

**SB 1328** by **Latvala**; (Similar to CS/H 1385) Inspectors General

236068	A	S		GO, Hays	Delete L.97 - 104:	03/25 01:25 PM
633854	A	S		GO, Hays	Delete L.128 - 131:	03/25 01:25 PM

**CS/SB 1278** by **BI, Richter**; (Similar to CS/CS/H 0675) Public Records/Office of Financial Regulation

673018	A	S	RCS	GO, Hays	Delete L.25 - 263:	03/26 05:07 PM
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**CS/SB 810** by **RI, Galvano**; (Similar to CS/H 0773) Pugilistic Exhibitions

**CS/SB 808** by **RI, Galvano**; (Similar to CS/H 0775) Public Records/Florida State Boxing Commission

586338	A	S	RCS	GO, Bradley	Delete L.17 - 36:	03/26 05:07 PM
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**SB 280** by **Garcia**; (Similar to CS/H 0109) Public Records/Participants in Treatment-based Drug Court Programs

296184	A	S	RCS	GO, Bean	Delete L.20 - 41:	03/26 05:07 PM
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**SB 1020** by **Soto**; (Similar to H 0855) Inspectors General

**SB 1262** by **Brandes**; (Similar to H 7159) Public Records and Meetings/Insurance Flood Loss Model

**SB 1640** by **CM**; Entertainment Industry

783608	A	S	RCS	GO, Simmons	Delete L.219 - 235:	03/26 05:07 PM
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**SB 1108** by **CA**; (Identical to H 7049) OGSR/Children of Agency Officers and Employees/Identifying Information

**CS/SB 608** by **MS, Hukill**; (Compare to CS/H 0731) Monuments on the Capitol Complex

**SB 864** by **Hays (CO-INTRODUCERS) Benacquisto, Negron**; (Similar to CS/H 0921) Instructional Materials for K-12 Public Education

840528	D	S	RCS	GO, Hays	Delete everything after	03/26 05:07 PM
809090	AA	S	RCS	GO, Hays	Delete L.300 - 330:	03/26 05:07 PM

**CS/SB 1002** by **BI, Hays**; (Similar to CS/CS/H 0415) Public Records/Office of Financial Regulation

**CS/SB 1300** by **BI, Simmons**; (Similar to CS/H 1273) Public Records/Office of Insurance Regulation

177436	A	S	RCS	GO, Simmons	Delete L.37:	03/26 05:07 PM
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**CS/SB 1396** by **ED, Montford**; (Similar to CS/H 0543) Public Records and Meetings/Public-private Partnerships/State Universities

**SPB 7116** by **GO**; Administrative Procedures

**SPB 7118** by **GO**; Administrative Procedures

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

**MEETING DATE:** Wednesday, March 26, 2014  
**TIME:** 1:30 —3:30 p.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
1	<b>SB 1328</b> Latvala (Similar CS/H 1385)	Inspectors General; Revising provisions relating to the duties, appointment, and removal of the Chief Inspector General; revising provisions relating to the duties, appointment, and removal of agency inspectors general, etc.  GO 03/26/2014 Not Considered AP	Not Considered
2	<b>CS/SB 1278</b> Banking and Insurance / Richter (Similar CS/CS/H 675, Compare CS/H 673, Link CS/S 1012)	Public Records/Office of Financial Regulation; Providing an exemption from public records requirements for certain informal enforcement actions by the Office of Financial Regulation, to which penalties apply for willful disclosure of such confidential information; providing an exemption from public records requirements for certain trade secrets held by the office, to which penalties apply for willful disclosure of such confidential information; providing for future legislative review and repeal of the section; providing a statement of public necessity, etc.  BI 03/11/2014 Fav/CS GO 03/26/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0
3	<b>CS/SB 810</b> Regulated Industries / Galvano (Similar CS/H 773, Compare CS/H 775, Link CS/S 808)	Pugilistic Exhibitions; Revising the duties and responsibilities of the executive director of the Florida State Boxing Commission; deleting a provision requiring the electronic recording of commission proceedings; clarifying the commission's exclusive jurisdiction over approval of amateur and professional boxing, kickboxing, and mixed martial arts matches; providing for immediate license suspension and other disciplinary action if a participant fails or refuses to provide a urine sample or tests positive for specified prohibited substances; authorizing the commission and the Department of Business and Professional Regulation to audit specified records retained by a promoter, etc.  RI 03/13/2014 Fav/CS GO 03/26/2014 Favorable JU AP	Favorable Yeas 9 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Wednesday, March 26, 2014, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 808</b> Regulated Industries / Galvano (Similar CS/H 775, Compare CS/H 773, Link CS/S 810)	Public Records/Florida State Boxing Commission; Providing an exemption from public records requirements for the information in the reports required to be submitted to the Florida State Boxing Commission by a promoter or obtained by the commission through audit of a promoter's records; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  RI 03/13/2014 Fav/CS GO 03/26/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0
5	<b>SB 280</b> Garcia (Similar CS/H 109)	Public Records/Participants in Treatment-based Drug Court Programs; Exempting from public records requirements information relating to a participant or a person considered for participation in a treatment- based drug court program and contained in certain records, reports, and evaluations; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  JU 01/14/2014 Favorable GO 03/26/2014 Fav/CS RC	Fav/CS Yeas 9 Nays 0
6	<b>SB 1020</b> Soto (Similar H 855)	Inspectors General; Requiring the Chief Inspector General to publish final investigative reports in a specified manner within a certain timeframe; requiring final investigative reports of inspectors general to be published on an agency website within a certain timeframe; defining the term "unit of local government"; requiring specified reports of local governments to be published online within a certain timeframe, etc.  GO 03/26/2014 Favorable CA AP	Favorable Yeas 9 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Wednesday, March 26, 2014, 1:30 —3:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	<b>SB 1262</b> Brandes (Similar H 7159, Compare H 581, CS/H 879, Link CS/CS/CS/S 542)	Public Records and Meetings/Insurance Flood Loss Model; Providing an exemption from public records and public meetings requirements for trade secrets used to design an insurance flood loss model held in records or discussed in meetings of the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the appointed consumer advocate; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  BI 03/11/2014 Favorable GO 03/26/2014 Favorable RC	Favorable Yeas 9 Nays 0
8	<b>SB 1640</b> Commerce and Tourism	Entertainment Industry; Renaming the Office of Film and Entertainment within the Department of Economic Opportunity as the Division of Film and Entertainment and housing the division within Enterprise Florida, Inc.; requiring Enterprise Florida, Inc., to conduct a national search for a film commissioner; revising provisions relating to the application process, tax credit eligibility, election and distribution of tax credits, annual allocation of tax credits, forfeiture of tax credits, and annual report, etc.  GO 03/26/2014 Fav/CS AFT AP	Fav/CS Yeas 8 Nays 0
9	<b>SB 1108</b> Community Affairs (Identical H 7049)	OGSR/Children of Agency Officers and Employees/Identifying Information; Amending provisions relating to an exemption from public record requirements for personal identifying information of certain dependent children of current or former agency officers or employees; removing the scheduled repeal of the exemption, etc.  GO 03/26/2014 Favorable RC	Favorable Yeas 9 Nays 0

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**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Wednesday, March 26, 2014, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
10	<b>CS/SB 608</b> Military and Veterans Affairs, Space, and Domestic Security / Hukill (Compare CS/H 731)	Monuments on the Capitol Complex; Establishing the POW-MIA Chair of Honor Memorial; requiring the Florida chapters of Rolling Thunder, Inc., to fund the memorial; requiring the commission to consider recommendations of the Department of Veterans' Affairs and the Florida chapters of Rolling Thunder, Inc., regarding specific aspects of the memorial; prohibiting the construction and placement of a monument on the premises of the Capitol Complex unless authorized by general law; revising the powers and duties of the Florida Historical Commission to conform to changes made by the act, etc.  MS 03/05/2014 Fav/CS GO 03/26/2014 Favorable RC	Favorable Yeas 9 Nays 0
11	<b>SB 864</b> Hays (Similar CS/H 921)	Instructional Materials for K-12 Public Education; Providing that the district school board has the constitutional duty and responsibility to select and provide adequate instructional materials for all students; requiring a district school board or consortium of school districts to implement an instructional materials program; repealing provisions relating to bids, proposals, and advertisement regarding the adoption of instructional materials; requiring the district school board, rather than the commissioner, to conduct an independent investigation to determine the accuracy of district-adopted instructional materials, etc.  ED 03/11/2014 Favorable GO 03/26/2014 Fav/CS	Fav/CS Yeas 7 Nays 2
12	<b>CS/SB 1002</b> Banking and Insurance / Hays (Similar CS/CS/H 415, Compare CS/CS/H 413, Link CS/S 1006)	Public Records/Office of Financial Regulation; Providing a public records exemption for information held by the Office of Financial Regulation pursuant to an investigation or examination of consumer collection agencies; providing for future repeal and legislative review of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  BI 03/05/2014 Fav/CS GO 03/26/2014 Favorable RC	Favorable Yeas 8 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Wednesday, March 26, 2014, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	<b>CS/SB 1300</b> Banking and Insurance / Simmons (Similar CS/H 1273, Compare CS/H 1271, Link CS/CS/S 1308)	Public Records/Office of Insurance Regulation; Creating an exemption from public records requirements for proprietary business information and information that is confidential when held by another entity in this state, the Federal Government, or another state or nation, and which is held by the Office of Insurance Regulation; providing for future legislative review and repeal; providing a statement of public necessity, etc.  BI 03/11/2014 Fav/CS GO 03/26/2014 Fav/CS RC	Fav/CS Yeas 8 Nays 0
14	<b>CS/SB 1396</b> Education / Montford (Similar CS/H 543, Compare CS/H 541, Link CS/S 900)	Public Records and Meetings/Public-private Partnerships/State Universities; Amending provisions relating to public-private projects for the upgrade of state university facilities and infrastructure; creating an exemption from public records requirements for unsolicited proposals held by a state university board of trustees for a specified period; creating an exemption from public meetings requirements for portions of meetings of a state university board of trustees at which confidential and exempt information is discussed; providing for future review and repeal of the exemptions under the Open Government Sunset Review Act; providing statements of public necessity, etc.  ED 03/11/2014 Fav/CS GO 03/26/2014 Favorable RC	Favorable Yeas 9 Nays 0
Consideration of proposed committee bill:			
15	<b>SPB 7116</b>	Administrative Procedures; Revising the deadline to propose rules implementing new laws; revising requirements for the periodic review of agency rules; requiring agencies to annually review rulemaking and prepare and publish regulatory plans; specifying requirements for such plans; requiring an agency to include a certification of the regulatory plan in a legislative budget request; requiring an agency to file a certification with the Administrative Procedures Committee, etc.	Submitted as Committee Bill Yeas 8 Nays 0
Consideration of proposed committee bill:			

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Wednesday, March 26, 2014, 1:30 —3:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
16	<b>SPB 7118</b>	Administrative Procedures; Revising requirements for the content of notices of rule development; creating a presumption of adverse impact on small business in specified circumstances; requiring certain agency personnel to attend public hearings on proposed rules; revising requirements for substantially affected persons to submit proposals for lower cost regulatory alternatives to a proposed rule following a notice of change, etc.	Submitted as Committee Bill Yeas 8 Nays 0

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Other Related Meeting Documents

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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.)

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

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BILL: SB 1328

INTRODUCER: Senator Latvala

SUBJECT: Inspectors General

DATE: March 25, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1328 modifies how the Chief Inspector General and agency inspectors general are appointed, supervised, and removed. Currently, the Chief Inspector General is appointed and removed solely by the Governor. The bill makes the Governor's appointment of a Chief Inspector General subject to consultation by the Cabinet and confirmation by the Senate, and removal of the Chief Inspector General may be done only by unanimous vote of the Governor and Cabinet.

Currently, agency inspectors general are appointed by and report to agency heads. The bill provides that for agencies under the jurisdiction of the Governor, agency inspectors general are to be appointed and removed (only for cause) by the Chief Inspector General, with notice to the Governor and Cabinet; are to report to the Chief Inspector General; and may hire and fire their staff independently of the agency. Offices of inspectors general are to have their own budgets within the agencies, and, for agencies under the jurisdiction of the Governor, must be provided independent legal counsel by the Chief Inspector General.

**II. Present Situation:**

**Chief Inspector General**

Section 14.32, F.S., creates in the Executive Office of the Governor the Office of Chief Inspector General. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor. The Chief Inspector General is appointed by and serves at the pleasure of the Governor, and serves as the inspector general for the Executive Office of the Governor. The Chief Inspector General must:

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent fraud, waste, mismanagement, and misconduct in government.
- Investigate any administrative action of any agency under the direct supervision of the Governor.
- Request assistance and information as necessary for the performance of the duties.



- Examine the records and reports of any agency under the direct supervision of the Governor.
- Coordinate complaint-handling activities with agencies.
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline.
- Report to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are grounds to believe that there has been a violation of criminal law or that a civil action should be initiated.
- Act as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government.
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction.
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor.
- Conduct special investigations and management reviews at the request of the Governor.

The Chief Inspector General has various duties relating to public-private partnerships, including advising on internal controls, conducting audits, investigating complaints of fraud, and making recommendations for improvements in the actions taken by public-private partnerships to meet performance standards.

### **Agency Inspectors General**

#### *Duties*

Section 20.055, F.S., requires that each state agency<sup>1</sup> created in the organizational structure of state government have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. Each office is responsible for the following:

- Advising in the development of performance standards, their validation, and the compliance of agency activities with them.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Improving agency performance.
- Supervising and coordinating audits, investigations, and reviews relating to the operations of the state agency.
- Conducting, supervising, or coordinating other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.
- Providing central coordination of efforts to identify and remedy waste, fraud, and abuse.
- Coordinating agency-specific audit activities with those of peer federal and state agencies.
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact.

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<sup>1</sup> For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system are considered "state agencies," in addition to the departments created in Ch. 20, F.S.

- Maintaining a balance among audit, investigative, and other accounting activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.<sup>2</sup>

### ***Appointment***

Inspectors general are appointed by the agency head. For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the inspector general.<sup>3</sup>

### ***Removal and Qualifications***

Inspectors general may be removed only by the agency head. For agencies under the direction of the Governor, the agency head must notify the Governor and the Chief Inspector General, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal.<sup>4</sup> Inspectors general must possess minimum educational and experience qualifications,<sup>5</sup> and the investigations they conduct must adhere to specific internal auditing standards.

### ***Internal Audits***

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.<sup>6</sup>

Audit work papers and reports must be public records to the extent that they do not include information that has been made confidential and exempt from the provisions of

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<sup>2</sup> Section 20.055(2), F.S.

<sup>3</sup> Section 20.055(3)(a), F.S.

<sup>4</sup> Section 20.055(3)(c), F.S.

<sup>5</sup> Section 20.055(4), F.S.

<sup>6</sup> Section 20.055(5)(a), F.S.

s. 119.07(1), F.S., or information protected under s. 112.3187(5), F.S., of the Whistle-blower's Act.<sup>7</sup>

### ***Reporting***

At the conclusion of each audit, the inspector general must submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who must respond to any adverse findings within 20 working days after receipt of the tentative findings. Such response and the inspector general's rebuttal to the response must be included in the final audit report.<sup>8</sup>

The inspector general must submit the final report to the agency head and to the Auditor General. The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.<sup>9</sup>

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability (OPPAGA). No later than six months after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the state agency, the inspector general must provide a written response to the agency head on the status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.<sup>10</sup>

### ***More Duties***

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands related to claims against the state, and examining, auditing, adjusting, and settling accounts relating to those indebted to the state, may utilize audits performed by the inspectors general and internal auditors. For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.<sup>11</sup>

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.

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<sup>7</sup> Section 20.055(5)(b), F.S.

<sup>8</sup> Section 20.055(5)(d), F.S.

<sup>9</sup> Section 20.055(5)(g), F.S.

<sup>10</sup> Section 20.055(5)(h), F.S.

<sup>11</sup> Section 20.055(5)(i), F.S.

For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower’s Act.
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower’s Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law.
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general’s office. This must include freedom from any interference with investigations and timely access to records and other sources of information.
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.<sup>12</sup>

Each inspector general must submit a yearly report on its activities to the agency head, and provide any written complaints about the operations of the inspector general.<sup>13</sup>

**III. Effect of Proposed Changes:**

**Chief Inspector General**

**Section 1** amends s. 14.32, F.S., to change how the Chief Inspector General is appointed and removed. Currently, the Governor appoints the Chief Inspector General, who serves, without a statutorily-prescribed term, at the pleasure of the Governor. The bill requires that the Chief Inspector General be appointed, for a term of four years, by the Governor in consultation with the Cabinet, subject to confirmation by the Senate, and removable by unanimous vote of the Governor and Cabinet.

	<b>Current Law</b>	<b>Bill</b>
<b>Appointed by</b>	Governor	Governor, in consultation with Cabinet
<b>Confirmation by Senate</b>	No	Yes
<b>Term</b>	Not specified	4 years
<b>Removable by</b>	Governor	Unanimous vote of Governor and Cabinet

The Chief Inspector General must also provide for independent legal counsel for inspectors general in agencies under the jurisdiction of the Governor.

<sup>12</sup> Section 20.055(6), F.S.

<sup>13</sup> Section 20.055(7) and (8), F.S.

## **Agency Inspectors General**

**Section 2** amends s. 20.055, F.S., relating to the duties of agency inspectors general.

### ***Appointment***

The bill changes the appointment process for agency inspectors general, who are currently appointed by the agency head. The bill provides that for state agencies under the jurisdiction of a Cabinet officer or the Governor and Cabinet, the agency head appoints the inspector general; for state agencies under the jurisdiction of the Governor, the Chief Inspector General appoints the agency inspector general. The Chief Inspector General must notify the Governor and Cabinet in writing seven days in advance of the hiring of an agency inspector general.

### ***Supervision***

For state agencies under the jurisdiction of the Governor, the inspector general will report to the Chief Inspector General and may hire and remove staff within the Office of the Inspector General in consultation with the Chief Inspector General but independently of the respective agency. Inspectors general are not subject to supervision by any other agency employee.

