public officers and employees;
 3 amending s. 112.313, F.S.; removing an exception from
 4 prohibited employment or a prohibited contractual
 5 relationship for an officer or employee of certain
 6 special tax districts or an agency organized pursuant
 7 to ch. 298, F.S.; making technical changes; providing
 8 an effective date.

9

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

11

12 Section 1. Subsection (7) of section 112.313, Florida
 13 Statutes, is amended to read:

14 112.313 Standards of conduct for public officers, employees
 15 of agencies, and local government attorneys.-

16 (7) CONFLICTING EMPLOYMENT OR CONTRACTUAL RELATIONSHIP.-

17 (a) A ~~Ne~~ public officer or employee of an agency may not
 18 ~~shall~~ have or hold any employment or contractual relationship
 19 with any business entity or any agency ~~which is~~ subject to the
 20 regulation of, or ~~is~~ doing business with, an agency of which he
 21 or she is an officer or employee, excluding those organizations
 22 and their officers who, when acting in their official capacity,
 23 enter into or negotiate a collective bargaining contract with
 24 the state or any municipality, county, or other political
 25 subdivision of the state; nor may ~~shall~~ an officer or employee
 26 of an agency have or hold any employment or contractual
 27 relationship that will create a continuing or frequently
 28 recurring conflict between his or her private interests and the
 29 performance of his or her public duties or that would impede the

Page 1 of 2

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

29-01054-14

2014990__

30 full and faithful discharge of his or her public duties.

31 ~~1. When the agency referred to is that certain kind of~~
 32 ~~special tax district created by general or special law and is~~
 33 ~~limited specifically to constructing, maintaining, managing, and~~
 34 ~~financing improvements in the land area over which the agency~~
 35 ~~has jurisdiction, or when the agency has been organized pursuant~~
 36 ~~to chapter 298, then employment with, or entering into a~~
 37 ~~contractual relationship with, such business entity by a public~~
 38 ~~officer or employee of such agency shall not be prohibited by~~
 39 ~~this subsection or be deemed a conflict per se. However, conduct~~
 40 ~~by such officer or employee that is prohibited by, or otherwise~~
 41 ~~frustrates the intent of, this section shall be deemed a~~
 42 ~~conflict of interest in violation of the standards of conduct~~
 43 ~~set forth by this section.~~

44 2. ~~However, if~~ When the agency referred to is a legislative
 45 body and the regulatory power over the business entity resides
 46 in another agency, or when the regulatory power that ~~which~~ the
 47 legislative body exercises over the business entity or agency is
 48 strictly through the enactment of laws or ordinances, ~~then~~
 49 employment or a contractual relationship with such business
 50 entity by a public officer or employee of a legislative body is
 51 ~~shall~~ not be prohibited by this subsection or ~~be~~ deemed a
 52 conflict.

53 (b) This subsection does ~~shall~~ not prohibit a public
 54 officer or employee from practicing in a particular profession
 55 or occupation if ~~when~~ such practice ~~by persons holding such~~
 56 ~~public office or employment~~ is required or authorized ~~permitted~~
 57 by law or ordinance.

58 Section 2. This act shall take effect July 1, 2014.

Page 2 of 2

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

1280

**STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections**

I, Ken Detzner, Secretary of State,
do hereby certify that

MaryEllen Elia

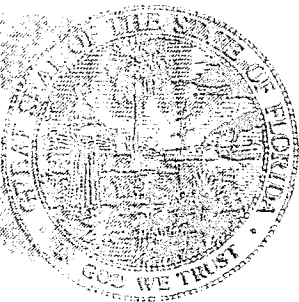
is duly appointed a member of the
Investment Advisory Council

for a term beginning on the
Eighth day of May, A.D., 2013,
until the Twelfth day of December, A.D., 2016
and is subject to be confirmed by the Senate
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Nineteenth day of July, A.D., 2013.*

Ken Detzner

Secretary of State



If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11" document.

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
NOTARY PUBLIC
2013 JUL 17 PM 3:38
STATE OF FLORIDA

STATE OF FLORIDA

County of Hillsborough

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Investment Advisory Council

(Title of Office)

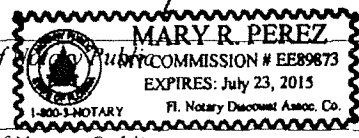
on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

Mary Ellen Elia
Signature

Sworn to and subscribed before me this 6th day of May, 2013.

Mary R. Perez
Signature of Officer Administering Oath of Notary Public



Mary R. Perez
Print, Type or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____

ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address: Home Office

901 E. Kennedy Blvd.
Street or Post Office Box
Tampa FL 33602
City, State, Zip Code

Mary Ellen Elia
Print name as you desire commission issued
Mary Ellen Elia
Signature



STATE BOARD OF ADMINISTRATION
OF FLORIDA

1801 HERMITAGE BOULEVARD
TALLAHASSEE, FLORIDA 32308
(850) 488-4406

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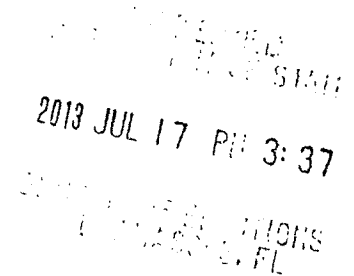
RICK SCOTT
GOVERNOR
AS CHAIRMAN
JEFF ATWATER
CHIEF FINANCIAL OFFICER

FAM BONDI
ATTORNEY GENERAL

ASH WILLIAMS
EXECUTIVE DIRECTOR & CIO

July 17, 2013

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399



RE: Investment Advisory Council Appointment – MaryEllen Elia

Dear Ms. Williams:

Ms. MaryEllen Elia has been appointed by Attorney General Bondi to serve on the Investment Advisory Council for the State Board of Administration. Attached please find the appointment letter, original Questionnaire for Senate Confirmation, along with the Oath of Office/Acceptance Form, and the May 8, 2013 cabinet transcript reflecting approval of her appointment. Ms. Elia's term will be May 8, 2013 through December 12, 2016.