### ***Removal***

For state agencies under the jurisdiction of a Cabinet officer or the Governor and Cabinet, the agency head may remove the inspector general. For state agencies under the jurisdiction the Governor and Cabinet, the agency head must give 21 days' notice to the Governor and Cabinet before removing an inspector general. For state agencies under the jurisdiction of the Governor, the agency inspector general may only be removed from office, for cause, by the Chief Inspector General, with notice to the Governor and Cabinet at least 21 days before removal.

### ***Budget***

Within each agency, the Office of Inspector General must have its own budget, developed in consultation with the Chief Inspector General, and sufficient to meet its mission.

### ***Reports and Responses to Reports***

For state agencies under the jurisdiction of the Governor, the agency inspector general must submit:

- Final reports to the agency head, the Auditor General, and the Chief Inspector General; and
- Responses to OPPAGA and Auditor General reports to the Chief Inspector General; and
- Annual reports on inspector general activities to the Chief Inspector General.

The inspector general of the Florida Finance Housing Corporation must submit an annual report to the Chief Inspector General.

The bill takes effect July 1, 2014.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

None.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The bill requires that budgets for state agency offices of inspectors general be separate from the budgets of the relevant agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Lines 93-102 specify that inspectors general in Governor's agencies report to the Chief Inspector General. The bill does not explicitly provide that inspectors general in Cabinet agencies report to the agency head, though it does provide that the inspector general may be removed by the agency head.

Lines 103-111 provide that inspectors general in Governor's agencies may only be removed for cause. The bill does not specify a standard for removal of inspectors general in Cabinet agencies.

Lines 128-131 could be clearer in providing that the Chief Inspector General consults with offices of inspectors general in development of their budgets.

The Chief Inspector General is also the inspector general for the Executive Office of the Governor (EOG), so operation of the bill's provisions is unclear in relation to the Chief Inspector General's duties related to the EOG.

**VIII. Statutes Affected:**

This bill substantially amends sections 14.32 and 20.055 of the Florida Statutes.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Changes:**

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

None.

**B. Amendments:**

None.

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

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236068

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment**

Delete lines 97 - 104  
and insert:  
shall be appointed without regard to political affiliation. For  
state agencies under the jurisdiction of the Governor, the  
inspector general shall be under the general supervision of the  
agency head, shall report to the Chief Inspector General, and  
may hire and remove staff within the Office of Inspector General  
in consultation with the Chief Inspector General but





236068

11 independently of the respective agency.

12 (c) For state agencies under the jurisdiction of a Cabinet

13 officer or the Governor and Cabinet, the ~~an~~ inspector general

14 may be



633854

LEGISLATIVE ACTION

Senate

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House

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

**Senate Amendment**

Delete lines 128 - 131

and insert:

(e) The Office of Inspector General shall have its own  
budget within the respective state agency, developed in  
consultation with the Chief Inspector General, sufficient to  
meet the office's mission.

By Senator Latvala

20-00844A-14

20141328\_\_

1 A bill to be entitled  
 2 An act relating to inspectors general; amending s.  
 3 14.32, F.S.; revising provisions relating to the  
 4 duties, appointment, and removal of the Chief  
 5 Inspector General; amending s. 20.055, F.S.; revising  
 6 provisions relating to the duties, appointment, and  
 7 removal of agency inspectors general; updating a  
 8 cross-reference; providing an effective date.  
 9  
 10 Be It Enacted by the Legislature of the State of Florida:  
 11  
 12 Section 1. Subsection (1) and paragraph (e) of subsection  
 13 (2) of section 14.32, Florida Statutes, are amended to read:  
 14 14.32 Office of Chief Inspector General.—  
 15 (1) There is created in the Executive Office of the  
 16 Governor the Office of Chief Inspector General. The Chief  
 17 Inspector General shall be responsible for promoting  
 18 accountability, integrity, and efficiency in the agencies under  
 19 the jurisdiction of the Governor. The Chief Inspector General  
 20 shall be appointed by the Governor, in consultation with the  
 21 Cabinet, to a term of 4 years, is subject to confirmation by the  
 22 Senate, and may be removed by unanimous vote ~~serve at the~~  
 23 ~~pleasure~~ of the Governor and Cabinet.  
 24 (2) The Chief Inspector General shall:  
 25 (e) Coordinate complaint-handling activities with agencies  
 26 and provide for independent legal counsel for inspectors general  
 27 in agencies under the jurisdiction of the Governor.  
 28 Section 2. Subsections (2) and (3), paragraphs (f), (h),  
 29 and (i) of subsection (5), paragraph (c) of subsection (7), and

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30 subsection (8) of section 20.055, Florida Statutes, are amended  
 31 to read:  
 32 20.055 Agency inspectors general.—  
 33 (2) The Office of Inspector General is ~~hereby~~ established  
 34 in each state agency to provide a central point for coordination  
 35 of and responsibility for activities that promote  
 36 accountability, integrity, and efficiency in government. ~~It~~  
 37 ~~shall be the duty and responsibility of~~ Each inspector general,  
 38 with respect to the state agency in which the office is  
 39 established, shall ~~be~~:  
 40 (a) Advise in the development of performance measures,  
 41 standards, and procedures for the evaluation of state agency  
 42 programs.  
 43 (b) Assess the reliability and validity of the information  
 44 provided by the state agency on performance measures and  
 45 standards, and make recommendations for improvement, if  
 46 necessary, before ~~prior to~~ submission of such information ~~these~~  
 47 ~~measures and standards to the Executive Office of the Governor~~  
 48 pursuant to s. 216.1827 ~~216.0166(1)~~.  
 49 (c) Review the actions taken by the state agency to improve  
 50 program performance and meet program standards and make  
 51 recommendations for improvement, if necessary.  
 52 (d) Provide direction for, supervise, and coordinate  
 53 audits, investigations, and management reviews relating to the  
 54 programs and operations of the state agency, except that when  
 55 the inspector general does not possess the qualifications  
 56 specified in subsection (4), the director of auditing shall  
 57 conduct such audits.  
 58 (e) Conduct, supervise, or coordinate other activities

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59 carried out or financed by that state agency for the purpose of  
60 promoting economy and efficiency in the administration of, or  
61 preventing and detecting fraud and abuse in, its programs and  
62 operations.

63 (f) Keep ~~the such~~ agency head, or, for state agencies under  
64 the jurisdiction of the Governor, the Chief Inspector General,  
65 informed concerning fraud, abuses, and deficiencies relating to  
66 programs and operations administered or financed by the state  
67 agency, recommend corrective action concerning fraud, abuses,  
68 and deficiencies, and report on the progress made in  
69 implementing corrective action.

70 (g) Ensure effective coordination and cooperation between  
71 the Auditor General, federal auditors, and other governmental  
72 bodies with a view toward avoiding duplication.

73 (h) Review, as appropriate, rules relating to the programs  
74 and operations of ~~the such~~ state agency and make recommendations  
75 concerning their impact.

76 (i) Ensure that an appropriate balance is maintained  
77 between audit, investigative, and other accountability  
78 activities.

79 (j) Comply with the General Principles and Standards for  
80 Offices of Inspector General as published and revised by the  
81 Association of Inspectors General.

82 (3) (a) For state agencies under the jurisdiction of a  
83 Cabinet officer or the Governor and Cabinet, the inspector  
84 general shall be appointed by the agency head. For state  
85 agencies under the jurisdiction direction of the Governor, the  
86 inspector general shall be appointed by the Chief Inspector  
87 General. The Chief Inspector General shall notify appointment

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88 ~~shall be made after notifying~~ the Governor and Cabinet ~~the Chief~~  
89 ~~Inspector General~~ in writing, ~~at least 7 days prior to an offer~~  
90 ~~of employment,~~ of his or her ~~the agency head's~~ intention to hire  
91 the inspector general for each state agency under his or her  
92 purview at least 7 days before an offer of employment.

93 (b) ~~An Each~~ inspector general is ~~shall report to and be~~  
94 ~~under the general supervision of the agency head and shall not~~  
95 ~~be~~ subject to supervision by any other employee of the state  
96 agency in which the office is established. The inspector general  
97 shall be appointed without regard to political affiliation. For  
98 state agencies under the jurisdiction of the Governor, the  
99 inspector general shall report to the Chief Inspector General  
100 and may hire and remove staff within the Office of the Inspector  
101 General in consultation with the Chief Inspector General but  
102 independently of the respective agency.

103 (c) For state agencies under the jurisdiction of a Cabinet  
104 officer or the Governor and Cabinet, an inspector general may be  
105 removed from office by the agency head. For state agencies under  
106 the jurisdiction direction of the Governor, an inspector general  
107 may only be removed from office by the agency head shall notify  
108 the Governor and the Chief Inspector General for cause including  
109 concerns regarding performance, malfeasance, misfeasance,  
110 misconduct, or failure to carry out his or her duties under this  
111 section, in writing, of the intention to terminate the inspector  
112 general at least 7 days prior to the removal. For state agencies  
113 under the jurisdiction of the Governor, the Chief Inspector  
114 General shall notify the Governor and Cabinet in writing of his  
115 or her intention to remove the inspector general at least 21  
116 days before the removal. For state agencies under the

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117 jurisdiction ~~direction~~ of the Governor and Cabinet, the agency  
 118 head shall notify the Governor and Cabinet in writing of his or  
 119 her the intention to ~~remove~~ terminate the inspector general at  
 120 least 21 ~~7~~ days before ~~prior~~ to the removal. If the inspector  
 121 general disagrees with the removal, the inspector general may  
 122 present objections in writing to the Governor and Cabinet within  
 123 such 21-day period.

124 (d) The Governor, the Governor and Cabinet, the agency  
 125 head, or agency staff may ~~shall~~ not prevent or prohibit the  
 126 inspector general from initiating, carrying out, or completing  
 127 any audit or investigation.

128 (e) The Office of Inspector General shall have its own  
 129 budget within the respective state agency sufficient to meet its  
 130 mission developed in consultation with the Chief Inspector  
 131 General.

132 (5) In carrying out the auditing duties and  
 133 responsibilities of this section ~~act~~, each inspector general  
 134 shall review and evaluate internal controls necessary to ensure  
 135 the fiscal accountability of the state agency. The inspector  
 136 general shall conduct financial, compliance, electronic data  
 137 processing, and performance audits of the agency and prepare  
 138 audit reports of his or her findings. The scope and assignment  
 139 of the audits shall be determined by the inspector general;  
 140 however, the agency head may at any time direct the inspector  
 141 general to perform an audit of a special program, function, or  
 142 organizational unit. The performance of the audit shall be under  
 143 the direction of the inspector general, except that if the  
 144 inspector general does not possess the qualifications specified  
 145 in subsection (4), the director of auditing shall perform the

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146 functions listed in this subsection.

147 (f) The inspector general shall submit the final report to  
 148 the agency head, ~~and to~~ the Auditor General, and, for state  
 149 agencies under the jurisdiction of the Governor, the Chief  
 150 Inspector General.

151 (h) The inspector general shall monitor the implementation  
 152 of the state agency's response to any report on the state agency  
 153 issued by the Auditor General or by the Office of Program Policy  
 154 Analysis and Government Accountability. No later than 6 months  
 155 after the Auditor General or the Office of Program Policy  
 156 Analysis and Government Accountability publishes a report on the  
 157 state agency, the inspector general shall provide a written  
 158 response to the agency head or, for state agencies under the  
 159 jurisdiction of the Governor, the Chief Inspector General on the  
 160 status of corrective actions taken. The inspector general shall  
 161 file a copy of such response with the Legislative Auditing  
 162 Committee.

163 (i) The inspector general shall develop long-term and  
 164 annual audit plans based on the findings of periodic risk  
 165 assessments. The plan, when ~~where~~ appropriate, should include  
 166 postaudit samplings of payments and accounts. The plan must  
 167 ~~shall~~ show the individual audits to be conducted during each  
 168 year and related resources to be devoted to the respective  
 169 audits. The Chief Financial Officer, to assist in fulfilling the  
 170 responsibilities for examining, auditing, and settling accounts,  
 171 claims, and demands pursuant to s. 17.03(1), and examining,  
 172 auditing, adjusting, and settling accounts pursuant to s. 17.04,  
 173 may use ~~utilize~~ audits performed by the inspectors general and  
 174 internal auditors. For state agencies under the jurisdiction of

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175 the Governor, the audit plans shall be submitted to the  
 176 ~~Governor's~~ Chief Inspector General. The plan shall be submitted  
 177 to the agency head for review and to the Chief Inspector General  
 178 for approval. A copy of the approved plan shall be submitted to  
 179 the Auditor General. For state agencies under the jurisdiction  
 180 of a Cabinet officer or the Governor and Cabinet, the plan shall  
 181 be submitted to the agency head for review and approval before  
 182 submitting to the Auditor General.

(7)

184 (c) The final reports prepared pursuant to paragraphs (a)  
 185 and (b) shall be provided ~~furnished~~ to the heads of the  
 186 respective agencies and, for state agencies under the  
 187 jurisdiction of the Governor, the Chief Inspector General. Such  
 188 reports must ~~shall~~ include, but need not be limited to:

189 1. A description of activities relating to the development,  
 190 assessment, and validation of performance measures.

191 2. A description of significant abuses and deficiencies  
 192 relating to the administration of programs and operations of the  
 193 agency disclosed by investigations, audits, reviews, or other  
 194 activities during the reporting period.

195 3. A description of the recommendations for corrective  
 196 action made by the inspector general during the reporting period  
 197 with respect to significant problems, abuses, or deficiencies  
 198 identified.

199 4. The identification of each significant recommendation  
 200 described in previous annual reports on which corrective action  
 201 has not been completed.

202 5. A summary of each audit and investigation completed  
 203 during the reporting period.

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204 (8) The inspector general in each state agency shall  
 205 provide to the agency head, upon receipt, all written complaints  
 206 concerning the duties and responsibilities in this section or  
 207 any allegation of misconduct related to the office of the  
 208 inspector general or its employees, if received from subjects of  
 209 audits or investigations who are individuals substantially  
 210 affected or entities contracting with the state, as defined in  
 211 this section. For state agencies ~~solely~~ under the jurisdiction  
 212 ~~direction~~ of the Governor, the inspector general shall also  
 213 provide the complaint to the Chief Inspector General.

214 Section 3. This act shall take effect July 1, 2014.

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## 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

March 4, 2014

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

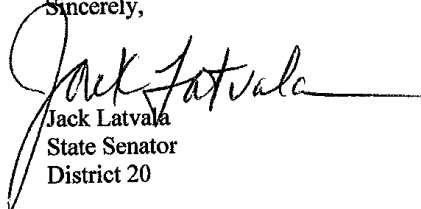
Dear Chairman Ring:

I respectfully request that Senate Bill 1328/Inspectors General be placed on the agenda of the Senate Committee on Governmental Oversight and Accountability at your earliest convenience.

There have been many examples of a lack of true independence for inspectors general and of abuse of power by agency heads. This bill would allow an inspector general in each executive agency to be hired and terminated by the State Chief Inspector General moving the agency head/IG relationship from a supervisor-employee relationship to a peer-to-peer relationship.

If you have any questions regarding this legislation, please contact me. Thank you for your consideration.

Sincerely,

  
Jack Latvala  
State Senator  
District 20

JL:tc

CC: Joe McVaney, Staff Director; Bethany Jones, Administrative Assistant

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](http://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.)

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

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BILL: CS/CS/SB 1278

INTRODUCER: Governmental Oversight and Accountability Committee; Banking and Insurance Committee and Senator Richter

SUBJECT: Public Records/Office of Financial Regulation

DATE: March 28, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/CS/SB 1278 creates a public records exemption for informal enforcement actions of the Office of Financial Regulation (OFR) and trade secrets held by the OFR in accordance with its statutory duties with respect to the Financial Institutions Codes. In addition, the bill defines:

- Examination report,
- Informal enforcement action,
- Working papers, and
- Personal financial information.

The OFR regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (codes), chapters 655 to 667, Florida Statutes. The OFR ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. Currently, s. 655.057, F.S., exempts certain records held by the OFR relating to the supervision and regulation of financial institutions chartered in Florida.

The bill provides for repeal of the exemption for informal enforcement actions and trade secrets on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act. Because this bill creates a new public records exemption, the bill provides a statement of public necessity as required by the State Constitution.



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 public record or public meeting exemption.

## 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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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 provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

---

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

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> 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 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)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> 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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

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

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>10</sup> 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.<sup>11</sup> OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.<sup>12</sup>

### **Regulation of State-Chartered Financial Institutions**

The Office of Financial Regulation (OFR) regulates and charters banks, trust companies, credit unions, and other financial institutions pursuant to the Financial Institutions Codes (“codes”), chapters 655 to 667, F.S. The OFR ensures Florida-chartered financial institutions’ compliance with state and federal requirements for safety and soundness.

### **Current Public Records Exemptions under the Codes**

Currently, s. 655.057, F.S., of the codes contains the following public records exemptions:

- All records and information relating to an “active” investigation or examination are confidential and exempt.
- After an investigation or examination is no longer active, information remains confidential and exempt to the extent that disclosure would:
  - Jeopardize the integrity of another active investigation;
  - Impair the safety and soundness of the financial institution;
  - Reveal personal financial information;
  - Reveal the identity of a confidential source;
  - Defame or cause unwarranted damage to the good name or reputation of an individual or jeopardize the safety of an individual; or
  - Reveal investigative techniques or procedures.
- Reports of examination, operations, or condition, *including working papers*, or portions thereof, that are prepared by or for the use of the OFR or any state or federal agency responsible for the regulation or supervision of financial institutions.
  - Current law provides exceptions for persons to whom these reports and working papers may be released.
- Examination, operation, or condition reports of a failed financial institution, which shall be released within one year after the appointment of a liquidator, receiver, or conservator. However, any portion which discloses the identities of depositors, bondholders, members, borrowers, or stockholders (other than directors, officers, or controlling stockholders) remains confidential and exempt.
- Lists required to be maintained and submitted to the OFR by Florida-chartered credit unions and mutual associations of their members’ names and residences. These list of members are confidential and exempt.

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<sup>10</sup> 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.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

- Lists required to be maintained and submitted to the OFR by Florida-chartered banks, trust companies, and stock associations of their shareholders' names, addresses, and number of shares held by each shareholder. Any portion of these lists which reveal the shareholders' identities is confidential and exempt.

In addition, s. 655.059, F.S., provides that the books and records of a financial institution are "confidential" and are available to specified persons, including the OFR.<sup>13</sup> However, this is not a public records exemption from s. 119.07(1), F.S., because private organizations (such as financial institutions) are generally not subject to the ch. 119, F.S., unless the private organization has been created by a public entity, has been delegated the authority to perform some governmental function, or plays an integral part in the decision-making process of a public entity.<sup>14</sup> This statute merely prohibits financial institutions from disclosing its books and records to anyone other than the persons enumerated in s. 655.059(1)(a), F.S.

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

#### **Informal Enforcement Actions**

The bill creates a limited public records exemption for "informal enforcement actions" by the OFR. An informal enforcement action is defined to mean "a board resolution, document of resolution, or an agreement in writing between the office and a financial institution" that the office imposes on an institution after considering the administrative enforcement guidelines in s. 655.031, F.S., and determining that a formal enforcement action is not an appropriate enforcement remedy. However, the bill limits the exemption by providing that after an investigation relating to an informal enforcement action is completed or ceases to be active, an informal enforcement action is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, only to the extent that disclosure would result in certain events (i.e., impair the safety and soundness of the financial institution; reveal investigative techniques or procedures, etc.).

The public necessity statement provides that public disclosure of informal enforcement actions could erode public confidence in financial institutions in this state and may lead to a reduced level of protection of the interests of the depositors and creditors of financial institutions. In addition, the public necessity statement provides that this exemption will, among other things, provide competitive equality to Florida-chartered institutions, because financial institutions that are federally chartered or chartered by other states are protected by those federal or state laws with regard to informal enforcement actions.

#### **Trade Secrets**

The bill creates a public records exemption for trade secrets, as defined in s. 688.002, F.S., that comply with s. 655.0591, F.S., and that are held by the OFR in accordance with its statutory duties with respect to the codes.

---

<sup>13</sup> In addition, s. 655.012(1)(b), F.S., grants the OFR access to all books and records of all persons over whom the OFR exercises general supervision as is necessary for the performance of the duties and functions of the OFR, as prescribed by the codes.

<sup>14</sup> Florida Attorney General Opinion 07-27.

The public necessity statement provides that disclosure of these trade secrets could result in a competitive disadvantage and economic loss to a financial institution.

### **Definitions**

In addition to creating a definition of “informal enforcement action” for the new exemption, the bill defines the examination report, working papers, and personal financial information to clarify the existing exemptions in s. 655.057, F.S.

### **Statement of Public Necessity**

Section 2 of the bill is the statement of public necessity supporting the new exemptions for informal enforcement actions and trade secrets. The bill provides legislative findings that informal enforcement actions and trade secrets must be kept confidential and exempt; and identified public purposes for exempting informal enforcement actions and trade secrets.

The bill will take effect on the same date that SB 1012 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

## **IV. Constitutional Issues:**

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

None.

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

In order to pass a newly-created or expanded public records or public meetings exemption, Article I, s. 24 of the State Constitution requires a two-thirds vote of each house of the Legislature and a public necessity statement. The bill contains a public necessity statement for informal enforcement actions and trade secrets. This bill requires a two-thirds vote for passage.

### **C. Trust Funds Restrictions:**

None.

## **V. Fiscal Impact Statement:**

### **A. Tax/Fee Issues:**

None.

### **B. Private Sector Impact:**

The bill’s protection of trade secrets and informal enforcement actions may benefit Florida-chartered financial institutions, since disclosure of such information could result in a competitive disadvantage in the marketplace and reputational risk.

**C. Government Sector Impact:**

The bill likely could create a minimal fiscal impact on the OFR, because OFR staff responsible for complying with public record requests could require training related to implementation of the public record exemption. In addition, the OFR could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the agency.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends section 655.057 of the Florida Statutes.

**IX. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS/CS by Governmental Oversight and Accountability on March 26, 2014:**

The CS/CS amends the bill so that the public records exemptions currently in s. 655.057, F.S., were not made subject to a new Open Government Sunset Review (pursuant to s. 119.15, F.S.).<sup>15</sup> Technical changes in s. 655.057, F.S., were also made.

The CS/CS makes the new exemptions for informal enforcement actions and trade secrets subject to the s. 119.15, F.S., the Open Government Sunset Review Act.

**CS by Banking and Insurance on March 11, 2014:**

The CS provides a reference to linked bill, SB 1012.

**B. Amendments:**

None.

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

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<sup>15</sup> Section 655.057, F.S. was subject to an Open Government Sunset Review pursuant to s. 119.14, F.S., however, s. 119.14, F.S. was repealed on October 1, 1995.



673018

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2014	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 25 - 263  
and insert:  
119.07(1) until such investigation is completed or ceases to be  
active. For purposes of this subsection, an investigation is  
considered "active" while such investigation is being conducted  
by the office with a reasonable, good faith belief that it may  
lead to the filing of administrative, civil, or criminal  
proceedings. An investigation does not cease to be active if the



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11 office is proceeding with reasonable dispatch, and there is a  
12 good faith belief that action may be initiated by the office or  
13 other administrative or law enforcement agency. After an  
14 investigation is completed or ceases to be active, portions of  
15 the such records relating to the investigation are shall be  
16 confidential and exempt from ~~the provisions of~~ s. 119.07(1) to  
17 the extent that disclosure would:

18 (a) Jeopardize the integrity of another active  
19 investigation;

20 (b) Impair the safety and soundness of the financial  
21 institution;

22 (c) Reveal personal financial information;

23 (d) Reveal the identity of a confidential source;

24 (e) Defame or cause unwarranted damage to the good name or  
25 reputation of an individual or jeopardize the safety of an  
26 individual; or

27 (f) Reveal investigative techniques or procedures.

28 (2) Except as otherwise provided in this section and except  
29 for such portions thereof which are public record, reports of  
30 examinations, operations, or condition, including working  
31 papers, or portions thereof, prepared by, or for the use of, the  
32 office or any state or federal agency responsible for the  
33 regulation or supervision of financial institutions in this  
34 state are confidential and exempt from ~~the provisions of~~ s.  
35 119.07(1). However, such reports or papers or portions thereof  
36 may be released to:

37 (a) The financial institution under examination;

38 (b) Any holding company of which the financial institution  
39 is a subsidiary;



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40 (c) Proposed purchasers if necessary to protect the  
41 continued financial viability of the financial institution, upon  
42 prior approval by the board of directors of such institution;

43 (d) Persons proposing in good faith to acquire a  
44 controlling interest in or to merge with the financial  
45 institution, upon prior approval by the board of directors of  
46 such financial institution;

47 (e) Any officer, director, committee member, employee,  
48 attorney, auditor, or independent auditor officially connected  
49 with the financial institution, holding company, proposed  
50 purchaser, or person seeking to acquire a controlling interest  
51 in or merge with the financial institution; or

52 (f) A fidelity insurance company, upon approval of the  
53 financial institution's board of directors. However, a fidelity  
54 insurance company may receive only that portion of an  
55 examination report relating to a claim or investigation being  
56 conducted by such fidelity insurance company.

57 (g) Examination, operation, or condition reports of a  
58 financial institution shall be released by the office within 1  
59 year after the appointment of a liquidator, receiver, or  
60 conservator to the ~~such~~ financial institution. However, any  
61 portion of such reports which discloses the identities of  
62 depositors, bondholders, members, borrowers, or stockholders,  
63 other than directors, officers, or controlling stockholders of  
64 the institution, shall remain confidential and exempt from ~~the~~  
65 ~~provisions of~~ s. 119.07(1).

66

67 Any confidential information or records obtained from the office  
68 pursuant to this paragraph shall be maintained as confidential





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69 and exempt from ~~the provisions of~~ s. 119.07(1).

70 (3) Except as otherwise provided in this section and except  
71 for those portions that are otherwise public record, after an  
72 investigation relating to an informal enforcement action is  
73 completed or ceases to be active, informal enforcement actions  
74 are confidential and exempt from s. 119.07(1) and s. 24(a), Art.  
75 I of the State Constitution to the extent that disclosure would:

76 (a) Jeopardize the integrity of another active  
77 investigation.

78 (b) Impair the safety and soundness of the financial  
79 institution.

80 (c) Reveal personal financial information.

81 (d) Reveal the identity of a confidential source.

82 (e) Defame or cause unwarranted damage to the good name or  
83 reputation of an individual or jeopardize the safety of an  
84 individual.

85 (f) Reveal investigative techniques or procedures.

86 (4) Except as otherwise provided in this section and except  
87 for those portions that are otherwise public record, trade  
88 secrets as defined in s. 688.002 which comply with s. 655.0591  
89 and which are held by the office in accordance with its  
90 statutory duties with respect to the financial institutions  
91 codes are confidential and exempt from s. 119.07(1) and s.  
92 24(a), Art. I of the State Constitution.

93 (5) ~~(3)~~ The provisions of This section does ~~de~~ not prevent  
94 or restrict:

95 (a) Publishing reports required to be submitted to the  
96 office pursuant to s. 655.045(2) (a) or required by applicable  
97 federal statutes or regulations to be published.



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98 (b) Furnishing records or information to any other state,  
99 federal, or foreign agency responsible for the regulation or  
100 supervision of financial institutions, including Federal Home  
101 Loan Banks.

102 (c) Disclosing or publishing summaries of the condition of  
103 financial institutions and general economic and similar  
104 statistics and data, provided that the identity of a particular  
105 financial institution is not disclosed.

106 (d) Reporting any suspected criminal activity, with  
107 supporting documents and information, to appropriate law  
108 enforcement and prosecutorial agencies.

109 (e) Furnishing information upon request to the Chief  
110 Financial Officer or the Division of Treasury of the Department  
111 of Financial Services regarding the financial condition of any  
112 financial institution that is, or has applied to be, designated  
113 as a qualified public depository pursuant to chapter 280.

114  
115 Any confidential information or records obtained from the office  
116 pursuant to this subsection shall be maintained as confidential  
117 and exempt from ~~the provisions of~~ s. 119.07(1).

118 (6) (a) ~~(4) (a)~~ Orders of courts or of administrative law  
119 judges for the production of confidential records or information  
120 shall provide for inspection in camera by the court or the  
121 administrative law judge and, after the court or administrative  
122 law judge has made a determination that the documents requested  
123 are relevant or would likely lead to the discovery of admissible  
124 evidence, such ~~said~~ documents shall be subject to further orders  
125 by the court or the administrative law judge to protect the  
126 confidentiality thereof. An ~~Any~~ order directing the release of



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127 information is ~~shall be~~ immediately reviewable, and a petition  
128 by the office for review of such order shall automatically stays  
129 ~~stay~~ further proceedings in the trial court or the  
130 administrative hearing until the disposition of such petition by  
131 the reviewing court. If any other party files such a petition  
132 for review, it operates ~~will operate~~ as a stay of such  
133 proceedings only upon order of the reviewing court.

134 (b) Confidential records and information furnished pursuant  
135 to a legislative subpoena shall be kept confidential by the  
136 legislative body or committee that ~~which~~ received the records or  
137 information, except in a case involving investigation of charges  
138 against a public official subject to impeachment or removal. r  
139 ~~and then~~ Disclosure of such information shall be only to the  
140 extent determined necessary by the legislative body or committee  
141 ~~to be necessary~~.

142 (7) ~~(5)~~ Every credit union and mutual association shall  
143 maintain, in the principal office where its business is  
144 transacted, full and correct records of the names and residences  
145 of all the members of the credit union or mutual association.  
146 Such records are ~~shall be~~ subject to the inspection of all the  
147 members of the credit union or mutual association, and the  
148 officers authorized to assess taxes under state authority,  
149 during business hours of each business day. A current list of  
150 members shall be made available to the office's examiners for  
151 their inspection and, upon the request of the office, shall be  
152 submitted to the office. Except as otherwise provided in this  
153 subsection, the list of the members of the credit union or  
154 mutual association is confidential and exempt from ~~the~~  
155 ~~provisions of~~ s. 119.07(1).



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156        (8)~~(6)~~ Every bank, trust company, and stock association  
157 shall maintain, in the principal office where its business is  
158 transacted, full and complete records of the names and  
159 residences of all the shareholders of the bank, trust company,  
160 or stock association and the number of shares held by each. Such  
161 records are ~~shall be~~ subject to the inspection of all the  
162 shareholders of the bank, trust company, or stock association,  
163 and the officers authorized to assess taxes under state  
164 authority, during business hours of each banking day. A current  
165 list of shareholders shall be made available to the office's  
166 examiners for their inspection and, upon the request of the  
167 office, shall be submitted to the office. Except as otherwise  
168 provided in this subsection, any portion of this list which  
169 reveals the identities of the shareholders is confidential and  
170 exempt from ~~the provisions of~~ s. 119.07(1).

171        (9)~~(7)~~ Materials supplied to the office or to employees of  
172 any financial institution by other state or federal governmental  
173 agencies, ~~federal or state,~~ shall remain the property of the  
174 submitting agency or the corporation, and any document request  
175 must be made to the appropriate agency. Any confidential  
176 documents supplied to the office or to employees of any  
177 financial institution by other state or federal governmental  
178 agencies are, ~~federal or state,~~ shall be confidential and exempt  
179 from ~~the provisions of~~ s. 119.07(1). Such information shall be  
180 made public only with the consent of such agency or the  
181 corporation.

182        (10)~~(8)~~ Examination reports, investigatory records,  
183 applications, and related information compiled by the office, or  
184 photographic copies thereof, shall be retained by the office for



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185 ~~a period of~~ at least 10 years.

186 (11)(9) A copy of any document on file with the office  
187 which is certified by the office as being a true copy may be  
188 introduced in evidence as if it were the original. The  
189 commission shall establish a schedule of fees for preparing true  
190 copies of documents.

191 (12) For purposes of this section, the term:

192 (a) "Examination report" means records submitted to or  
193 prepared by the office as part of the office's duties performed  
194 pursuant to s. 655.012 or s. 655.045(1).

195 (b) "Informal enforcement action" means a board resolution,  
196 a document of resolution, or an agreement in writing between the  
197 office and a financial institution which:

198 1. The office imposes on an institution when the office  
199 considers the administrative enforcement guidelines in s.  
200 655.031 and determines that a formal enforcement action is not  
201 an appropriate administrative remedy;

202 2. Sets forth a program of corrective action to address one  
203 or more safety and soundness deficiencies and violations of law  
204 or rule at the institution; and

205 3. Is not subject to enforcement by imposition of an  
206 administrative fine pursuant to s. 655.041.

207 (c) "Personal financial information" means:

208 1. Information relating to the existence, nature, source,  
209 or amount of a person's personal income, expenses, or debt.

210 2. Information relating to a person's financial  
211 transactions of any kind.

212 3. Information relating to the existence, identification,  
213 nature, or value of a person's assets, liabilities, or net



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214 worth.

215 (d) "Working papers" means the records of the procedures  
216 followed, the tests performed, the information obtained, and the  
217 conclusions reached in an examination or investigation performed  
218 under s. 655.032 or s. 655.045. Working papers include planning  
219 documentation, work programs, analyses, memoranda, letters of  
220 confirmation and representation, abstracts of the books and  
221 records of a financial institution as defined in s. 655.005(1),  
222 and schedules or commentaries prepared or obtained in the course  
223 of such examination or investigation.

224 (13)-(10) A ~~Any~~ person who willfully discloses information  
225 made confidential by this section ~~commits is guilty of~~ a felony  
226 of the third degree, punishable as provided in s. 775.082, s.  
227 775.083, or s. 775.084.

228 (14) Subsections (3) and (4) are subject to the Open  
229 Government Sunset Review Act in accordance with s. 119.15 and  
230 are repealed on October 2, 2019, unless reviewed and saved from  
231 repeal through reenactment by the Legislature.

232 Section 2. (1) The Legislature finds that it is a public  
233 necessity that informal enforcement actions and trade secrets,  
234 as defined in s. 688.002, Florida Statutes, be kept confidential  
235 and exempt

By the Committee on Banking and Insurance; and Senator Richter

597-02472-14

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1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 655.057, F.S.; providing an exemption from public  
 4 records requirements for certain informal enforcement  
 5 actions by the Office of Financial Regulation, to  
 6 which penalties apply for willful disclosure of such  
 7 confidential information; providing an exemption from  
 8 public records requirements for certain trade secrets  
 9 held by the office, to which penalties apply for  
 10 willful disclosure of such confidential information;  
 11 defining terms; providing for future legislative  
 12 review and repeal of the section; providing a  
 13 statement of public necessity; providing a contingent  
 14 effective date.  
 15  
 16 Be It Enacted by the Legislature of the State of Florida:  
 17  
 18 Section 1. Section 655.057, Florida Statutes, is amended to  
 19 read:  
 20 655.057 Records; limited restrictions upon public access.—  
 21 (1) Except as otherwise provided in this section and except  
 22 for such portions thereof which are otherwise public record, all  
 23 records and information relating to an investigation by the  
 24 office are confidential and exempt from ~~the provisions of~~ s.  
 25 119.07(1) and s. 24(a), Art. I of the State Constitution until  
 26 such investigation is completed or ceases to be active. For  
 27 purposes of this subsection, an investigation is considered  
 28 "active" while such investigation is being conducted by the  
 29 office with a reasonable, good faith belief that it may lead to

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30 the filing of administrative, civil, or criminal proceedings. An  
 31 investigation does not cease to be active if the office is  
 32 proceeding with reasonable dispatch, and there is a good faith  
 33 belief that action may be initiated by the office or other  
 34 administrative or law enforcement agency. After an investigation  
 35 is completed or ceases to be active, portions of ~~the such~~  
 36 records relating to the investigation are ~~shall be~~ confidential  
 37 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),  
 38 Art. I of the State Constitution to the extent that disclosure  
 39 would:  
 40 (a) Jeopardize the integrity of another active  
 41 investigation;  
 42 (b) Impair the safety and soundness of the financial  
 43 institution;  
 44 (c) Reveal personal financial information;  
 45 (d) Reveal the identity of a confidential source;  
 46 (e) Defame or cause unwarranted damage to the good name or  
 47 reputation of an individual or jeopardize the safety of an  
 48 individual; or  
 49 (f) Reveal investigative techniques or procedures.  
 50 (2) Except as otherwise provided in this section and except  
 51 for such portions thereof which are public record, reports of  
 52 examinations, operations, or condition, including working  
 53 papers, or portions thereof, prepared by, or for the use of, the  
 54 office or any state or federal agency responsible for the  
 55 regulation or supervision of financial institutions in this  
 56 state are confidential and exempt from ~~the provisions of~~ s.  
 57 119.07(1) and s. 24(a), Art. I of the State Constitution.  
 58 However, such reports or papers or portions thereof may be

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59 released to:

- 60 (a) The financial institution under examination;
- 61 (b) Any holding company of which the financial institution  
62 is a subsidiary;
- 63 (c) Proposed purchasers if necessary to protect the  
64 continued financial viability of the financial institution, upon  
65 prior approval by the board of directors of such institution;
- 66 (d) Persons proposing in good faith to acquire a  
67 controlling interest in or to merge with the financial  
68 institution, upon prior approval by the board of directors of  
69 ~~the such~~ financial institution;
- 70 (e) Any officer, director, committee member, employee,  
71 attorney, auditor, or independent auditor officially connected  
72 with the financial institution, holding company, proposed  
73 purchaser, or person seeking to acquire a controlling interest  
74 in or merge with the financial institution; or
- 75 (f) A fidelity insurance company, upon approval of the  
76 financial institution's board of directors. However, a fidelity  
77 insurance company may receive only that portion of an  
78 examination report relating to a claim or investigation being  
79 conducted by such fidelity insurance company.
- 80 (g) Examination, operation, or condition reports of a  
81 financial institution shall be released by the office within 1  
82 year after the appointment of a liquidator, receiver, or  
83 conservator to ~~the such~~ financial institution. However, any  
84 portion of such reports which discloses the identities of  
85 depositors, bondholders, members, borrowers, or stockholders,  
86 other than directors, officers, or controlling stockholders of  
87 the institution, shall remain confidential and exempt from ~~the~~

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88 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~  
89 Constitution.