Please let me know if additional information is required.

Sincerely,

A handwritten signature in cursive script that reads "Diane Bruce".

Diane Bruce
Executive Assistant

Attachments

cc: Ash Williams w/o Attachments
Mr. Ron Poppell w/o Attachments

T H E C A B I N E T
S T A T E O F F L O R I D A

Representing:

HIGHWAY SAFETY AND MOTOR VEHICLES
DEPARTMENT OF VETERANS AFFAIRS
STATE BOARD OF ADMINISTRATION

The above agencies came to be heard before THE FLORIDA CABINET, the Honorable Governor Scott presiding, at Nemours Children's Hospital, in the Auditorium, Orlando, Florida, on Wednesday, May 8, 2013, commencing at approximately 9:14 a.m.

Reported by:

KAREN S. RHINE
Florida Professional Reporter
Notary Public

KAREN S. RHINE, FPR
925 Patrician Place
Oviedo, Florida 32766
KSRhine@aol.com
407.718.8600

APPEARANCES:

Representing the Florida Cabinet:

RICK SCOTT
Governor

PAM BONDI
Attorney General

JEFF ATWATER
Chief Financial Officer

ADAM PUTNAM
Commissioner of Agriculture

* * *

I N D E X

HIGHWAY SAFETY AND MOTOR VEHICLES
(Presented by JULIE JONES)

ITEM	ACTION	PAGE
1	Approved	4
2	Approved	11

DEPARTMENT OF VETERANS AFFAIRS
(Presented by MIKE PRENDERGAST)

ITEM	ACTION	PAGE
1	Approved	14
2	Approved	19
3	Approved	22
4	Approved	30

INDEX CONTINUEDSTATE BOARD OF ADMINISTRATION
(Presented by ASH WILLIAMS)

ITEM	ACTION	PAGE
1	Approved	32
2	Discussed	34
CERTIFICATE OF REPORTER		45

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GOVERNOR SCOTT: Now I'd like to recognize Teacher of the Year for Orange County, Dorina Sackman with Westridge Middle School. If you'll stand so we can recognize you. Thank you very much and thanks for all you do for these kids. You change people's lives and you inspire them. So thank you for what you're doing.

Now I'd like to recognize Executive Director Ash Williams with the State Board of Administration. Good morning, Ash. The portfolio is up.

MR. WILLIAMS: Yes, it is up and we can just open with that since you've got it. I think it's a segway. As of the close on the 6th we are up 15.6 percent year-to-day. That's 63 basis points ahead of target and leaves a balance of \$136.2 billion.

GOVERNOR SCOTT: That's great.

MR. WILLIAMS: All right.

Item 1 I would like to request approval of the appointment of Mary Ellen Elia to the Investment Advisory Council. She was nominated by Attorney General Bondi.

MS. BONDI: And if I could say a few words, Governor. As we all know, teachers comprise such a huge portion of our Pension Fund and Mary Ellen Elia, if approved by the Governor and Cabinet, will be the first superintendent on the Investment Advisory Council.

1 Under her leadership Hillsborough Schools have
2 invested over half a billion in the Florida PRIME Fund,
3 which is our local government fund, and Mary Ellen Elia
4 previously was Chair of the Participant Local Government
5 Advisory Council.

6 I know her personally. I know her work ethic and I'm
7 just so proud that she's willing to take this on. And I
8 think it would be incredible to have a superintendent of
9 the schools on our Investment Advisory Council.

10 GOVERNOR SCOTT: Is there a motion? Are you making a
11 motion?

12 ATTORNEY GENERAL BONDI: So moved that we appoint
13 Mary Ellen Elia.

14 GOVERNOR SCOTT: Is there a second?

15 CFO ATWATER: Second.

16 GOVERNOR SCOTT: Any comments or objections? Showing
17 none, approved unanimously. She'll be very good. She's
18 very good. You did a great job.

19 ATTORNEY GENERAL BONDI: Thank you.

20 MR. WILLIAMS: Thank you. And I would say too, as
21 one of the founding members of the Participant Local
22 Government Advisory Council, in her chairmanship of that
23 group, she did a terrific job.

24 And if one looks back to the most recent sales of
25 securities we've done on the Pool B, which is a securities

1 that became liquid back in 2007, we are now in a position
2 to distribute or have already distributed a little over 92
3 percent of the original value of those securities.

4 I'd like to move forward with a little update on the
5 Florida Growth Fund as it relates to the State Board of
6 Administration. For those of you who are in the local
7 area and don't know who the State Board is, we're
8 essentially the State's investment organization. We
9 service folks as fiduciaries providing investment services
10 to over 30 different entities as directed by Florida
11 Statute.

12 The aggregate clients we manage are north of \$167
13 billion. We operate in an extraordinarily transparent
14 environment obviously with the leadership of our trustees,
15 but also with very intensive oversight and reporting both
16 internally and externally.