90

91 Any confidential information or records obtained from the office  
92 pursuant to this paragraph shall be maintained as confidential  
93 and exempt from ~~the provisions of s. 119.07(1) and s. 24(a),~~  
94 Art. I of the State Constitution.

95 (3) Except as otherwise provided in this section and except  
96 for such portions thereof which are otherwise public record,  
97 after an investigation relating to an informal enforcement  
98 action is completed or ceases to be active, the informal  
99 enforcement action is confidential and exempt from s. 119.07(1)  
100 and s. 24(a), Art. I of the State Constitution to the extent  
101 that disclosure would:

102 (a) Jeopardize the integrity of another active  
103 investigation;

104 (b) Impair the safety and soundness of the financial  
105 institution;

106 (c) Reveal personal financial information;

107 (d) Reveal the identity of a confidential source;

108 (e) Defame or cause unwarranted damage to the good name or  
109 reputation of an individual or jeopardize the safety of an  
110 individual; or

111 (f) Reveal investigative techniques or procedures.

112 (4) Except as otherwise provided in this section and except  
113 for such portions thereof which are otherwise public record,  
114 trade secrets, as defined in s. 688.002, which comply with s.  
115 655.0591 and which are held by the office in accordance with its  
116 statutory duties with respect to the financial institutions

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117 codes are confidential and exempt from s. 119.07(1) and s.  
 118 24(a), Art. I of the State Constitution.  
 119 ~~(5)(3) The provisions of This section does de~~ not prevent  
 120 or restrict:  
 121 (a) Publishing reports required to be submitted to the  
 122 office pursuant to s. 655.045(2)(a) or required by applicable  
 123 federal statutes or regulations to be published.  
 124 (b) Furnishing records or information to any other state,  
 125 federal, or foreign agency responsible for the regulation or  
 126 supervision of financial institutions, including Federal Home  
 127 Loan Banks.  
 128 (c) Disclosing or publishing summaries of the condition of  
 129 financial institutions and general economic and similar  
 130 statistics and data, provided that the identity of a particular  
 131 financial institution is not disclosed.  
 132 (d) Reporting any suspected criminal activity, with  
 133 supporting documents and information, to appropriate law  
 134 enforcement and prosecutorial agencies.  
 135 (e) Furnishing information upon request to the Chief  
 136 Financial Officer or the Division of Treasury of the Department  
 137 of Financial Services regarding the financial condition of any  
 138 financial institution that is, or has applied to be, designated  
 139 as a qualified public depository pursuant to chapter 280.  
 140  
 141 Any confidential information or records obtained from the office  
 142 pursuant to this subsection shall be maintained as confidential  
 143 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),  
 144 Art. I of the State Constitution.  
 145 ~~(6)(4)~~(a) Orders of courts or of administrative law judges

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146 for the production of confidential records or information shall  
 147 provide for inspection in camera by the court or the  
 148 administrative law judge, and, after the court or administrative  
 149 law judge has made a determination that the documents requested  
 150 are relevant or would likely lead to the discovery of admissible  
 151 evidence, such said documents shall be subject to further orders  
 152 by the court or the administrative law judge to protect the  
 153 confidentiality thereof. ~~An Any~~ order directing the release of  
 154 information is shall be immediately reviewable, and a petition  
 155 by the office for review of such order ~~shall~~ automatically stays  
 156 ~~stay~~ further proceedings in the trial court or the  
 157 administrative hearing until the disposition of such petition by  
 158 the reviewing court. If any other party files such a petition  
 159 for review, it operates will operate as a stay of such  
 160 proceedings only upon order of the reviewing court.  
 161 (b) Confidential records and information furnished pursuant  
 162 to a legislative subpoena shall be kept confidential by the  
 163 legislative body or committee ~~that which~~ received the records or  
 164 information, except in a case involving investigation of charges  
 165 against a public official subject to impeachment or removal,  
 166 ~~and then~~ Disclosure of such information shall be only to the  
 167 extent determined necessary by the legislative body or committee  
 168 ~~to be necessary.~~  
 169 ~~(7)(5)~~ Every credit union and mutual association shall  
 170 maintain, in the principal office where its business is  
 171 transacted, full and correct records of the names and residences  
 172 of all the members of the credit union or mutual association.  
 173 Such records are shall be subject to the inspection of all the  
 174 members of the credit union or mutual association, and the

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175 officers authorized to assess taxes under state authority,  
 176 during business hours of each business day. A current list of  
 177 members shall be made available to the office's examiners for  
 178 their inspection and, upon the request of the office, shall be  
 179 submitted to the office. Except as otherwise provided in this  
 180 subsection, the list of the members of the credit union or  
 181 mutual association is confidential and exempt from ~~the~~  
 182 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 183 Constitution.

184 ~~(8)(6)~~ Every bank, trust company, and stock association  
 185 shall maintain, in the principal office where its business is  
 186 transacted, full and complete records of the names and  
 187 residences of all the shareholders of the bank, trust company,  
 188 or stock association and the number of shares held by each. Such  
 189 records ~~are shall be~~ subject to the inspection of all the  
 190 shareholders of the bank, trust company, or stock association,  
 191 and the officers authorized to assess taxes under state  
 192 authority, during business hours of each banking day. A current  
 193 list of shareholders shall be made available to the office's  
 194 examiners for their inspection and, upon the request of the  
 195 office, shall be submitted to the office. Except as otherwise  
 196 provided in this subsection, any portion of this list which  
 197 reveals the identities of the shareholders is confidential and  
 198 exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I  
 199 of the State Constitution.

200 ~~(9)(7)~~ Materials supplied to the office or to employees of  
 201 any financial institution by other state or federal governmental  
 202 agencies, ~~federal or state,~~ shall remain the property of the  
 203 submitting agency or the corporation, and any document request

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204 must be made to the appropriate agency. Any confidential  
 205 documents supplied to the office or to employees of any  
 206 financial institution by other state or federal governmental  
 207 agencies ~~are, federal or state,~~ shall be confidential and exempt  
 208 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the  
 209 State Constitution. Such information shall be made public only  
 210 with the consent of such agency or the corporation.

211 ~~(10)(8)~~ Examination reports, investigatory records,  
 212 applications, and related information compiled by the office, or  
 213 photographic copies thereof, shall be retained by the office for  
 214 ~~a period of~~ at least 10 years.

215 ~~(11)(9)~~ A copy of any document on file with the office  
 216 which is certified by the office as being a true copy may be  
 217 introduced in evidence as if it were the original. The  
 218 commission shall establish a schedule of fees for preparing true  
 219 copies of documents.

220 (12) As used in this section, the term:

221 (a) "Examination report" means records submitted to or  
 222 prepared by the office as part of the office's duties performed  
 223 pursuant to s. 655.012 or s. 655.045(1).

224 (b) "Informal enforcement action" means a board resolution,  
 225 a document of resolution, or an agreement in writing between the  
 226 office and a financial institution which:

227 1. The office imposes on the institution when the office  
 228 considers the administrative enforcement guidelines in s.  
 229 655.031 and determines that a formal enforcement action is not  
 230 an appropriate administrative remedy;

231 2. Sets forth a program of corrective action to address one  
 232 or more safety and soundness deficiencies and violations of law

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233 or rule at the institution; and

234 3. Is not subject to enforcement by imposition of an  
 235 administrative fine pursuant to s. 655.041.

236 (c) "Personal financial information" means:

237 1. Information relating to the existence, nature, source,  
 238 or amount of a person's personal income, expenses, or debt.

239 2. Information relating to a person's financial  
 240 transactions of any kind.

241 3. Information relating to the existence, identification,  
 242 nature, or value of a person's assets, liabilities, or net  
 243 worth.

244 (d) "Working papers" means the records of the procedures  
 245 followed, the tests performed, the information obtained, and the  
 246 conclusions reached in an investigation or examination performed  
 247 under ss. 655.032 or 655.045. Working papers include planning,  
 248 documentation, work programs, analyses, memoranda, letters of  
 249 confirmation and representation, abstracts of the books and  
 250 records of a financial institution as defined in s.  
 251 655.005(1)(i), and schedules or commentaries prepared or  
 252 obtained in the course of such investigation or examination.

253 (13)-(14) A ~~Any~~ person who willfully discloses information  
 254 made confidential by this section ~~commits is guilty~~ of a felony  
 255 of the third degree, punishable as provided in s. 775.082, s.  
 256 775.083, or s. 775.084.

257 (14) This section is subject to the Open Government Sunset  
 258 Review Act in accordance with s. 119.15 and shall stand repealed  
 259 on October 2, 2019, unless otherwise saved from repeal through  
 260 reenactment by the Legislature.

261 Section 2. (1) The Legislature finds it a public necessity

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262 that informal enforcement actions and trade secrets, as defined  
 263 in s. 688.002, Florida Statutes, be kept confidential and exempt  
 264 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of  
 265 the State Constitution.

266 (2) Public disclosure of an informal enforcement action  
 267 could further impair the safety and soundness of a financial  
 268 institution that is subject to the action. Furthermore, the  
 269 public disclosure of this information could erode public  
 270 confidence in financial institutions and the financial  
 271 institution system in this state and may lead to a reduced level  
 272 of protection of the interests of the depositors and creditors  
 273 of financial institutions. Maintaining informal enforcement  
 274 actions as confidential and exempt from s. 119.07(1), Florida  
 275 Statutes, and s. 24(a), Article I of the State Constitution will  
 276 provide to the financial institutions that are chartered by this  
 277 state the same protections as those already available to  
 278 financial institutions chartered under federal law and by other  
 279 states, maintain public confidence in financial institutions  
 280 subject to the financial institutions codes, protect the safety  
 281 and soundness of the financial institution system in this state,  
 282 protect the interests of the depositors and creditors of  
 283 financial institutions, promote the opportunity for state-  
 284 chartered financial institutions to be and remain competitive  
 285 with financial institutions chartered by other states or the  
 286 United States, and otherwise provide for and promote the  
 287 purposes of the financial institutions codes as set forth in s.  
 288 655.001, Florida Statutes.

289 (3) A trade secret derives independent economic value,  
 290 actual or potential, from not being generally known to, and not

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291 readily ascertainable by, other persons who can obtain economic  
292 value from the disclosure or use of the trade secret. Without an  
293 exemption for a trade secret held by the office, that trade  
294 secret becomes a public record when received and must be  
295 divulged upon request. Divulging a trade secret under the public  
296 records law would give business competitors an unfair advantage  
297 and destroy the value of that property, causing a financial loss  
298 to the person or entity submitting the trade secret and  
299 weakening the position of that person or entity in the  
300 marketplace.

301 Section 3. This act shall take effect on the same date that  
302 SB 1012 or similar legislation takes effect, if such legislation  
303 is adopted in the same legislative session or an extension  
304 thereof and becomes a law.



# 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

March 12, 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 1278, Public Records/Office of Financial Regulation, 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:

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**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1278  
*(if applicable)*

Name JO MORRIS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Affairs Director

Address 200 E. GAINES ST.

Phone \_\_\_\_\_

*Street*

Tallahassee  
*City*

FL  
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Speaking:  For  Against  Information

Representing Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: CS/SB 810

INTRODUCER: Regulated Industries Committee and Senator Galvano

SUBJECT: Pugilistic Exhibitions

DATE: March 25, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	_____	_____	<u>JU</u>	_____
4.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 810 relates to pugilistic exhibitions, such as boxing, kickboxing, and the martial arts, which are regulated by the Florida Boxing Commission within the Department of Business and Professional Regulation under ch. 548, F.S.

The bill provides a \$111,000 appropriation in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2013-2014 fiscal year.

The bill repeals the concessionaire license requirement and eliminates requirements for concessionaires to report and pay taxes. It also repeals the license and tax reporting requirements for persons who have the right to telecast matches. It also repeals the license requirement for co-promoters.

The bill limits the amount of taxes that promoters' must report and pay based on 5 percent tax on gross receipts, including gross receipts derived from the gross price charged for the sale of broadcasting, television and motion picture rights, to a maximum of \$40,000 for a single event.

The bill also deletes the requirement that promoters report and pay the 5 percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill also:

- Revises current definitions and defines new terms;
- Clarifies the duties and responsibilities of the executive director of the commission;
- Deletes a duplicative requirement that the commission must electronically record of all its scheduled proceedings;
- Authorizes the commission to approve, suspend, or revoke its approval of amateur sanctioning organizations for mixed martial arts matches;
- Exempts several types of matches from regulation by the state, including amateur matches conducted by public postsecondary institutions, public secondary schools and the Florida National Guard and U.S. Armed Forces, and matches conducted by the International Olympic Committee, the Special Olympics, or the Junior Olympics, and professional or amateur martial arts activity;
- Provides that a participant's failure or refusal to provide a urine sample upon request results in the license being immediately suspended, and such failure is grounds for additional disciplinary action;
- Provides the commission's hearings related to the withholding of purses must be held pursuant to ch. 120, F.S., the Administrative Procedures Act;
- Permits promoters to deduct the face value of complimentary tickets issued, provided or given from the calculation of the tax on gross receipts. The promoters may deduct complimentary tickets, up to 5 percent of the seating designated for the match, from the calculation of gross receipts;
- Permits promoters to not include the face value of complimentary tickets, when calculating the gross receipts tax, for more than 5 percent of the seats designated for the match if the promoter obtains written authorization from the commission or the executive director, or his or her designee;
- Permits complimentary tickets that are provided to reserve of active members of the United States Armed Forces and the National Guard, military veterans, and not for profit organizations persons, would not be included in the calculation of the gross receipts tax if authorized by the commission;
- Requires promoters to keep specified records for one year;
- Requires audits to verify compliance with promoter reporting requirements;
- Requires the commission to establish by rule the procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in an audit, and for imposing late fees if taxes are owed; and
- Provides the procedure for emergency license suspensions and requires the general counsel of the department to review the grounds for emergency suspension orders and to file an administrative complaint against the licensee within 21 days after issuance of the suspension order.

The bill takes effect on July 1, 2014.



## II. Present Situation:

### Florida State Boxing Commission

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (commission) within the Department of Business and Professional Regulation (department).

Section 548.006(3), F.S., provides the commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match ch. 548, F.S., and the rules adopted by the commission.

The commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.<sup>1</sup> Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.<sup>2</sup> This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

According to the department, the commission's primary duty is to ensure all matches comply with the laws and rules and the matches are competitive and physically safe for the participants. For the most recent period for which data is available, the commission licensed 1,224 professionals in FY 2011-12 and processed 51 live event permits.<sup>3</sup> According to the department, it had 1,056 licensed professional and processed 39 live permits for FY 2012-2013.

In addition to its daily processing of applications for licensure and the approval or denial of live event permits, the commission coordinates live event schedules and evaluates proposed fight cards. It also evaluates the assignment of officials (referees, judges, physicians) and event staff (event coordinator, chief inspector, inspectors, and timekeeper).

A department representative or commission representative is assigned to attend each official weigh-in and live event. This person attends the official weigh-in during which the application is processed, license fees are collected, the results of participant medical examinations are verified, pre-fight physicals are conducted by physicians, the promoter/participant contracts are collected, participants' weights are recorded, officials' (referee, judges, and physicians) pay from the promoter are collected, and the required accidental death and health insurance for each of the participants is verified. The department or commission representative is also accompanied to the event by the department's OPS event staff, i.e., the event coordinator, timekeeper, and inspector. The OPS event staff and the representative from the department or commission also inspect the ring for safety standards, verify that emergency medical personnel and an ambulance are on-site, assign inspectors to each of the fighters, conduct match timekeeping, verify assigned officials are present, distribute officials' pay following the event, and conduct participant drug tests, if necessary.

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<sup>1</sup> Section 548.006(3), F.S.

<sup>2</sup> Section 548.002(2), F.S.

<sup>3</sup> See *Annual Report, Fiscal Year 2011-2012*, Florida State Boxing Commission, Department of Business and Professional Regulation. A copy is available at: <http://www.myfloridalicense.com/dbpr/os/documents/SBCAR2012v6.pdf> (Last visited March 8, 2014).

**Definitions**

Section 548.002(3), F.S., defines the term “boxing” to mean “to compete with the fists.”