17 We just discussed two of our advisory bodies, the
18 Participant Local Government Advisory Council and our
19 Investment Advisory Council. We also have an Independent
20 Audit Committee and use a number of independent
21 consultants who serve as fiduciaries to us to help us make
22 good investment decisions.

23 This just gives you a sense of how our investment
24 duties break down across the Pension Plan which is the
25 defined benefit part of our pension system, the Investment

1 Plan which is defined contribution, the Hurricane
2 Catastrophe Fund and Florida PRIME which is a local
3 government investment pool that Ms. Elia has been very
4 involved with in recent years.

5 We also have a very interesting entity called the
6 Florida Growth Fund. The legislature in 2008 passed the
7 Florida Technology and Growth Act which allowed investment
8 of up to one and a half percent of the pension's assets in
9 entities with significant ties to Florida that relate to
10 technology, engineering, aviation, computer tech,
11 renewable energy, medical and life sciences.

12 When looking at the business model of how to
13 undertake an investment program of that sort, we looked
14 all over the country and concluded that the best model was
15 to hire a third-party entity with investment expertise who
16 would have discretion in selecting investments and would
17 serve as a fiduciary to us.

18 To fill that role we selected a firm called Hamilton
19 Lane. They're one of the world's leading private equity
20 investment advisory firms and are based in Bala Cynwyd,
21 Pennsylvania. We have a long and deep relationship with
22 them and other private equity investing and we have been
23 fortunate to have Mr. Greg Baty come to Florida full-time
24 and open an office for Hamilton Lane in Florida because we
25 knew the Governor wanted to otherwise, so we did.

1 We have invested two successive tranches of \$250
2 million each in this program. The Legislative Office of
3 Program Policy Analysis and Government Accountability did
4 a review of the program recently and published findings
5 showing that through June 30 of 2012 the internal rate of
6 return on this set of investments is north of 21 percent.
7 It further had an ancillary benefit of creating close to
8 4,200 jobs in Florida with an average income of
9 approximately \$58,000.

10 I'm going to turn this over to Greg Baty, but by way
11 of background I want to share with you that in addition to
12 working with Hamilton Lane, Greg has previously worked in
13 the private equity and venture capital area with Sandhill
14 Capital and Garage.com in both areas where he's created
15 portfolio opportunities.

16 He has owned and operated a retail franchise and has
17 had operational roles in tech startups. He has
18 undergraduate and graduate degrees from Stanford and has a
19 very distinct Florida connection in his past.

20 Before he got a really difficult job as a
21 professional investor he played professional football in
22 the NFL and the last team he played with was the Miami
23 Dolphins. So with that, Greg.

24 MR. BATY: Thank you, Ash, and thank you, Governor
25 Scott and Cabinet. I appreciate the opportunity to be

1 here. Thank you Nemours Hospital as well. This whole
2 Medical City is just an amazing tribute to what's going on
3 here in Florida.

4 I can tell you now it's a lot easier waking up on
5 Mondays doing my job now than it was for nine years
6 playing football. I felt like I had a car accident every
7 Sunday afternoon for about nine years.

8 I'm the last speaker between you and lunch so I know
9 I need to be brief and I will be. No offense to anybody
10 in the room, but I think I have the best job in the entire
11 state.

12 I get to invest in the best and the brightest of what
13 Florida has to offer. In case anybody doesn't know what
14 private equity is, and that's what we do, essentially we
15 invest into private companies. So we buy a piece of a
16 private company or we buy a majority of a private company.
17 We then help that company grow and we hope to sell that
18 company for more than we brought it for. It's pretty
19 simple, but that's what private equity does.

20 And, you know, I'm sorry to see that a lot of the
21 teachers are probably back in their schools teaching,
22 which is what they, I guess, should be doing, but I want
23 you to know -- I see one teacher there and other civil
24 servants that are here that we are investing on behalf of
25 that every time we make an investment we're looking at it

1 through your eyes.

2 So, you know, that's the prism we put on things.
3 When we make an investment we say would a teacher, would a
4 retired teacher, would a civil servant be proud of the
5 investment that we're making. We're not always going to
6 be right, but we look at it through that prism. So I want
7 you to know that.

8 If we could go to the first slide here. I just
9 wanted to point out one thing, Governor. I don't know if
10 you noticed, but Fast Company Magazine which studies and
11 goes over technology and that's all they're about, they
12 just ranked Florida as the number one state in the country
13 for innovation. It's the first time that's happened.

14 So I'm going to explain a little bit about venture
15 capital too. Venture capital is a subset of private
16 equity. Same thing, investing in private companies, but
17 venture capital is primarily technology and primarily
18 earlier-stage businesses.

19 Since we're here in Orlando I just want to point out
20 a few things that are happening here in Orlando. A couple
21 of companies, Koni and Pentaho, have attracted a lot of
22 venture capital from top-tier venture capital firms.
23 That's one of the things that we're trying to do with the
24 Florida Growth Fund is have top-tier, nationally-known and
25 internationally-known venture capital firms come and

1 invest in Florida companies.

2 There are two examples right here in Orlando where
3 significant venture capitals come in from really good
4 groups; Insight Venture Partners and Benchmark are
5 probably one of the top five venture firms in the world.

6 There are other firms here, PlanSource, Row Sham Bow,
7 Engineering Support Personnel, Treehouse; these are all
8 companies that have raised money in the last year or year
9 and a half in Orlando.