Section 548.002(5), F.S., defines the term “concessionaire” to mean:

any person or business entity not licensed as a promoter which receives revenues or other compensation from the sale of tickets or from the sale of souvenirs, programs, broadcast rights, or any other concessions in conjunction with the promotion of a match.

Section 548.002(6), F.S., defines the term “contest” to mean “a boxing, kickboxing, or mixed martial arts engagement in which persons participating strive earnestly to win using, but not necessarily being limited to, strikes and blows to the head.”

Section 548.002(9), F.S., defines the term “exhibition” to mean:

a boxing, kickboxing, or mixed martial arts engagement in which persons participating show or display their skill without necessarily striving to win using, but not necessarily being limited to, strikes and blows to the head.

Section 548.002(12), F.S., defines the term “kickboxing” to mean to “compete with the fists, feet, legs, or any combination thereof, and includes “punchkick” and other similar competitions.”

Section 548.002(16), F.S., defines the term “mixed martial arts” to mean:

unarmed combat involving the use, subject to any applicable limitations set forth in this chapter, of a combination of techniques from different disciplines of the martial arts, including, but not limited to, grappling, kicking, and striking.

Section 548.006(17), F.S., defines a “participant” to mean “a professional competing in a boxing, kickboxing, or mixed martial arts match.”

Section 548.006(19), F.S., defines the term “professional” to

a person who has received or competed for any purse or other article of a value greater than \$50, either for the expenses of training or for participating in any match.

Section 548.002(20), F.S., defines the term “promoter” to mean:

any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

Section 548.002(21), F.S., defines the term “purse” to mean:

the financial guarantee or other remuneration for which a professional is participating in a match and includes the professional’s share of any payment received for radio broadcasting, television, and motion picture rights.

### **Executive Director**

Section 548.004(1), F.S., requires the department, with the approval of the commission, to employ an executive director. The duties and responsibilities of the executive director include:

- Keeping a record of all proceedings of the commission;
- Preserving all books, papers, and documents pertaining to the business of the commission;
- Preparing any notices and papers required;
- Appointing judges, referees, and other officials as delegated by the commission and pursuant to ch. 548, F.S., and the rules of the commission; and
- Performing any other duties as the department or commission directs.

### **Recording of Commission Proceedings**

Section 548.004(2), F.S., requires the commission to electronically record all of its scheduled proceedings. Section 455.203(7), F.S., also requires the department to electronically record all of its proceedings.

### **Licenses**

Several professions are licensed by the commission. A license is required to be the promoter of a match.<sup>4</sup> Before acting in any capacity in a match, a license is required to be a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, concessionaire, or booking agent or representative of a booking agent.<sup>5</sup> Prior to working as the ringside physician, a physician must be licensed under ch. 458, F.S., or ch. 459, F.S., must maintain an unencumbered license in good standing, and must demonstrate satisfactory medical training or experience in boxing, or a combination of both, to the executive director. The commission also licenses the concessionaires.<sup>6</sup>

### **Exceptions**

The commission’s jurisdiction does not extend to:

- A match conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program;

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<sup>4</sup> See s. 548.012(1), F.S.

<sup>5</sup> Section 548.017, F.S.

<sup>6</sup> See s. 548.015, F.S.

- A match conducted or sponsored by any company or detachment of the Florida National Guard, if the match is limited to participants who are members of the Florida National Guard; or
- A match conducted or sponsored by the Fraternal Order of Police, if the match is limited to amateur participants and is held in conjunction with a charitable event.<sup>7</sup>

### **Revocation and Suspension of a License**

Section 548.046(3)(c), F.S., provides that the failure or refusal to provide a urine sample, immediately upon request, results in the revocation of the participant's license.

### **Withholding of Purses**

Section 548.054, F.S., provides the procedure for the withholding of prize purses. A member of the commission, a commission representative, or the referee may order a promoter to surrender any purse or other funds payable to a participant, or to withhold the share of any manager, if it appears that:

- The participant is not competing honestly, or is intentionally not competing to the best of his or her ability and skill in a match represented to be a contest; or
- The participant, his or her manager, or any of the participant's seconds has violated ch. 548, F.S.<sup>8</sup>

In the event a purse is withheld, the purse must be delivered to the commission by the promoter.<sup>9</sup> Within ten days after the match, the person from whom the purse was withheld may apply, in writing, to the commission for a hearing.<sup>10</sup> Upon receipt of the application, the commission must set the date for a hearing. Within ten days after the hearing or after ten days following the match, if no application for a hearing is filed, the commission is required to meet and determine the disposition of the withheld purse.<sup>11</sup> If the commission finds the charges sufficient, it may decide that all or a part of the funds be forfeited.<sup>12</sup> Conversely, if the commission does not find the charges sufficient, it must distribute the withheld funds immediately.<sup>13</sup>

### **Reporting and Tax Requirement**

Within seventy-two hours after a match, the promoter of that match must file a written report with the commission.<sup>14</sup> The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the commission requires.<sup>15</sup> Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

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<sup>7</sup> See s. 548.007, F.S.

<sup>8</sup> Section 548.054(1), F.S.

<sup>9</sup> Section 548.054(2), F.S.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Section 548.06(1), F.S.

<sup>15</sup> *Id.*

The term “gross receipts” includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;
- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.<sup>16</sup>

According to the department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Florida State Boxing Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.<sup>17</sup>

Concessionaire must also file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.<sup>18</sup>

Any written report that must be filed with the commission and postmarked within 72 hours after the conclusion of the match with an additional five days allowed for mailing.<sup>19</sup> According to the department, the report is required to enable the commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.

Section 548.015, F.S., requires that a concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the commission. The security is required before licensure, license renewal, or before a match.

These written reports must be accompanied with a tax payment in the amount of 5 percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.<sup>20</sup>

### **Commission Hearings**

Section 548.073, F.S., provides any member of the commission may conduct a hearing. Notwithstanding, the provisions of ch. 120, F.S., the Administrative Procedures Act, before any

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<sup>16</sup> Section 548.06(1), F.S.

<sup>17</sup> Section 548.06(2), F.S.

<sup>18</sup> Section 548.06(3), F.S.

<sup>19</sup> Section 548.06(4), F.S.

<sup>20</sup> Section 548.06(5), F.S.

adjudication is rendered, a majority of the commission must examine the record and approve the adjudication and order.

### **Emergency Suspensions**

Section 120.60(6), F.S., permits agencies to order the emergency suspension, restriction, or limitation of a license upon a finding of immediate serious danger to the public health, safety, or welfare. The agency may take such action by any procedure that is fair under the circumstances if:

- (a) The procedure provides at least the same procedural protection as is given by other statutes, the State Constitution, or the United States Constitution;
- (b) The agency takes only that action necessary to protect the public interest under the emergency procedure; and
- (c) The agency states in writing at the time of, or prior to, its action the specific facts and reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for concluding that the procedure used is fair under the circumstances. The agency's findings of immediate danger, necessity, and procedural fairness are judicially reviewable. Summary suspension, restriction, or limitation may be ordered, but a suspension or revocation proceeding pursuant to ss. 120.569 and 120.57 shall also be promptly instituted and acted upon.

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

### **Section 1 – Definitions**

The bill amends s. 548.002, F.S., to revise current definitions and to define new terms. Specifically, the bill:

- Amends the definition of the term “boxing” in s. 548.002(3), F.S., to mean the unarmed combat sport of fighting by striking with fists;
- Deletes the definition for the term “concessionaire” in s. 548.002(5), F.S.;
- Amends the definition of the terms “contest” and “exhibition” in ss. 548.002(5) and (8), F.S., to include the participants’ use of other full-contact maneuvers;
- Creates s. 548.002(11), F.S., to define the term “face value” to mean the dollar value which is equal to what the customer is required to pay, or would be required to pay, if it is a complimentary ticket. Taxes are not included in the face value if the ticket specifies the amount of admission charges attributable to state or federal taxes;
- Creates s. 548.002(13), F.S., to define the term “full contact” to mean the use of strikes and blows during a match in which the strikes and blows are intended to break the plane of the participant’s body, are delivered to the head, face, neck, or body of the receiving participant’s body, or cause the receiving participant to move in response to the strikes and blows;
- Deletes the definition for the term “foreign copromoter” in s. 548.002(10), F.S.;
- Amends the definition of the term “judge” in s. 548.002(11), F.S., to provide that the judge is licensed by the commission and scores a match using a designated scoring system;
- Amends the definition of the term “kickboxing” in s. 548.002(12), F.S., to include the act, activity, or sport of fighting with the use of fists, hands, feet, legs or any combination thereof

in a roped ring. It provides that the term does not include any form of ground fighting techniques;<sup>21</sup>

- Amends s. 548.002(16), F.S., to define the term “mixed martial arts” to mean the act, activity, or sport of unarmed combat involving the use of a combination of techniques, including, but not limited to, wrestling, grappling, kicking, and striking, and other techniques from different disciplines of the martial arts. The term may include, but is not limited to, boxing, kickboxing, Muay Thai,<sup>22</sup> jujitsu, and wrestling in a roped square ring or a fenced –in area;
- Amends the definition of the term “physician” in s. 548.002(18), F.S., to mean a person licensed to practice medicine under ch. 458, F.S. or ch. 459, F.S., whose license is unencumbered and in good standing;
- Amends the definition of the term “promoter” in s. 548.002(20), F.S., to include “any entity” in addition to “any person” in current law. It also amends the definition to include the trustee or partner of a corporate partner or any promoter partnership. Current law does not reference promoter partnerships;
- Amends the definition of the term “purse” in s. 548.002(21), F.S., to include the professional’s share of any payment from pay-per-view or closed circuit. Current law is limited to payment from radio broadcasts and television; and
- Amends the definition of the term “second” or cornerman” in s. 548.002(22), F.S., to mean a person who assists a participant in preparing for a match and between rounds. Current law limits the definition to a person who assists the match participant between rounds.
- Creates a definition for the term “unarmed combat” in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

## **Section 2 - Executive Director**

The bill amends s. 548.004(1), F.S., to require the executive director or his or her designee to perform the duties or responsibilities set forth by the commission, including conducting the functions of the commission office, appointing event and commission officials, approving licenses, permits, and matches. It deletes the requirement that the executive director must keep a record of all proceedings of the commission, preserve all books, papers, and documents pertaining to the business of the commission, prepare any notices and papers required, appoint judges, referees, and other duties as the commission or department deem necessary to fulfill the duties of the position.

The bill also amends s. 548.004(1), F.S., to authorize the executive director to issue subpoenas and administer oaths to witnesses, permitholders, record custodians, and licensees.

In addition, the bill repeals the requirement currently in s. 548.004(2), F.S., that the commission require electronic recording of all its scheduled proceedings. Under current law, s. 455.203(7), F.S., requires all proceedings conducted by the department be electronically recorded.

<sup>21</sup> Ground fighting involves hand-to-hand combat with the combatants are on the ground. This type of combat generally involving grappling. *See* [http://en.wikipedia.org/wiki/Ground\\_fighting](http://en.wikipedia.org/wiki/Ground_fighting) [Last visited March 8, 2014].

<sup>22</sup> Muay Thai is a combat sport from the muay martial arts of Thailand. *See* <http://www.wmcmuaythai.org/about> (Last visited March 25, 2014).

### **Section 3 - Jurisdiction of the Commission**

The bill amends s. 548.006(3), F.S., to include, within the commission's authority, the approval and suspension or revocation of approval of amateur sanctioning organizations for mixed martial arts matches.

### **Section 4 - Exceptions**

The bill amends s. 548.007(1), F.S., to exempt from regulation under ch. 548, F.S., matches that do not allow full contact if the match is limited to amateurs. The bill deletes the exemption in this subsection for matches conducted or sponsored by a bona fide non-profit school or education program whose primary purpose is instruction in martial arts, boxing, or kickboxing if the match is held in conjunction with the instruction, and is limited to amateur participants who are students of the school or instructional program.

The bill also provides the following additional exemptions from ch. 548, F.S.:

- Amateur matches conducted by public K-12 schools, as defined in s. 1000.04, F.S.;<sup>23</sup>
- Amateur matches conducted by the Florida National Guard and U.S. Armed Forces involving its amateur members;
- Matches conducted by the International Olympic Committee, the Special Olympics, or the Junior Olympics; and

Each of these exemptions requires that the matches must be limited to amateurs who are members of the exempted organization.

The bill also exempts professional or amateur martial arts activity, which it defines as one of the traditional forms of self-defense or unarmed combat involving the use of physical skill and coordination including karate, aikido, judo, and kung fu. The term does not include mixed martial arts.

### **Section 5. Foreign Promoter License Requirement**

The bill repeals s. 548.013, F.S., which provides the license requirement for foreign copromoters. The also deletes the definition for the term "foreign copromoter" in s. 548.002(10), F.S.

### **Section 6. Promoter and Foreign Copromoter Bond Requirements**

The bill amends s. 548.014, F.S., to delete references to the term "foreign copromoters."

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<sup>23</sup> Section 1000.04(1), F.S., defines "public K-12 schools" to "include charter schools and consist of kindergarten classes; elementary, middle, and high school grades and special classes; virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be operated under the control of district school boards; and lab schools operated under the control of state universities."



**Section 7. Concessionaires – Security**

The bill repeals s. 548.015, F.S., which authorizes the commission to require that concessionaires file a surety bond as a condition for a license.

**Section 8. Persons Required to be Licensed**

The bill amends s. 548.017, F.S., to delete the requirement that concessionaires must be licensed by the commission.

**Section 9. - Immediate Suspension**

The bill amends s. 548.046(3)(c), F.S., to provide that a participant's failure or refusal to provide a urine sample is considered an immediate, serious danger to the health, safety, and welfare of the person's opponent and is grounds for immediate license suspension pursuant to s. 120.60(6), F.S. The commission is authorized to suspend the participant's license and to subject the participant to additional disciplinary action.

The bill also amends s. 548.046(3)(c), F.S., to delete the provisions in this paragraph that provide that the loser of the match who subsequently does not provide a urine sample forfeits his or her share of the purse. The bill provides that the decision shall be changed to a no decision result, which under current law in this paragraph requires the distribution of the purse as though the participant who violated this subsection had lost the match.

The bill creates s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule,<sup>24</sup> the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent. The participants shall be immediate suspended under s. 120.60(6), F.S., and subject to additional disciplinary action.

**Section 10. Payment of Advances by Promoter Regulated**

The bill amends s. 548.052, F.S., to delete references to the term "foreign copromoter."

The bill also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

**Section 11 - Withholding of Purses**

The bill amends s. 548.054(2), F.S., to provide the commission must hold a hearing pursuant to s. 120.569, F.S., and s. 120.57, F.S., for hearings related to the withholding of purses. The hearing procedures in s. 120.569, F.S., relate to proceedings in which the substantial interests of a party are determined by an agency. The hearing procedures in s. 120.57, F.S., relate to proceedings that involve disputed material issues of fact before the Division of Administrative Hearings.

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<sup>24</sup> See rule 61K1-1.0043, F.A.C.

Also, the bill deletes the requirement that the commission must fix a date for the hearing and meet to determine the disposition of the withheld purse within 10 days after the hearing.

### **Section 12 - Promoter Payments to the State and Recordkeeping Requirement**

The bill amends s. 548.06(1)(a), F.S., to provide that promoters must report and pay the 5 percent tax on gross receipts within 72 hours after a match except as provided in s. 548.06(4), F.S. The bill also amends s. 548.06, F.S., to use the term “gross receipts” instead of “total gross receipts.”

The bill deletes the requirement in s. 548.06(1)(b), F.S., that the promoter report and pay the 5 percent tax on gross receipts based on the portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter.

The bill amends s. 548.06(1)(b), F.S., to provide that the gross receipts complimentary tickets above 5 percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2).

The bill creates s. 548.06(2), F.S., to provide for the authorization of complimentary tickets by the commission. It permits promoters to issue, provide, or give, complimentary tickets for up to 5 percent of the seats in the house designated for use in the event, equally distributed between or among the price categories for which they were issued, without the commission’s written authorization. Promoters do not have to include the face value of these complimentary tickets when calculating the gross receipts tax in s. 548.06(4), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The bill creates s. 548.06(2)(a), F.S., to provide that the commission may not consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The bill creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than 5 percent of the seats in the house without written authorization. However, the promoter must include the face value of such tickets when calculating the gross receipts tax.

The bill creates s. 548.06(2)(c), F.S., to provide the classes of persons that the commission may authorize promoters to give complimentary tickets. Complimentary tickets provided to these persons, if authorized by the commission, would not be included in the calculation of the gross receipts tax:

- Reserve of active members of the United States Armed Forces and the National Guard;
- Military veterans; and
- Not for profit organizations.

The bill creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization of the commission for giving complimentary tickets for more than 5 percent. Section 548.06(2)(d)1., F.S., requires the promoter to submit an application, on a form adopted by the commission, no later than two business days before the date of the professional

event. The bill requires that the application must include, at a minimum, the date, time, and location of the event, the number of complimentary tickets being requested, the percentage of total tickets issued for the seats in the house designated for use in the event being requested as complimentary tickets, and which individuals or entities will receive the complimentary tickets.

Section 548.06(2)(d)2., F.S., requires that the promoter maintain the documentation that evidences that the tickets were given to individuals or entities that fall into the categories listed in s. 548.06(2)(c), F.S., and provides that the commission may audit these records, as provided in s. 548.06(7), F.S.

Section 548.06(2)(e), F.S., requires that the commission, executive director, or his or her designee, must deny or approve the application. The commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed 5 percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2)(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for setting limits on complimentary tickets or determining which portion of the requested percentage above 5 percent it may authorize.

The bill requires that the commission, executive director, or his or her designee must provide the decision in writing to the promoter at least one business day before the start of the event, with an explanation for the denial or approval and an explanation for any limitation on the approval. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements as set forth in ch. 548, F.S.

The bill deletes the provision in s. 548.06(2), F.S., that classifies promoters as the persons who have rights to telecast a match or matches held in this state, that requires that they must be licensed as a promoter, and requires that they file with the commission a written report of the number of tickets sold, the amount of gross receipts within 72 hours after the sale, transfer, or extension of such rights in whole or in part.

The bill deletes the provision in s. 548.06(3), F.S., that requires concessionaires to file with the commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the commission may require.