10 The Florida Growth Fund, we've been very active in
11 this market. We've made investments in Lanzar which is a
12 medical device company here. They've raised over \$31
13 million. Part of that is our investment.

14 And a company Voxeo that I'd like -- it was our first
15 investment that we made and I'd like to talk about it a
16 little bit. Voxeo was founded here in Orlando, but the
17 founder couldn't raise capital here. This was back in the
18 late '90s. So he moved to Silicon Valley because he
19 couldn't find capital here.

20 He raised \$30 million in venture capital, built his
21 company and the dot com crash. His venture capital firm,
22 the one that invested the majority of the money, he wasn't
23 one of their bright, shining students so he was allowed to
24 buy back his company from the venture capital firm.

25 He moved back here to Orlando where he wanted to be.

1 He's built this great company north of \$50 million in
2 revenue creating lots of jobs here in Florida. We were
3 the first outside private equity firm to invest in the
4 company after he bought it back.

5 What's really good here, I've heard a constant theme
6 that's this kind of trickle down or the payback. And so
7 what's happened with Voxeo is he's already spun off
8 another company that is now growing here outside of Voxeo,
9 which we own part of as well, which is kind of nice, but
10 he's also stepped into a chairman role. He's now founded
11 another company.

12 Row Sham Bow here, which is a company that raised \$3
13 million this past year, Row Sham Bow is co-located in his
14 office. He's the chairman of their Board.

15 So that's kind of the grand circle, kind of like what
16 happens when you're teaching a student and then she goes
17 on to win a service award. I mean that's what this is in
18 the technology thing. I want to acknowledge that that's
19 just an amazing -- I don't know if it's coincidence, but
20 it was a really neat story.

21 So we've also invested in a municipal services
22 company here in the Orlando region and we've also invested
23 in a fund that is a venture capital fund that's located
24 here in Winter Park.

25 I'll try to speed things up because I know we're in a

1 hurry. So I also wanted to talk just a little bit about,
2 since we're at Lake Nona and Medical City, about the life
3 sciences activity here in the state.

4 One of the interesting trends is that life sciences
5 investing in the entire nation has gone down significantly
6 over the past couple of years. Florida, thank goodness,
7 is bucking that trend and we're actually up in venture
8 capital investing. So that's a very good sign for our
9 economy here.

10 We've had a number of successful life sciences exits
11 that have happened here in Florida and that's what it's
12 about. It's about investing, but also being able to exit
13 because that's where you make the return for teachers and
14 other people that need to have their pension secured.

15 Envoy. I mentioned Takeda earlier. Takeda bought
16 this company, Envoy, for \$140 million. Pastoria, Sid
17 Martin, Biotechncology, Spin-Out and they were acquired
18 for \$113 million.

19 That's what it's all about. It's about building
20 companies that are going to stay here in Florida that are
21 going to have successful exits. You can see on the charts
22 that the investing in life sciences is continuing to trend
23 upwards which is a good sign.

24 Real quickly. Here is the Florida Eco System. It
25 doesn't just take a venture capital firm. It takes lots

1 of different entities coming together and working together
2 to -- there's a life cycle of a company and there has to
3 be capital at the early stage. There has to be people
4 helping those companies get from an idea to a product.

5 This is what the venture capital or the Florida
6 Venture Eco System looked like and I'm being kind because
7 I think in universities -- this is four years ago before
8 the Florida Growth Fund was around. Some of these
9 universities I don't think were really focused and this is
10 only a subset of universities. I apologize. I could only
11 fit so much.

12 They weren't really focused on entrepreneurial
13 studies. And the shift that I've seen to this slide is
14 dramatic over the last four years where all the
15 universities are now really focused on entrepreneurial
16 studies, on combining technology and people that are
17 interested in running companies and the shift is just very
18 dramatic.

19 Also, at the top of this, the accelerators and
20 incubators. There's just a number, and I couldn't fit
21 them all on this page, that are required to get companies
22 from an idea standpoint to a product being able to sell.

23 Conferences. The number of conferences people here,
24 it's just a huge gain in the last four years. Okay. I'm
25 going to go quickly.

1 Florida Growth Fund. This is just -- it's all about
2 the outreach. What we've done with the Florida Growth
3 Fund is just tried to get out there in the community so
4 that every university knows about us, all the
5 entrepreneurs know about us and we are successful in that
6 endeavor.

7 The pipeline. The pipeline is huge. We see over 200
8 deals a year. We hope to see every deal that is
9 significant that happens in Florida and we'd like to try
10 to be a part of it. If we can't invest in it because of
11 risk return profile, we still try to be helpful.

12 That's the number one -- we help more early-stage
13 venture type companies that might be too risky for us to
14 invest in, but we make introductions. We introduce them
15 to accelerators; we introduce them to early-stage angels;
16 whatever we can do to help those companies so they're
17 around three years from now for us to invest in.

18 We also make investments in funds and so we invest
19 directly into companies, but we also invest into private
20 equity -- other private equity funds that are investing
21 here successfully in Florida.

22 One of the ones I'd like to highlight is MPM's
23 Sunstate Fund. They're an internationally-known life
24 sciences investor. They came to us. We worked with them.
25 The University of Florida worked with them, David Day, and

1 we attracted them here by showing them the number of
2 opportunities that exist here in Florida.

3 So not only did they open an office here, they opened
4 a separate fund focused on Florida which is really
5 dramatic to have that kind of venture capital aimed at
6 life sciences here resident in the State of Florida. And
7 we continue to try to do those types of things.