The bill amends s. 548.06(4), F.S., to include pay-per-view rights in place of motion picture rights. It also limits the provision to matches occurring within the state. The bill provides that, if a promoter remits the maximum tax amount of \$40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of \$40,000 has been remitted for such taxes on a form provided by the commission. The bill provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The bill creates s. 548.06(6), F.S., to require the promoter to keep a copy of specified records for a period of one year, including records necessary to justify and support the reports submitted to

the commission, copies of independently prepared ticket manifests, and records to verify compliance with the complimentary tickets requirements in s. 548.06(2), F.S. It is not clear if one year is sufficient for the commission to be able to conduct audits of the records. Current law does not require promoters to retain records relating to the reporting of gross receipts under s. 548.06, F.S.

The bill creates s. 548.06(7), F.S., to provide that compliance with the reporting requirements in s. 548.06, F.S., is subject to verification by department or commission audit. It provides the commission has the right to audit a promoter's books and records relating to the promoter's operations upon reasonable notice.

The bill creates s. 548.06(8), F.S., to direct the commission to adopt rules to establish a procedure for auditing a promoter's records, and for resolving any inconsistencies revealed in the audit, and to impose late fees if taxes are owed.<sup>25</sup>

### **Section 13 - Emergency Suspension of License**

The bill amends s. 548.07, F.S., to provide an emergency license suspension procedure. The bill authorizes the commission, any commissioner, the executive director or his or her designee, or any commission designee to issue an emergency suspension of a licensee's license when the licensee poses an immediate and serious danger to the health, safety, and welfare of the public, a licensee, or a participant.

In addition, the bill requires the general counsel of the department to review the grounds for the emergency suspension order and to file an administrative complaint against the licensee within 21 days after issuance of the suspension order. The bill deletes the current suspension procedure, including the requirement that the commission must hold a hearing within 10 days after the date on which the license or permit is suspended.

The disciplinary process would proceed under ch. 120, F.S., after the administrative complaint is served on the licensee as provided in s. 455.275, F.S.<sup>26</sup>

### **Section 14 - Commission Hearings**

The bill amends s. 548.073, F.S., to provide the hearing held under ch. 548, F.S., must be pursuant to ch. 120, F.S. The bill deletes the provision that any member of the commission may hold a hearing. It also deletes the requirement that, before any adjudication is rendered, a majority of the members of the commission shall examine the record and approve the adjudication and order.

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<sup>25</sup> Section 548.075(1), F.S., authorizes the commission to impose a fine of not more than \$5,000 for any violation of ch. 548, F.S., in lieu of or in addition to any other punishment provided for such violation.

<sup>26</sup> Section 455.275, F.S., provides the procedure for service of a complaint on a licensee of the department. For administrative complaints, s. 455.275(3), F.S., the department is required to serve the licensee by regular mail to the licensee's last known address of record, by certified mail to the last known address of record, and, if possible, by e-mail. If the department is unable to serve the licensee by these methods, the department must call the last known telephone number of record and cause a short, plain notice to the licensee to be posted on the front page of the department's website and must also send notice via e-mail to all newspapers of general circulation and all news departments of broadcast network affiliates in the county of the licensee's last known address of record.

### **Section 15 – Appropriation**

The bill provides an appropriation of \$111,000 in recurring funds from the General Revenue Fund to the department for the implementation of this act during the 2014-2015 fiscal year.

### **Section 16 - Effective Date**

The bill would take effect on July 1, 2014.

## **IV. Constitutional Issues:**

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

None.

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

None.

### **C. Trust Funds Restrictions:**

None.

### **D. Other Constitutional Issues:**

In section 11 of the bill, s. 548.06(2)(e), F.S., is amended to allow promoters to give complimentary tickets for up to 5 percent of the seats in the house for an event. If the promoter wants to give more complimentary tickets, the commission, executive director, or his or her designee approve any amount in excess of the 5 percent threshold. The bill's only criteria for the commission's authorization of complimentary tickets are the limitation that complimentary tickets may not exceed 5 percent of the seats in the house and the requirement that the complimentary tickets are specified in ss. 548.06(2)(a)-(c), F.S. The bill does not provide a clear delegation of authority, beyond the requirements of ss. 548.06(2)(a)-(c), F.S., for the sitting or limits on complimentary tickets or to determine which portion of the portion of the requested percentage above 5 percent it may authorize. To the extent that this paragraph authorizes the commission to set limitations on complimentary tickets or for the denial or approval of complimentary tickets beyond the reasons specified in ss. 548.06(2)(a)-(c), F.S., such authority may constitute an unconstitutional delegation of legislative authority.

An invalid delegation of authority violates the principle of separation of powers in Art. II, s. 3, Florida Constitution.<sup>27</sup> When assigning to an agency a regulatory responsibility, the legislature must provide the agency with adequate standards and guidelines when delegating the duties.<sup>28</sup> The executive branch must be limited and guided by an

<sup>27</sup> *Gallagher v. Motors Insurance Corp.*, 605 So.2d 62 (Fla. 1992).

<sup>28</sup> *Askew v. Cross Key Waterways*, 372 So.2d. 913 (Fla. 1978); *Florida East Coast Industries, Inc. v. Dept. of Community Affairs*, 677 So.2d 357 (Fla. 1st DCA 1996).

appropriately detailed legislative statement of the standards and policies to be followed.<sup>29</sup> The bill may constitute an unconstitutional delegation of authority because it fails to provide the commission with any standards by which to judge the appropriateness of those minimum standards.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill deletes the licensure requirement for concessionaires. The current license fee for concessionaires is \$100. Concessionaires would also not be required to report and pay taxes on gross receipts.

The bill repeals the license requirement for persons who have the right to telecast matches.

C. Government Sector Impact:

The department collects \$600 annually from the licensure of concessionaires. The department estimates a reduction of approximately \$40,000 in post-event taxes for complimentary tickets and \$60,000 in post-event taxes from concessions.

The bill provides a \$111,000 appropriation from the General Revenue Fund.

**VI. Technical Deficiencies**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 548.002, 548.004, 548.006, 548.007, 548.013, 548.014, 548.015, 548.017, 548.046, 548.052, 548.054, 548.06, 548.07, and 548.073.

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<sup>29</sup> *Florida Home Builders Association v. Division of Labor*, 367 So. 219 (Fla. 1979).

**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 Regulated Industries on March 13, 2014:**

The committee substitute (CS) differs from SB 810 as follows:

The CS does not amend the definition of the term “boxing” in s. 548.002(3), F.S., to mean the act, activity, or sport of fighting by striking with fists covered with approved padded gloves in a roped square ring, subject to ch. 548, F.S., and the rules adopted pursuant to this chapter. Instead, it amends the term to mean the unarmed combat sport of fighting by striking with fists.

The CS creates a definition for the term “unarmed combat” in s. 548.002(24), F.S., to mean a form of competition in which a strike or blow is struck which may reasonable be expected to inflict injury.

The CS amends s. 548.004(1), F.S., to reference “other duties as the commission or department deem necessary to fulfill the duties of the position” instead of “other duties as the commission or department deem necessary.” The bill also amends s. 548.004(1), F.S., to include permitholders and record custodians among the listing of persons to whom the executive director is authorized to issue subpoenas and administer oaths.

The CS amends the exemption in s. 548.007(2), F.S., to include the exemption for amateur matches that are limited to members of the United States Armed Forces in this subsection. It deletes the exemption for the United States Armed Forces in subsection (5) of the bill. It amends s. 548.007(4), F.S., to reference amateur matches conducted by public K-12 schools, as defined in s. 1000.04, F.S., instead of referencing public post-secondary education institutions or public secondary schools.

The CS repeals s. 548.013, F.S., which provides the license requirement for foreign copromoters.

The CS amends s. 548.014, F.S., to delete references to the term “foreign copromoters.”

The CS amends s. 548.046(3)(c), F.S., to provide a participant’s failure or refusal to provide a urine sample is grounds for immediate license suspension pursuant to s. 120.60(6), F.S., instead of revocation.

The CS does not amend s. 548.046(3)(c), F.S., to provide that participant’s failure or refusal to provide a urine sample results in the immediate revocation of the participant’s license. Instead, it amends this paragraph to provide that the failure to provide the urine sample is considered an immediate, serious danger to the health, safety, and welfare of the person’s opponent and is grounds for immediate license suspension pursuant to s. 120.60(6), F.S. The CS deletes the provisions in this paragraph that provide that the loser of the match who subsequently does not provide a urine sample forfeits his or her

share of the purse. Instead, the CS provides that the decision shall be changed to a no decision result, which under current law requires the distribution of the purse as though the participant who violated this subsection had lost the match.

The CS amends s. 548.046(3)(d), F.S., to provide that, if a participant tests positive for any substance prohibited by commission rule, the participant shall be considered an immediate, serious danger to the health, safety, and welfare of the public and his or her opponent.

The CS amends s. 548.052, F.S., to delete references to the term “foreign copromoter.” It also amends this section to permit the commission or the executive director, or his or her designee, to give prior written consent to a promoter to pay, lend, or give a participant an advance against her or his purse before a contest.

The CS does not amend s. 548.06(1)(b), F.S., to prohibit the promoter from issuing complimentary tickets for more than 5 percent of the seats in the house, equally distributed between or among the price categories for which they were issued, without the commission’s written authorization. Instead, it provides this requirement in s. 548.06(2), F.S. The bill permits a promoter to also not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The CS amends s. 548.06(1)(b), F.S., to include in the gross receipts the complimentary tickets above 5 percent of the seats in the house designated for use in the event and not authorized by the commission pursuant to subsection (2). It deletes the language that provides that prohibited the commission from considering complimentary tickets that it authorizes as part of the total gross receipts from admission.

The CS amends s. 548.06(2), F.S., to permit a promoter to not include the face value of complimentary tickets for more than 5 percent of the seats in the house when calculating the gross receipts tax if the promoter obtains written authorization from the commission or the executive director, or his or her designee.

The CS creates s. 548.06(2)(a), F.S., to prohibit the commission from consider the complimentary tickets that it authorizes as part of the gross receipts from admission fees.

The CS creates s. 548.06(2)(b), F.S., to permit a promoter to give complimentary tickets for more than 5 percent of the seats in the house without written authorization if the promoter includes the face value of such tickets when calculating the gross receipts tax.

The CS creates s. 548.06(2)(c), F.S., to provide the classes of persons for who the commission may authorize promoters to give additional complimentary tickets.

The CS creates s. 548.06(2)(d), F.S., to provide the process for promoters to follow to obtain the written authorization of the commission for giving complimentary tickets for



more than 5 percent of the house, including the application, the maintenance of records, and the auditing of such records.

The CS creates s. 548.06(2)(e), F.S., to require that the commission, executive director, or his or her designee, must deny or approve the application for complimentary tickets. It also provides that the commission, executive director, or his or her designee may set limitations on the approval and may approve all or a portion of the requested percentage above 5 percent.

The CS amends s. 548.06(4), F.S., to provide that, if a promoter remits the maximum tax amount of \$40,000 for the sale or lease of broadcasting, television, or pay-per-view rights of any single event pursuant to this subsection, the promoter is only required to indicate that the amount of \$40,000 has been remitted for such taxes on a form provided by the commission. The CS also provides that the promoter remains responsible for complying with other reporting and taxation requirements related to other gross receipts as set forth in this chapter.

The CS amends s. 548.06(6), F.S., to require the promoter to keep records to verify compliance with the complimentary tickets requirements in s. 548.06(2), F.S.

**B. Amendments:**

None.

By the Committee on Regulated Industries; and Senator Galvano

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1 A bill to be entitled  
 2 An act relating to pugilistic exhibitions; amending s.  
 3 548.002, F.S.; revising definitions; amending s.  
 4 548.004, F.S.; revising the duties and  
 5 responsibilities of the executive director of the  
 6 Florida State Boxing Commission; deleting a provision  
 7 requiring the electronic recording of commission  
 8 proceedings; amending s. 548.006, F.S.; clarifying the  
 9 commission's exclusive jurisdiction over approval of  
 10 amateur and professional boxing, kickboxing, and mixed  
 11 martial arts matches; amending s. 548.007, F.S.;  
 12 revising applicability of ch. 548, F.S.; repealing s.  
 13 548.013, F.S.; relating to foreign copromoter license  
 14 requirement; amending s. 548.014, F.S.; deleting  
 15 references to foreign copromoters; repealing s.  
 16 548.015, F.S., relating to the authority of the  
 17 commission to require a concessionaire to file a form  
 18 of security with the commission; amending s. 548.017,  
 19 F.S.; deleting a requirement for the licensure of  
 20 concessionaires; amending s. 548.046, F.S.; providing  
 21 for immediate license suspension and other  
 22 disciplinary action if a participant fails or refuses  
 23 to provide a urine sample or tests positive for  
 24 specified prohibited substances; amending s. 548.052,  
 25 F.S.; deleting a reference to foreign copromoters;  
 26 amending s. 548.054, F.S.; revising procedures and  
 27 requirements for requesting a hearing following the  
 28 withholding of a purse; amending s. 548.06, F.S.;  
 29 specifying a circumstance under which a report is not

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

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30 required to be filed with the commission; revising the  
 31 calculation of gross receipts that are required to be  
 32 filed in a report to the commission; requiring  
 33 promoters to retain specified documents and records;  
 34 authorizing the commission and the Department of  
 35 Business and Professional Regulation to audit  
 36 specified records retained by a promoter; requiring  
 37 the commission to adopt rules; amending s. 548.07,  
 38 F.S.; revising the procedure for suspension of  
 39 licensure; amending s. 548.073, F.S.; requiring that  
 40 commission hearings be held in accordance with ch.  
 41 120, F.S.; providing an appropriation; providing an  
 42 effective date.  
 43  
 44 Be It Enacted by the Legislature of the State of Florida:  
 45  
 46 Section 1. Section 548.002, Florida Statutes, is amended to  
 47 read:  
 48 548.002 Definitions.—As used in this chapter, the term:  
 49 (1) "Amateur" means a person who has never received nor  
 50 competed for any purse or other article of value, either for the  
 51 expenses of training or for participating in a match, other than  
 52 a prize of \$50 or less in value ~~or less~~.  
 53 (2) "Amateur sanctioning organization" means a ~~any~~ business  
 54 entity organized for sanctioning and supervising matches  
 55 involving amateurs.  
 56 (3) "Boxing" means the unarmed combat sport of fighting by  
 57 striking with fists ~~to compete with the fists~~.  
 58 (4) "Commission" means the Florida State Boxing Commission.

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

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- 59 ~~(5) "Concessionaire" means any person or business entity~~  
 60 ~~not licensed as a promoter which receives revenues or other~~  
 61 ~~compensation from the sale of tickets or from the sale of~~  
 62 ~~souvenirs, programs, broadcast rights, or any other concessions~~  
 63 ~~in conjunction with the promotion of a match.~~
- 64 ~~(5)(6)~~ "Contest" means a boxing, kickboxing, or mixed  
 65 martial arts engagement in which persons participating strive  
 66 earnestly to win using, ~~but not necessarily being limited to,~~  
 67 strikes and blows to the head or other full-contact maneuvers.
- 68 ~~(6)(7)~~ "Department" means the Department of Business and  
 69 Professional Regulation.
- 70 ~~(7)(8)~~ "Event" means one or more matches comprising a show.
- 71 ~~(8)(9)~~ "Exhibition" means a boxing, kickboxing, or mixed  
 72 martial arts engagement in which persons participating show or  
 73 display their skill without necessarily striving to win using,  
 74 ~~but not necessarily being limited to,~~ strikes and blows to the  
 75 head or other full-contact maneuvers.
- 76 ~~(9)~~ "Face value" means the dollar value of a ticket equal  
 77 to the dollar amount that a customer is required to pay or, for  
 78 complimentary tickets, would have been required to pay to  
 79 purchase a ticket with equivalent seating priority in order to  
 80 view the event. If the ticket specifies the amount of admission  
 81 charges attributable to state or federal taxes, such taxes are  
 82 not included in the face value.
- 83 ~~(10)~~ "Full contact" means the use of strikes and blows  
 84 during a match which:
- 85 (a) Are intended to break the plane of the receiving  
 86 participant or amateur's body;
- 87 (b) Are delivered to the head, face, neck, or body of the

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- 88 receiving participant or amateur; and
- 89 (c) Cause the receiving participant or amateur to move in  
 90 response to the strike or blow.
- 91 ~~(10) "Foreign copromoter" means a promoter who has no place~~  
 92 ~~of business within this state.~~
- 93 ~~(11) "Judge" means a person licensed by the commission who~~  
 94 ~~evaluates and scores a match using a designated scoring system~~  
 95 ~~who has a vote in determining the winner of any contest.~~
- 96 ~~(12) "Kickboxing" means the unarmed combat sport of~~  
 97 ~~fighting by striking to compete with the fists, hands, feet,~~  
 98 ~~legs, or any combination thereof, and includes "punchkick" and~~  
 99 ~~other similar competitions. The term does not include any form~~  
 100 ~~of ground fighting techniques.~~
- 101 ~~(13) "Manager" means a any person who, directly or~~  
 102 ~~indirectly, controls or administers the boxing, kickboxing, or~~  
 103 ~~mixed martial arts affairs of a any participant.~~
- 104 ~~(14) "Match" means a any contest or exhibition.~~
- 105 ~~(15) "Matchmaker" means a person who brings together~~  
 106 ~~professionals or arranges matches for professionals.~~
- 107 ~~(16) "Mixed martial arts" means the unarmed combat sport~~  
 108 ~~involving the use, subject to any applicable limitations set~~  
 109 ~~forth in this chapter, of a combination of techniques,~~  
 110 ~~including, but not limited to, grappling, kicking, striking, and~~  
 111 ~~using techniques from different disciplines of the martial arts,~~  
 112 ~~including, but not limited to, boxing, kickboxing, Muay Thai,~~  
 113 ~~jujitsu, and wrestling grappling, kicking, and striking.~~
- 114 ~~(17) "Participant" means a professional competing in a~~  
 115 ~~boxing, kickboxing, or mixed martial arts match.~~
- 116 ~~(18) "Physician" means a person who is approved by the~~

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117 ~~commission, who is an individual licensed to practice medicine~~  
 118 ~~under chapter 458 or chapter 459, and whose license is~~  
 119 ~~unencumbered and in good standing to practice medicine and~~  
 120 ~~surgery in this state.~~

121 (19) "Professional" means a person who has received or  
 122 competed for ~~a any~~ purse or other article of a value greater  
 123 than \$50, either for the expenses of training or for  
 124 participating in ~~a any~~ match.

125 (20) "Promoter" means ~~a any~~ person or entity, including an  
 126 ~~and includes any officer, director, trustee, partner employee,~~  
 127 ~~or owner stockholder~~ of a corporate promoter or promoter  
 128 partnership, who produces, arranges, or stages ~~a any~~ match  
 129 involving a professional.

130 (21) "Purse" means the financial guarantee or other  
 131 remuneration for which a professional is participating in a  
 132 match and includes the professional's share of any payment  
 133 received for radio broadcasting ~~and~~ television, including pay-  
 134 per-view or closed circuit and motion picture rights.

135 (22) "Second" or "cornerman" means a person who assists ~~a~~  
 136 ~~the match~~ participant in preparing for a match and between  
 137 rounds, and who maintains the corner of a the participant during  
 138 a the match.

139 (23) "Secretary" means the Secretary of Business and  
 140 Professional Regulation.

141 (24) "Unarmed combat" means a form of competition in which  
 142 a strike or blow is struck which may reasonably be expected to  
 143 inflict injury.

144 Section 2. Section 548.004, Florida Statutes, is amended to  
 145 read:

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146 548.004 Executive director; duties, compensation,  
 147 administrative support.-

148 (1) The department shall employ an executive director with  
 149 the approval of the commission. The executive director shall  
 150 serve at the pleasure of the secretary. The executive director  
 151 or his or her designee shall perform the duties specified by the  
 152 commission, including conducting the functions of the commission  
 153 office; appointing event and commission officials; approving  
 154 licenses, permits, and matches; and performing any keep a record  
 155 ~~of all proceedings of the commission; shall preserve all books,~~  
 156 ~~papers, and documents pertaining to the business of the~~  
 157 ~~commission; shall prepare any notices and papers required; shall~~  
 158 ~~appoint judges, referees, and other officials as delegated by~~  
 159 ~~the commission and pursuant to this chapter and rules of the~~  
 160 ~~commission; and shall perform such other duties as the~~  
 161 ~~department or commission deems necessary to fulfill the duties~~  
 162 of the position directs. The executive director may issue  
 163 subpoenas and administer oaths to witnesses, permitholders,  
 164 record custodians, and licensees.

165 ~~(2) The commission shall require electronic recording of~~  
 166 ~~all scheduled proceedings of the commission.~~

167 ~~(2)(3)~~ The department shall provide assistance in budget  
 168 development and budget submission for state funding requests.  
 169 The department shall submit an annual balanced legislative  
 170 budget for the commission which is based upon anticipated  
 171 revenue. The department shall provide technical assistance and  
 172 administrative support, if requested or determined necessary  
 173 ~~needed~~, to the commission and its executive director on issues  
 174 relating to personnel, contracting, property management, or

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175 other issues identified as important to performing the duties of  
176 this chapter and to protecting the interests of the state.

177 Section 3. Section 548.006, Florida Statutes, is amended to  
178 read:

179 548.006 Power of commission to control professional and  
180 amateur boxing, kickboxing, and mixed martial arts matches  
181 ~~pugilistic contests and exhibitions~~; certification of  
182 competitiveness of professional mixed martial arts and  
183 kickboxing matches.-

184 (1) The commission has exclusive jurisdiction over every  
185 boxing, kickboxing, and mixed martial arts match held within the  
186 state which involves a professional.

187 (2) As to professional mixed martial arts and kickboxing,  
188 until a central repository of match records for each exists and  
189 is approved by the commission, the matchmaker shall certify as  
190 to the competitiveness of each match.

191 (3) The commission has exclusive jurisdiction over  
192 approval, disapproval, suspension of approval, and revocation of  
193 approval of all amateur sanctioning organizations for amateur  
194 boxing, and kickboxing, and mixed martial arts matches held in  
195 this state.

196 (4) Professional and amateur matches shall be held in  
197 accordance with this chapter and the rules adopted by the  
198 commission.

199 Section 4. Section 548.007, Florida Statutes, is amended to  
200 read:

201 548.007 Exemptions.-This chapter does ~~Applicability of~~  
202 ~~provisions to amateur matches and certain other matches or~~  
203 ~~events.-Sections 548.001-548.079 do not apply to any of the~~

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204 following:

205 (1) A match that does not allow full contact ~~conducted or~~  
206 ~~sponsored by a bona fide nonprofit school or education program~~  
207 ~~whose primary purpose is instruction in the martial arts,~~  
208 ~~boxing, or kickboxing,~~ if the match ~~held in conjunction with the~~  
209 ~~instruction~~ is limited to amateur participants. ~~who are students~~  
210 ~~of the school or instructional program.~~

211 (2) A match conducted or sponsored by a any company or  
212 detachment of the Florida National Guard or the United States  
213 Armed Forces, if the match is limited to amateurs participants  
214 who are members of a the company or detachment of the Florida  
215 National Guard or United States Armed Forces. ~~or~~

216 (3) A match conducted or sponsored by the Fraternal Order  
217 of Police, if the match is limited to amateurs amateur  
218 ~~participants~~ and is held in conjunction with a charitable event.

219 (4) A match conducted by or between public postsecondary  
220 educational institutions or public K-12 schools, as defined in  
221 s. 1000.04, if the match is limited to amateurs who are members  
222 of a school-sponsored club or team.

223 (5) A match conducted by the International Olympic  
224 Committee, the International Paralympic Committee, the Special  
225 Olympics, or the Junior Olympics, if the match is limited to  
226 amateurs who are competing in or attempting to qualify for the  
227 Olympics, Paralympics, Special Olympics, or Junior Olympics.

228 (6) A professional or amateur martial arts activity. As  
229 used in this subsection, the term "martial arts" means one of  
230 the traditional forms of self-defense or unarmed combat  
231 involving the use of physical skill and coordination, including,  
232 but not limited to, karate, aikido, judo, and kung fu. The term

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233 does not include mixed martial arts.

234 Section 5. Section 548.013, Florida Statutes, is repealed.

235 Section 6. Subsections (1) and (2) of section 548.014,  
236 Florida Statutes, are amended to read:

237 548.014 Promoters ~~and foreign copromoters~~; bonds or other  
238 security.—

239 (1) (a) Before any license is issued or renewed to a  
240 promoter ~~or foreign copromoter~~ and before any permit is issued  
241 to a promoter ~~or foreign copromoter~~, she or he must file a  
242 surety bond with the commission in such reasonable amount, but  
243 not less than \$15,000, as the commission determines.

244 (b) All bonds must be upon forms approved and supplied by  
245 the commission.

246 (c) The sufficiency of any surety is subject to approval of  
247 the commission.

248 (d) The surety bond must be conditioned upon the faithful  
249 performance by the promoter ~~or foreign copromoter~~ of her or his  
250 obligations under this chapter and upon the fulfillment of her  
251 or his contracts with any other licensees under this chapter.  
252 However, the aggregate annual liability of the surety for all  
253 obligations and fees may not exceed the amount of the bond.

254 (2) In lieu of a surety bond, the promoter ~~or foreign~~  
255 ~~copromoter~~ may deposit with the commission cash or a certified  
256 check, in an equivalent amount and subject to the same  
257 conditions as the bond. Such security may not be returned to the  
258 promoter until 1 year after the date on which it was deposited  
259 with the commission unless a surety bond is substituted for it.  
260 If no claim against the deposit is outstanding, it shall be  
261 returned to the depositor 1 year after the date it was

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262 deposited.

263 Section 7. Section 548.015, Florida Statutes, is repealed.

264 Section 8. Subsection (1) of section 548.017, Florida  
265 Statutes, is amended to read:

266 548.017 Participants, managers, and other persons required  
267 to have licenses.—

268 (1) A participant, manager, trainer, second, timekeeper,  
269 referee, judge, announcer, physician, matchmaker,  
270 ~~concessionaire, or promoter must~~ booking agent or representative  
271 ~~of a booking agent shall~~ be licensed before directly or  
272 indirectly acting in such capacity in connection with any match  
273 involving a participant. A physician approved by the commission  
274 must be licensed pursuant to chapter 458 or chapter 459, must  
275 maintain an unencumbered license in good standing, and must  
276 demonstrate satisfactory medical training or experience in  
277 boxing, or a combination of both, to the executive director  
278 before ~~prior to~~ working as the ringside physician.

279 Section 9. Paragraph (c) of subsection (3) of section  
280 548.046, Florida Statutes, is amended, and paragraph (d) is  
281 added to that subsection, to read:

282 548.046 Physician's attendance at match; examinations;  
283 cancellation of match.—

284 (3)

285 (c) A participant who fails or refuses ~~Failure or refusal~~  
286 to provide a urine sample immediately upon request shall be  
287 considered an immediate, serious danger to the health, safety,  
288 and welfare of the public and his or her opponent. If a  
289 participant fails or refuses to provide a urine sample, his or  
290 her license shall be immediately suspended pursuant to

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291 ~~s.120.60(6), and such failure or refusal is grounds for~~  
 292 ~~additional disciplinary action result in the revocation of the~~  
 293 ~~participant's license. Any participant who has been adjudged the~~  
 294 ~~loser of a match and who subsequently refuses to or is unable to~~  
 295 ~~provide a urine sample shall forfeit his or her share of the~~  
 296 ~~purse to the commission. A~~ Any participant who is adjudged the  
 297 winner of a match and who subsequently refuses to or is unable  
 298 to provide a urine sample forfeits ~~shall forfeit~~ the win and  
 299 ~~shall not be allowed to engage in any future match in the state.~~  
 300 The decision shall be changed to a no-decision result and shall  
 301 ~~be entered into the official record as the result of the match.~~  
 302 The purse shall be redistributed as though the participant found  
 303 to be in violation of this subsection had lost the match. If  
 304 ~~redistribution of the purse is not necessary or after~~  
 305 ~~redistribution of the purse is completed, the participant found~~  
 306 ~~to be in violation of this subsection shall forfeit his or her~~  
 307 ~~share of the purse to the commission.~~

308 (d) If a participant tests positive for a prohibited  
 309 substance as specified by commission rule, the participant shall  
 310 be considered an immediate, serious danger to the health,  
 311 safety, and welfare of the public and his or her opponent. The  
 312 participant's license shall be immediately suspended pursuant to  
 313 s. 120.60(6), and subject to additional disciplinary action.

314 Section 10. Section 548.052, Florida Statutes, is amended  
 315 to read:

316 548.052 Payment of advances by promoter ~~or foreign~~  
 317 ~~copromoter~~ regulated.—A promoter ~~or foreign copromoter~~ may not  
 318 pay, lend, or give a participant an advance against her or his  
 319 purse before a contest, except with the prior written permission

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320 of the commission or the executive director, or his or her  
 321 ~~designee a commissioner~~; and, if permitted, such advance may be  
 322 made only for expenses for transportation and maintenance in  
 323 preparation for a contest.

324 Section 11. Subsection (2) of section 548.054, Florida  
 325 Statutes, is amended to read:

326 548.054 Withholding of purses; hearing; disposition of  
 327 withheld purse forfeiture.—

328 (2) Any purse so withheld shall be delivered by the  
 329 promoter to the commission upon demand. Within 10 days after the  
 330 match, the person from whom the sum was withheld may submit a  
 331 petition for a hearing to the commission pursuant to s. 120.569  
 332 ~~apply in writing to the commission for a hearing.~~ Upon receipt  
 333 of the petition application, the commission shall hold ~~shall fix~~  
 334 ~~a date for a hearing pursuant to ss. 120.569 and 120.57.~~ Within  
 335 ~~10 days after the hearing or after 10 days following the match,~~  
 336 If no petition application for a hearing is filed, the  
 337 commission shall meet and determine the disposition ~~to be made~~  
 338 of the withheld purse. If the commission finds the charges  
 339 sufficient, it may declare all or ~~any~~ part of the funds  
 340 forfeited. If the commission finds the charges insufficient ~~not~~  
 341 ~~sufficient upon which to base a withholding order,~~ it shall  
 342 immediately distribute the withheld funds to the appropriate  
 343 ~~persons entitled thereto.~~

344 Section 12. Section 548.06, Florida Statutes, is amended to  
 345 read:

346 548.06 Payments to state; exemptions; audit of records.—

347 (1) Except as provided in subsection (4), a promoter  
 348 holding a match shall, within 72 hours after the match, file

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349 with the commission a written report ~~that which~~ includes the  
 350 number of tickets sold, the amount of gross receipts, and any  
 351 other facts the commission may require. For the purposes of this  
 352 chapter, ~~total~~ gross receipts include each of the following:

353 (a) The gross price charged for the sale or lease of  
 354 broadcasting, television, and pay-per-view motion picture rights  
 355 of any match occurring within the state without any deductions  
 356 for commissions, brokerage fees, distribution fees, advertising,  
 357 or other expenses or charges.

358 ~~(b) The portion of the receipts from the sale of souvenirs,~~  
 359 ~~programs, and other concessions received by the promoter;~~

360 ~~(b)(c)~~ The face value of all tickets sold and complimentary  
 361 tickets issued, provided, or given above 5 percent of the seats  
 362 in the house designated for use in the event and not authorized  
 363 by the commission pursuant to subsection (2). ~~and~~

364 ~~(c)(d)~~ The face value of any seat or seating issued,  
 365 provided, or given in exchange for advertising, sponsorships, or  
 366 anything of value to the promotion of an event.

367 (2) A promoter may issue, provide, or give complimentary  
 368 tickets for up to 5 percent of the seats in the house designated  
 369 for use in the event, equally distributed between or among the  
 370 price categories for which complimentary tickets are issued,  
 371 without including the face value of such tickets issued,  
 372 provided, or given, in gross receipts, and without paying the  
 373 taxes required in subsection (4). If a promoter wishes to issue,  
 374 provide, or give complimentary tickets for more than 5 percent  
 375 of the seats in the house designated for use in the event  
 376 without including the face value of such tickets issued,  
 377 provided, or given, in gross receipts, the promoter must obtain

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378 written authorization from the commission or the executive  
 379 director, or his or her designee ~~Where the rights to telecast a~~  
 380 ~~match or matches held in this state under the supervision of the~~  
 381 ~~Florida State Boxing Commission are in whole owned by, sold to,~~  
 382 ~~acquired by, or held by any person who intends to or~~  
 383 ~~subsequently sells or, in some other manner, extends such rights~~  
 384 ~~in part to another, such person is deemed to be a promoter and~~  
 385 ~~must be licensed as such in this state. Such person shall,~~  
 386 ~~within 72 hours after the sale, transfer, or extension of such~~  
 387 ~~rights in whole or in part, file with the commission a written~~  
 388 ~~report that includes the number of tickets sold, the amount of~~  
 389 ~~gross receipts, and any other facts the commission may require.~~

390 (a) The commission may not consider complimentary tickets  
 391 that it authorizes under this subsection as part of the total  
 392 gross receipts from admission fees.

393 (b) A promoter may issue, provide, or give complimentary  
 394 tickets for more than 5 percent of the seats in the house  
 395 designated for use in the event without obtaining written  
 396 authorization from the commission, the executive director, or  
 397 his or her designee if the promoter includes the face value of  
 398 such tickets issued, provided, or given over 5 percent of the  
 399 seats in the house designated for use in the event in gross  
 400 receipts and pays the taxes as required in subsection (4).

401 (c) The commission, the executive director, or his or her  
 402 designee, may authorize more than 5 percent of the tickets to be  
 403 issued as complimentary tickets to the following:

- 404 1. Reserve or active members of the United States Armed
- 405 Forces or National Guard;
- 406 2. A veteran, as defined in s. 1.01(14). The veteran need



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407 not have served during wartime periods of service as listed  
 408 under s. 1.01(14) or in a campaign or expedition for which a  
 409 campaign badge has been authorized; and

410 3. Not-for-profit organizations with tax-exempt status  
 411 pursuant to s. 501(c) (3) of the United States Internal Revenue  
 412 Code.

413 (d) A promoter who wishes to obtain authorization to issue  
 414 more than 5 percent complimentary tickets shall:

415 1. Submit an application adopted by the commission no later  
 416 than 2 business days before the date of the professional event.  
 417 The application must include, at a minimum, the date, time, and  
 418 location of the event, the number of complimentary tickets being  
 419 requested, the percentage of total tickets issued for the seats  
 420 in the house designated for use in the event being requested as  
 421 complimentary tickets, and which individuals or entities will  
 422 receive the complimentary tickets.

423 2. Maintain documentation evidencing that the tickets were  
 424 given to individuals or entities that fall into the categories  
 425 listed in paragraph (c). These documents are subject to auditing  
 426 requirements as set forth in subsection (7).

427 (e) The commission, executive director, or his or her  
 428 designee shall deny or approve the application. The commission,  
 429 executive director, or his or her designee may set limitations  
 430 on the approval and may approve all or a portion of the  
 431 requested percentage above 5 percent. The commission, executive  
 432 director, or his or her designee shall provide the decision in  
 433 writing to the promoter at least 1 business day before the start  
 434 of the event, with an explanation for the denial or approval and  
 435 an explanation for any limitation on the approval. The promoter

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436 remains responsible for complying with other reporting and  
 437 taxation requirements as set forth in this chapter.

438 ~~(3) A concessionaire shall, within 72 hours after the~~  
 439 ~~match, file with the commission a written report that includes~~  
 440 ~~the number of tickets sold, the amount of gross receipts, and~~  
 441 ~~any other facts the commission may require.~~

442 ~~(3)(4) A~~ Any written report required to be filed with the  
 443 commission under this section ~~must shall~~ be postmarked within 72  
 444 hours after the conclusion of the match, and an additional 5  
 445 days ~~is shall be~~ allowed for mailing.