8 On the direct investments we've made 20 direct
9 investments. We had our first major liquidity event in
10 December of last year. We invested in a company that was
11 a Tampa company, a venture capital company, and it turned
12 out to be a good one for us. It was a 5X return. So we
13 made 5X our money in two years, which is nice. If we
14 could do that repetitively we'd be very -- everybody would
15 be very happy.

16 And we continue to look at life sciences companies.
17 I had a lot more to say, but I wanted to be brief. So
18 thank you for having me and thank you for the support.

19 GOVERNOR SCOTT: Thank you very much. And is that
20 all for you, Ash?

21 MR. WILLIAMS: Yes.

22 GOVERNOR SCOTT: Thank you very much. And I want to
23 thank Nemours and everybody who put this together. I want
24 to thank CFO Atwater for organizing this and getting us
25 here. And this concludes our Cabinet meeting. Our next

1 meeting will be Tuesday, June 4, at 9:00 a.m. in
2 Tallahassee. We are adjourned.

3 (Proceedings concluded at 11:53 a.m.)
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CERTIFICATE OF REPORTER

STATE OF FLORIDA]
COUNTY OF SEMINOLE]

I, Karen S. Rhine, FPR, do hereby certify that I was authorized to and did report stenographically and electronically the foregoing proceedings at the time and place therein designated and that the foregoing pages transcribed by me constitute a true and correct transcription of the aforesaid proceedings.

DATED THIS 18th day of May, 2013.

Karen S. Rhine, FPR
KSRhine@aol.com
925 Patrician Place
Oviedo, Florida 32766
Telephone: 407.718.8600

184838

QUESTIONNAIRE FOR SENATE CONFIRMATION

The information from this questionnaire will be used by the Florida Senate in considering action on your confirmation. The questionnaire MUST BE COMPLETED IN FULL. Answer "none" or "not applicable" where appropriate. Please type or print in blue or black ink.

May 6, 2013

Date Completed

1. Name: Mrs. MaryEllen Elia

Mr./Mrs./Ms. Last First Middle/Maiden

2. Business Address: 901 E. Kennedy Boulevard

Tampa

Post Office Box 3408 FL 33601 813-272-4047
Post Office Box State Zip Code Area Code/Phone Number

3. Residence Address: 3602 W. Jetton

Tampa

Hillsborough

Street City County
FL 33629 813-495-6825
Post Office Box State Zip Code Area Code/Phone Number

Specify the preferred mailing address: Business Residence Fax # 813-272-4038 (optional)

4. A. List all your places of residence for the last five (5) years.

Address City & State From To
3602 W. Jetton Tampa, FL 4/2004 Present

B. List all your former and current residences outside of Florida that you have maintained at any time during adulthood.

Address City & State From To
None

5. Date of Birth: November 10, 1948 Place of Birth: Rochester, NY

6. Social Security Number:

7. Driver License Number. State: Florida

8. Have you ever used or been known by any other legal name? Yes No If "Yes" Explain

MaryEllen Swartzenberg - Maiden Name

RECEIVED STATE DEPT. JAN 17 PM 3:37
- CIVIL SERVICE DIVISIONS
- CIVIL SERVICE FL

9. Are you a United States citizen? Yes No If "No" explain:

If you are a naturalized citizen, date of naturalization: _____

10. Since what year have you been a continuous resident of Florida? 1986

11. Are you a registered Florida voter? Yes No If "Yes" list:

A. County of Registration: Hillsborough B. Current Party Affiliation: Independent

12. Education

A. High School: Stella Niagara Year Graduated: 1966
(Name and Location)

B. List all postsecondary educational institutions attended:

<u>Name & Location</u>	<u>Dates Attended</u>	<u>Certificates/Degrees Received</u>
Damien College, Buffalo NY	1966-1970	
State University of NY at Buffalo	1970-1973	
Buffalo State University	1979-1981	

13. Are you or have you ever been a member of the armed forces of the United States? Yes No If "Yes" list:

A. Dates of Service: _____

B. Branch or Component: _____

C. Date & type of discharge: _____

14. Have you ever been arrested, charged, or indicted for violation of any federal, state, county, or municipal law, regulation, or ordinance? (Exclude traffic violations for which a fine or civil penalty of \$150 or less was paid.) Yes No If "Yes" give details:

<u>Date</u>	<u>Place</u>	<u>Nature</u>	<u>Disposition</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

15. Concerning your current employer and for all of your employment during the last five years, list your employer's name, business address, type of business, occupation or job title, and period(s) of employment.

<u>Employer's Name & Address</u>	<u>Type of Business</u>	<u>Occupation/Job Title</u>	<u>Period of Employment</u>
Hillsborough County Public Schools	Education	Superintendent of Schools	2005-Present

16. Have you ever been employed by any state, district, or local governmental agency in Florida? Yes No If "Yes", identify the position(s), the name(s) of the employing agency, and the period(s) of employment:

<u>Position</u>	<u>Employing Agency</u>	<u>Period of Employment</u>
SEE ATTACHMENT 1		

17. A. State your experiences and interests or elements of your personal history that qualify you for this appointment.

Florida superintendents' representative on LGIP oversight committee established in 2007
Participant Local Government Advisory Council (PLGAC) appointee (January 13, 2009 - January 12, 2013)

B. Have you received any degree(s), professional certification(s), or designations(s) related to the subject matter of this appointment? Yes No If "Yes", list:

C. Have you received any awards or recognitions relating to the subject matter of this appointment? Yes No If "Yes", list:

Appointed to represent the Florida Association of District School Superintendents (FADSS)
Participant Local Government Advisory Council (PLGAC)

D. Identify all association memberships and association offices held by you that relate to this appointment:

Florida Association of District School Superintendents

18. Do you currently hold an office or position (appointive, civil service, or other) with the federal or any foreign government? Yes No If "Yes", list:

19. A. Have you ever been elected or appointed to any public office in this state? Yes No If "Yes", state the office title, date of election or appointment, term of office, and level of government (city, county, district, state, federal):

<u>Office Title</u>	<u>Date of Election or Appointment</u>	<u>Term of Office</u>	<u>Level of Government</u>
<u>Superintendent of Hillsborough County Public Schools</u>	<u>7/1/2005-Present</u>		
<u>Participant Local Government Advisory Council (PLGAC)</u>	<u>1/13/2009-1/12/2013</u>		
_____	_____	_____	_____
_____	_____	_____	_____

B. If your service was on an appointed board(s), committee(s), or council(s):

(1) How frequently were meetings scheduled: Quarterly

(2) If you missed any of the regularly scheduled meetings, state the number of meetings you attended, the number you missed, and the reasons(s) for your absence(s).

<u>Meetings Attended</u>	<u>Meetings Missed</u>	<u>Reason for Absence</u>

20. Has probable cause ever been found that you were in violation of Part III, Chapter 112, F.S., the Code of Ethics for Public Officers and Employees? Yes No If "Yes", give details:

<u>Date</u>	<u>Nature of Violation</u>	<u>Disposition</u>

21. Have you ever been suspended from any office by the Governor of the State of Florida? Yes No If "Yes", list:

A. Title of office: _____ C. Reason for suspension: _____
B. Date of suspension: _____ D. Result: Reinstated Removed Resigned

22. Have you previously been appointed to any office that required confirmation by the Florida Senate? Yes No If "Yes", list:

A. Title of Office: Participant Local Government Advisory Council (PLGAC)
B. Term of Appointment: 4 years
C. Confirmation results: Appointed

23. Have you ever been refused a fidelity, surety, performance, or other bond? Yes No If "Yes", explain:

24. Have you held or do you hold an occupational or professional license or certificate in the State of Florida? Yes No If "Yes", provide the title and number, original issue date, and issuing authority. If any disciplinary action (fine, probation, suspension, revocation, disbarment) has ever been taken against you by the issuing authority, state the type and date of the action taken:

<u>License/Certificate Title & Number</u>	<u>Original Issue Date</u>	<u>Issuing Authority</u>	<u>Disciplinary Action/Date</u>
<u>Professional Educator Certificate #607814</u>		<u>State of Florida</u>	

25. A. Have you, or businesses of which you have been and owner, officer, or employee, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

<u>Name of Business</u>	<u>Your Relationship to Business</u>	<u>Business' Relationship to Agency</u>

B. Have members of your immediate family (spouse, child, parents(s), siblings(s)), or businesses of which members of your immediate family have been owners, officers, or employees, held any contractual or other direct dealings during the last four (4) years with any state or local governmental agency in Florida, including the office or agency to which you have been appointed or are seeking appointment? Yes No If "Yes", explain:

<u>Name of Business</u>	<u>Family Member's Relationship to You</u>	<u>Family Member's Relationship to Business</u>	<u>Business' Relationship to Agency</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

26. Have you ever been a registered lobbyist or have you lobbied at any level of government at any time during the past five (5) years? Yes No

A. Did you receive any compensation other than reimbursement for expenses? Yes No

B. Name of agency or entity you lobbied and the principal(s) you represented:

<u>Agency Lobbied</u>	<u>Principal Represented</u>
_____	_____
_____	_____
_____	_____

27. List three persons who have known you well within the past five (5) years. Include a current, complete address and telephone number. Exclude your relatives and members of the Florida Senate.

<u>Name</u>	<u>Mailing Address</u>	<u>Zip Code</u>	<u>Area Code/Phone Number</u>
Bill Montford	_____	_____	_____
Dr. Earl J. Lennard	_____	_____	_____
Kathleen Shanahan	_____	_____	_____
_____	_____	_____	_____

28. Name any business, professional, occupational, civic, or fraternal organizations(s) of which you are now a member, or of which you have been a member during the past five (5) years, the organization address(es), and date(s) of your membership(s).

<u>Name</u>	<u>Mailing Address</u>	<u>Office(s) Held & Term</u>	<u>Date(s) of Membership</u>
SEE ATTACHMENT 2	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

29. Do you know of any reason why you will not be able to attend fully to the duties of the office or position to which you have been or will be appointed? Yes No If "Yes", explain:

30. If required by law or administrative rule, will you file financial disclosure statements? Yes No

Chronology in Change of Administrative Career
MaryEllen Elia

Position	Employer	City / State	From	To	Reason for Change
Superintendent of Schools	Hillsborough County Public Schools	Tampa, FL	2005	Present	
Chief Facilities Officer	Hillsborough County Public Schools	Tampa, FL	2003	2005	Promotion
General Director, Secondary Education	Hillsborough County Public Schools	Tampa, FL	2001	2003	Promotion
Director, K-12 Non-Traditional Programs	Hillsborough County Public Schools	Tampa, FL	1998	2001	Promotion
Director, Magnet Schools and Dropout Prevention	Hillsborough County Public Schools	Tampa, FL	1997	1998	Promotion
Supervisor, Magnet Programs/Schools	Hillsborough County Public Schools	Tampa, FL	1991	1997	Promotion
Supervisor of Reading	Hillsborough County Public Schools	Tampa, FL	1989	1991	Promotion
Reading Resource Specialist	Hillsborough County Public Schools	Tampa, FL	1986	1989	Initial Hire into Hillsborough County Public Schools
Social Studies Teacher	Sweet Home Central	Amherst, NY	1970	1986	Relocated to Tampa, FL

Attachment 2

LEADERSHIP POSITIONS:

Children's Board, Board of Directors (Ex Officio)

Florida Association of District School Superintendents Executive Board

Hillsborough Education Foundation Board of Directors (Ex Officio)

Magnet Schools of America Board of Directors 1993-Present; *President* 2002-2004

Museum of Science and Industry Board of Directors (Ex Officio)

Participant Local Government Advisory Council (PLGAC); 1/13/2009-1/12/2013

Public Service Coordinating Council Board of Directors (Ex Officio)

Straz Center Board of Directors (Ex Officio)

Tampa Bay History Center Board of Directors (Ex Officio)

Tampa Chamber of Commerce Board of Directors (Ex Officio)

Tampa Museum of Art Board of Directors (Ex Officio)

MEMORANDUM

AS A GENERAL MATTER, APPLICATIONS FOR ALL POSITIONS WITHIN STATE GOVERNMENT ARE PUBLIC RECORDS WHICH MAY BE VIEWED BY ANYONE UPON REQUEST. HOWEVER, THERE ARE SOME EXEMPTIONS FROM THE PUBLIC RECORDS LAW FOR IDENTIFYING INFORMATION RELATING TO PAST AND PRESENT LAW ENFORCEMENT OFFICERS AND THEIR FAMILIES, VICTIMS OF CERTAIN CRIMES, ETC. IF YOU BELIEVE AN EXEMPTION FROM THE PUBLIC RECORDS LAW APPLIES TO YOUR SUBMISSION, PLEASE CHECK THIS BOX.

Yes, I assert that identifying information provided in this application should be excluded from inspection under the Public Records Law.

Because: (please provide cite.) _____

IF YOU NEED ADDITIONAL GUIDANCE AS TO THE APPLICABILITY OF ANY PUBLIC RECORDS LAW EXEMPTION TO YOUR SITUATION, PLEASE CONTACT THE OFFICE OF THE ATTORNEY GENERAL.

The Office of the Attorney General
PL-01, The Capitol
Tallahassee, Florida 32399
(850) 245-0150

CERTIFICATION

STATE OF FLORIDA
COUNTY OF Hillsborough

RECEIVED
DEPARTMENT OF STATE
2013 JUL 17 PM 3:38
DIVISION OF ELECTIONS
TALLAHASSEE, FL

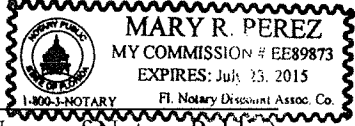
Before me, the undersigned Notary Public of Florida, personally appeared Mary Ellen Elia,
who, after being duty sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Mary Ellen Elia
Signature of Applicant-Affiant

Sworn to and subscribed before me this 6th day of May, 2013

Mary R. Perez
Signature of Notary Public-State of Florida

Mary R. Perez
(Print, Type, or Stamp Commissioned Name of Notary Public)



My commission expires: July 23, 2015

Personally Known OR Produced Identification

Type of Identification Produced _____

(seal)



County Superintendent, MaryEllen Elia
901 East Kennedy Boulevard
P.O. Box 3408
Tampa, Florida 33601 USA

phone number (813) 272-4000

Biography for MaryEllen Elia

RECEIVED
DEPARTMENT OF STATE
2013 JUL 17 PM 3:38
DIVISION OF ELECTIONS
TALLAHASSEE, FL

MaryEllen Elia was appointed Superintendent of Hillsborough County Public Schools on July 1, 2005, following a nationwide search. District schools have successively earned more A and B grades each year of her tenure as superintendent. The district also earned its first overall A grade from the state of Florida for student achievement after her first year as superintendent, and has earned two more since then.

Ms. Elia, a lifelong educator, began her career as a social studies teacher in the state of New York in 1970. In 1986, she relocated to the Tampa Bay area after accepting a position at Plant High School as a reading resource specialist. She was promoted to several key positions in the district over the next 20 years.

She was the district's first magnet schools supervisor. She was promoted in 1997 to the director of non-traditional programs where she managed all magnet schools, as well alternative schools and drop-out prevention programs. Ms. Elia was appointed general director of secondary education in 2002.

In 2003, she became the district's chief facilities officer. In this role, she provided oversight of all new construction and was responsible for the maintenance and operation of more than 200 existing schools and educational facilities. She remained in this position until her appointment as superintendent.

In 2011, she received the College Board's District of the Year Beacon Award and was recognized with the Florida Department of Education's Data Leader of the Year award for leading the way in using education data to drive student improvement. In 2010, she received the Inaugural Governor's Business Partnership Award presented by Governor-Elect Rick Scott and the Florida Council of 100; the Women of Distinction award from the local chapter of the American Association of University Women; CEO of the Year from the Florida Supplier Development Council; the University of South Florida-Anchin Center Exemplary Leadership in Education award; and the Network of Executive Women 2010 Executive Woman of the Year award. In 2009, Superintendent Elia received The College Board's Outstanding Leadership award. She received the Florida Association of District School Superintendents' Superintendent's Award for Volunteer/Community Service in 2008/2009 and 2006/2007. In 2008, Mrs. Elia was named the Dr. Carlo Rodriguez Champion of School Choice by the State Board of Education. She was named Florida's Superintendent of the Year by the Consortium of Florida Education Foundations in 2007.

Ms. Elia holds a bachelor of arts degree from Daeman College; a master's in education from the University of Buffalo; a master of professional studies in reading from State University of New York at Buffalo; and certification in educational leadership.

CourtSmart Tag Report

Room: KN 412

Case:

Type:

Caption: bGovernmental Oversight and Accountability Committee

Judge:

Started: 3/13/2014 9:03:40 AM

Ends: 3/13/2014 9:33:56 AM

Length: 00:30:17

9:03:46 AM Meeting called to order - roll call
9:04:16 AM Tab 11 - SB 546 by Senator Simpson—Public Records/Personal Identifying Information/License to Carry a Concealed Weapon or Firearm
9:04:19 AM Senator Simpson explains the amendment
9:04:52 AM Amendment adopted
9:05:37 AM Roll call
9:05:54 AM CS/SB 546 reported favorably
9:06:22 AM Tab 3 - SB 318 by Senator Stargel—Public Meetings/University Direct-support Organization
9:06:24 AM Rachel Barnes, aide to Sen. Stargel, presents bill
9:06:34 AM Strike all Amendment barcode 793024
9:07:16 AM Ms. Barnes explains amendment
9:08:28 AM Roll Call
9:08:43 AM CS/SB 318 reported favorably
9:08:57 AM Tab 4 - SB 520 by Senator Richter—Public Records/Dental Workforce Surveys
9:09:12 AM Becky Kokkinosis, aide to Senator Richter, presents bill
9:09:36 AM Roll call
9:09:50 AM SB 520 reported favorably
9:10:00 AM Tab 5 - SB 694 by Senator Garcia—Diabetes Advisory Council
9:10:07 AM Jesus Tundidor, aide to Senator Garcia, presents bill
9:10:42 AM Late-filed amendment barcode 235948
9:11:01 AM Roll Call
9:11:16 AM CS/SB 694 reported favorably
9:11:40 AM Tab 9 - CS/SB 390 by Senator Hays—Public Records/Identifying Information of Personnel of Department of Health
9:11:43 AM Senator Hays presents bill
9:12:11 AM Roll Call
9:12:27 AM CS/SB 390 reported favorably
9:12:38 AM Tab 10 - SB 650 by Judiciary—OGSR/Inventories of an Estate or Elective Estate
9:12:40 AM Tom Cibula presents bill
9:13:10 AM Amedment barcode 471000
9:13:40 AM Roll call
9:14:03 AM CS/SB 650 reported favorably
9:14:51 AM Senator Hays takes the Chair
9:14:58 AM Tab 1 - SPB 7082 by Governmental Oversight and Accountability—State-administered Retirement Systems
9:15:07 AM Senator Ring explains bill
9:16:03 AM Senator Hays asks a question
9:16:07 AM Joe McVaney answers
9:16:25 AM Roll Call
9:16:55 AM Reported favorably to submit as committee bill
9:16:55 AM Tab 2 - SPB 7080 by Governmental Oversight and Accountability—OGSR/Agency Personnel Information
9:17:02 AM Senator Ring explains bill
9:17:39 AM Roll Call
9:18:16 AM Reported favorably to submit as committee bill
9:18:25 AM Tab 12 - SB 990 by Senator Ring—Public Officers and Employees
9:18:32 AM Senator Ring explains bill
9:19:14 AM Amendment baracode 492990 (late filed)
9:19:38 AM Senator Hays
9:19:48 AM Roll Call
9:20:41 AM CS/SB 990 reported favorably
9:21:01 AM Tab 8 - CS/SB 198 by Senator Clemens—Social Media Privacy
9:21:09 AM Senator Clemens presents bill

9:21:15 AM Barcode 605118
9:21:46 AM Amendment to the Amendment Barcode 288674
9:22:21 AM Senator Smith asks a question
9:22:48 AM Senator Clemens answers
9:23:34 AM Senator Hays
9:24:35 AM Individuals waive time
9:24:54 AM Roll Call
9:25:16 AM CS/CS/SB 198 reported favorably
9:25:27 AM Senator Bradley moves to be shown voting favorably for missed bills
9:25:52 AM Senator Bean moves to be shown voting favorable for missed bills
9:26:08 AM Senator Benacquisto moves to be shown voting favorably on missed bills
9:26:53 AM Tab 6 - SB 834 by Senator Latvala—Legal Notices
9:27:05 AM Senator Latvala explains bill
9:28:10 AM Senator Latvala explains amendment
9:28:20 AM Amendment Barcode 530578
9:29:50 AM Roll Call
9:30:13 AM CS/SB 834 reported favorably
9:30:22 AM Tab 7 - SB 914 by Senator Latvala—State Contracting
9:30:26 AM Senator Latvala explains bill
9:31:42 AM Roll Call
9:32:03 AM SB 914 reported favorably
9:32:17 AM Tab 13-Senate Confirmation Hearing: MaryEllen Elia (Tampa), Investment Advisory Council
9:32:41 AM Senator Hays
9:32:52 AM Senator Montford
9:33:22 AM Senator Montford recommends confirmation
9:33:22 AM Roll call
9:33:33 AM Meeting Adjourned