446 ~~(4)(5) Each~~ the written report ~~must shall~~ be accompanied by  
 447 a tax payment in the amount of 5 percent of the total gross  
 448 receipts exclusive of any federal taxes, except that the tax  
 449 payment derived from the gross price charged for the sale or  
 450 lease of broadcasting, television, and pay-per-view motion  
 451 picture rights of any match occurring within the state may shall  
 452 not exceed \$40,000 for a any single event. If a promoter remits  
 453 the maximum tax amount of \$40,000 for the sale or lease of  
 454 broadcasting, television, or pay-per-view rights of any single  
 455 event pursuant to this subsection, the promoter is only required  
 456 to indicate that the amount of \$40,000 has been remitted for  
 457 such taxes on a form provided by the commission. The promoter  
 458 remains responsible for complying with other reporting and  
 459 taxation requirements related to other gross receipts as set  
 460 forth in this chapter.

461 ~~(5)(6)(a) A~~ Any promoter who willfully makes a false and  
 462 fraudulent report under this section ~~commits is guilty of~~  
 463 perjury and, upon conviction, is subject to punishment as  
 464 provided by law. Such penalty ~~is shall be~~ in addition to any

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465 other penalties imposed under ~~by~~ this chapter.

466 (b) ~~A~~ Any promoter who willfully fails, neglects, or  
467 refuses to make a report or to pay the taxes as prescribed or  
468 who refuses to allow the commission to examine the books,  
469 papers, and records of a ~~any~~ promotion commits is guilty of a  
470 misdemeanor of the second degree, punishable as provided in s.  
471 775.082 or s. 775.083.

472 (6) A promoter shall retain a copy of the following records  
473 for 1 year and provide a copy of the following records to the  
474 commission upon request:

475 (a) Records necessary to support each report submitted to  
476 the commission, including a copy of any report filed with the  
477 commission.

478 (b) A copy of each independently prepared ticket manifest.

479 (c) Documentation verifying the issuance of complimentary  
480 tickets approved by the commission pursuant to subsection (2) to  
481 individuals or entities which meet the requirements as set forth  
482 in paragraph (2)(c).

483 (7) Compliance with this section is subject to verification  
484 by department or commission audit. The commission may, upon  
485 reasonable notice to the promoter, audit a promoter's books and  
486 records relating to the promoter's operations under this  
487 chapter.

488 (8) The commission shall adopt rules establishing a  
489 procedure for auditing a promoter's records and resolving any  
490 inconsistencies revealed by an audit and shall adopt a rule  
491 imposing a late fee in the event of taxes owed.

492 Section 13. Section 548.07, Florida Statutes, is amended to  
493 read:

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494 548.07 Suspension of license or permit by commissioner;  
495 hearing.—

496 (1) The commission or the executive director, or his or her  
497 designee, may issue an emergency suspension order pursuant to s.  
498 120.60(6), suspending the license of any person or entity  
499 licensed under this chapter who poses an immediate, serious  
500 danger to the health, safety, and welfare of the public or the  
501 participants in a match.

502 (2) The department's Office of General Counsel shall review  
503 the grounds for each emergency suspension order issued and, if  
504 sufficient, shall file an administrative complaint against the  
505 licensee within 21 days after the issuance of the emergency  
506 suspension order.

507 (3) After service of the administrative complaint pursuant  
508 to the procedure of s. 455.275, the disciplinary process shall  
509 proceed pursuant to chapter 120. Notwithstanding any provision  
510 of chapter 120, any member of the commission may, upon her or  
511 his own motion or upon the verified written complaint of any  
512 person charging a licensee or permittee with violating this  
513 chapter, suspend any license or permit until final determination  
514 by the commission if such action is necessary to protect the  
515 public welfare and the best interests of the sport. The  
516 commission shall hold a hearing within 10 days after the date on  
517 which the license or permit is suspended.

518 Section 14. Section 548.073, Florida Statutes, is amended  
519 to read:

520 548.073 Commission hearings.—All hearings held under this  
521 chapter shall be held in accordance with chapter 120.

522 ~~Notwithstanding the provisions of chapter 120, any member of the~~

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523 ~~commission may conduct a hearing. Before any adjudication is~~  
524 ~~rendered, a majority of the members of the commission shall~~  
525 ~~examine the record and approve the adjudication and order.~~

526       Section 15. The sum of \$111,000 in recurring funds is  
527 appropriated from the General Revenue Fund to the Department of  
528 Business and Professional Regulation for the implementation of  
529 this act by the Florida State Boxing Commission during the 2014-  
530 2015 fiscal year.

531       Section 16. This act shall take effect July 1, 2014.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Appropriations Subcommittee on Education, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Gaming  
Health Policy  
Regulated Industries  
Rules

## SENATOR BILL GALVANO

26th District

March 14, 2014

Senator Jeremy Ring  
525 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Ring:

I respectfully request that SB 810, Pugilistic Exhibition, be scheduled for a hearing in the Committee on Government Oversight and Accountability at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,



Bill Galvano

cc: Joe McVaney  
Bethany Jones

### REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-26-14  
Meeting Date

Topic Boxing Bill

Bill Number SB 810 & SB 808  
(if applicable)

Name JEFF JOHNSON

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Lobbyist

Address \_\_\_\_\_  
Street  
\_\_\_\_\_  
City State Zip

Phone 813 772-9858

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing UFC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: CS/CS/SB 808

INTRODUCER: Governmental Oversight and Accountability Committee; Regulated Industries Committee and Senator Galvano

SUBJECT: Public Records/Florida State Boxing Commission

DATE: March 28, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 808 creates a public-records exemption for a promoter's proprietary confidential business information held by the Florida State Boxing Commission. CS/CS/SB 808 is the public records companion bill to CS/CS/SB 810, which substantially amends ch. 458, F.S. This bill 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.

CS/CS/SB 808 requires a two-thirds vote of the membership of each house of the Legislature for passage under s. 24(c), Art. I, Florida State Constitution.

**II. Present Situation:**

**Florida's Public Records Law**

Florida has a long history of providing public access to the records of governmental and other public entities. The first law affording access to public records was enacted by the Florida Legislature in 1909.

In 1992, Floridians voted to adopt an amendment to the Florida Constitution that raised the statutory right of public access to public records to a constitutional level. Article I, s. 24(a), of the State Constitution provides:

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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created there under; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

In addition to the Florida Constitution, the Public Records Law,<sup>1</sup> which predates the constitutional provisions, specifies conditions under which public access must be provided to governmental records of the executive branch and other governmental agencies. Section 119.07(1) (a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.

Unless specifically exempted, all agency<sup>2</sup> records are available for public inspection. The term “public records” is defined in s. 119.011(12), F.S., to include:

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 the official business by any agency.

This definition of “public records” has been interpreted by the Florida Supreme Court to include all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>3</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other

---

<sup>1</sup>Chapter 119, F.S.

<sup>2</sup>The term “agency” is defined in s. 119.011(2), F.S., as “any state, county district, authority, or municipal officer, department, division, board, bureau, commission or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>3</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Associates, Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

than to the persons or entities designated in the statute.<sup>4</sup> If a record is simply made exempt from disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>5</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>6</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>7</sup> A bill enacting an exemption<sup>8</sup> may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.<sup>9</sup>

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

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

The Act also requires specified questions to be considered during the review process.<sup>14</sup>

---

<sup>4</sup> Attorney General Opinion 85-62.

<sup>5</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d 289 (Fla. 1991).

<sup>6</sup> FLA. CONTS. Art I, s. 24(c).

<sup>7</sup> FLA. CONTS. Art I, s. 24(c).

<sup>8</sup> Under s. 119.15, F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>9</sup> FLA. CONTS. Art I, s. 24(c).

<sup>10</sup> 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 pursuant to 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 pursuant to s. 119.15(2), F.S.

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> 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?



If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>15</sup> If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are not required.

### **Florida State Boxing Commission**

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing, and mixed martial arts by the Florida State Boxing Commission (Commission) within the Department of Business and Professional Regulation (Department).

Section 548.006(3), F.S., provides the Commission with exclusive jurisdiction over every professional boxing match and professional mixed martial arts and kickboxing matches. Professional matches held in this state must meet the requirements for holding the match pursuant to ch. 548, F.S., and the rules adopted by the Commission.

The Commission's jurisdiction over amateur matches is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for boxing and kickboxing matches held in the state.<sup>16</sup> Amateur sanctioning organizations are business entities organized for sanctioning and supervising matches involving amateurs.<sup>17</sup> This jurisdiction does not extend to amateur sanctioning organizations for mixed martial arts.

### **Reporting and Tax Requirement**

Within seventy-two hours after a match, the promoter<sup>18</sup> of that match must file a written report with the Commission. The report must include information about the number of tickets sold, the amount of gross receipts, and any other facts that the Commission requires. Chapter 548, F.S., does not require the promoter to retain a copy of the written report.

The term "gross receipts" includes:

- The gross price charged for the sale or lease of broadcasting, television, and motion picture rights without any deductions for commissions, brokerage fees, distribution fees, advertising or other expenses or charges;
- The portion of the receipts from the sale of souvenirs, programs, and other concessions received by the promoter;

- 
- 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?

<sup>15</sup> FLA. CONST., art. I, s. 24(c). An existing exemption may be treated as a new exemption if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

<sup>16</sup> Section 548.006(3), F.S.

<sup>17</sup> Section 548.002(2), F.S.

<sup>18</sup> Section 548.002(20), F.S., defines the term "promoter" to mean: any person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, or stages any match involving a professional.

- The face value of all tickets sold and complimentary tickets issued, provided, or given; and
- The face value of any seat or seating issued, provided, or given in exchange for advertising sponsorships, or anything of value to the promotion of an event.

According to the Department, the current definition of “gross receipts” has led to some confusion in the industry because licensees are not sure whether to include state and federal taxes within the face value of a ticket.

Promoters include persons who have rights to telecast a match or matches held in this state under the supervision of the Commission. Such persons must be licensed as a promoter, and must, within 72 hours after the sale, transfer, or extension of such rights in whole or in part, file with the Commission a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the Commission may require.<sup>19</sup>

Concessionaire must also file with the Commission, within 72 hours after the match, a written report that includes the number of tickets sold, the amount of gross receipts, and any other facts the Commission may require.<sup>20</sup>

Any written report that must be filed with the Commission must be postmarked within 72 hours after the conclusion of the match with an additional five days allowed for mailing. According to the Department, the report is required to enable the Commission to verify the accuracy of the post-event tax payment for both tickets sold and broadcasting/television rights.<sup>21</sup>

These written reports must be accompanied with a tax payment in the amount of five percent of the total gross receipts exclusive of any federal taxes. The tax payment for the sale or lease of broadcasting, television, and motion picture rights cannot exceed \$40,000 for any single event.

A concessionaire must file a surety bond, cash deposit, or other security in an amount determined by the Commission. The security is required before licensure, license renewal, or before a match.<sup>22</sup>

### **CS/SB 810 (2014) Proposed Legislation Expanding the Role of the Boxing Commission**

CS/SB 810 substantially amends ch. 548, F.S. in the following manner:

- Provides, modifies, and eliminates definitions relating to the Commission.
- Amends and clarifies the duties of the Commission’s executive director.
- Eliminates the requirement that the Commission record all of its scheduled proceedings.
- Clarifies the Commission’s jurisdiction.
- Eliminates the requirement that concessionaires, foreign co-promoters, and booking agents be licensed, and eliminates references to responsibilities related to concessionaries.

---

<sup>19</sup> Section 548.06(1), F.S.

<sup>20</sup> Section 548.06(3), F.S.

<sup>21</sup> Section 548.06(5), F.S.

<sup>22</sup> Section 548.015, F.S.

- Provides that the failure or refusal to provide a urine sample, or the positive result of a urine test, constitutes an immediate serious danger to the health, safety, and welfare of the public and participants and results in the immediate suspension of the participant's license.
- Requires the Commission to hold purse forfeiture hearings pursuant to the Administrative Procedure Act.
- Redefines how the Commission is to determine "gross receipts."
- Permits the promoter to apply to the Commission for authorization to issue more than five percent of seats in the house as complimentary tickets and not be included in gross receipts for post-event taxation purposes.
- Requires that the promoter keep a copy of certain records for a period of one year.
- Provides that compliance with the requirements outlined in s. 548.06, F.S., is subject to verification by Department or Commission audit and that the Commission has the right to audit a promoter's books and records, upon reasonable notice.
- Directs the Commission to adopt rules to establish a procedure for auditing a promoter's records and for resolving any inconsistencies revealed in the audit.
- Directs the Commission to establish rules for imposing late fees in the event of taxes owed;
- Provides an emergency license suspension procedure.
- Provides that all hearings be held in accordance with the Administrative Procedure Act.

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

This bill provides that the proprietary confidential business information provided in the written report after a match or obtained by the Commission in an audit of the promoter's books and records, is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.

The bill defines "proprietary confidential business information" as information controlled by the promoter, which a promoter intends to be private in that the disclosure of the information would cause harm to the promoter or its business operations. If a promoter discloses information pursuant to a statutory provision or an order of a court or administrative body, the disclosed information is still considered proprietary confidential business information. In addition, a private agreement providing that information will not be released to the public will give it proprietary confidential business information status.

The bill provides that proprietary confidential business information includes any of the following information:

- (a) The number of ticket sales for a match.
- (b) The amount of gross receipts after a match.
- (c) Trade secrets as defined by s. 688.002, F.S.
- (d) Business plans.
- (e) Internal auditing controls and reports of internal auditors
- (f) External auditors' reports.

The bill provides that information made confidential and exempt by this subsection may be disclosed to another governmental entity in the performance of its duties and responsibilities.

This bill provides that these exemptions are subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and are repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 expresses the required Statement of Public Necessity for the public records exemption. The public necessity statement provides that the disclosure of proprietary confidential business information that could injure a promoter in the marketplace by giving the promoter's competitors insight into its financial status and business plan, thereby putting the promoter at a competitive disadvantage. The bill also provides that the Legislature's finding that the harm to a promoter in disclosing proprietary confidential business information significantly outweighs any public benefit derived from disclosure of the information.

Section 3 provides that this act shall take effect on the same date that CS/SB 810 or similar legislation takes effect.

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

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

None.

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

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

Section 24(c), Art. I, of the State Constitution requires a two-thirds vote of each house of the Legislature for passage of a newly created or expanded public-records or public-meetings exemption. Since SB 808 creates a new public-records exemption, it will require a two-thirds vote of each house of the Legislature for passage.

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

Section 24(c), Art. I, of the State Constitution requires a statement of public necessity for a newly-created or expanded public-records or public-meetings exemption. Section 2 of this bill provides a statement of public necessity for the new public record exemptions proposed therein.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

The definition of “proprietary confidential business information” includes information that is “intended to be and is treated by the promoter providing such information as private in that the disclosure of the information would cause harm to the promoter or its business operations.” This is a vague, subjective standard and it unclear how a records custodian will be able to discern a promoter’s intent or when disclosure would harm a promoter’s business. This bill also does not provide the records custodian any notice of when a promoter has ceased to treat a record as private, and is therefore no longer confidential and exempt.

This bill does not define the term “business plans.”

This bill may be overly broad in that it states that information “that concerns” several categories of records are proprietary confidential business information.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 548.062 of the Florida Statutes.

**IX. Additional Information:**

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

**CS/CS by Governmental Oversight and Accountability on March 26, 2014:**

The CS/CS provides that “trade secrets” are defined pursuant to s. 688.002, F.S., and includes external auditing reports in as a category of proprietary business records.

The CS/CS eliminates security systems and information related to competitive interests as two categories of proprietary confidential business information.

**CS by Regulated Industries Committee on March 13, 2014:**

The committee substitute (CS) amends s. 548.062(1), F.S., to include proprietary confidential business information obtained by the Commission in an audit of the promoter’s books and records.

---

The CS amends s. 548.062(1), F.S., to provide that the term “proprietary confidential business information” only includes the information delineated in paragraphs (a) through (g) of that subsection.

The CS also amends the Statement of Public Necessity in section 2 of the bill to also include proprietary confidential business information obtained by the Commission in an audit of the promoter’s books and records.

The CS amends the contingent effective date to link the bill to SB 810.

**B. Amendments:**

None.



586338

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2014	.	
	.	
	.	
	.	

---

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

**Senate Amendment**

Delete lines 17 - 36  
and insert:

(1) As used in this section, the term "proprietary confidential business information" means information that is owned or controlled by the promoter; that is intended by the promoter to be and is treated by the promoter as private in that the disclosure of the information would cause harm to the promoter or its business operations; that has not been disclosed



586338

11 unless disclosed pursuant to a statutory provision, an order of  
12 a court or administrative body, or a private agreement that  
13 provides that the information will not be released to the  
14 public; and that concerns:

- 15       (a) The number of ticket sales for a match.  
16       (b) The amount of gross receipts after a match.  
17       (c) Trade secrets as defined in s. 688.002.  
18       (d) Business plans.  
19       (e) Internal auditing controls and reports of internal  
20 auditors.  
21       (f) Reports of external auditors.



By the Committee on Regulated Industries; and Senator Galvano

580-02558-14

2014808c1

1 A bill to be entitled  
 2 An act relating to public records; creating s.  
 3 548.062, F.S.; providing an exemption from public  
 4 records requirements for the information in the  
 5 reports required to be submitted to the Florida State  
 6 Boxing Commission by a promoter or obtained by the  
 7 commission through audit of a promoter's records;  
 8 providing for future legislative review and repeal of  
 9 the exemption; providing a statement of public  
 10 necessity; providing a contingent effective date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Section 548.062, Florida Statutes, is created to  
 15 read:  
 16 548.062 Public records exemption.—  
 17 (1) As used in this section, the term "proprietary  
 18 confidential business information" means information that is  
 19 held by the commission which is intended to be and is treated by  
 20 the promoter providing such information as private in that the  
 21 disclosure of the information would cause harm to the promoter  
 22 or its business operations, and that has not been disclosed  
 23 unless disclosed pursuant to a statutory provision, an order of  
 24 a court or administrative body, or a private agreement that  
 25 provides that the information will not be released to the  
 26 public. The term includes:  
 27 (a) The number of ticket sales for a match.  
 28 (b) The amount of gross receipts after a match.  
 29 (c) Trade secrets.

Page 1 of 3

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

580-02558-14

2014808c1

30 (d) Business plans.  
 31 (e) Internal auditing controls and reports of internal  
 32 auditors.  
 33 (f) Security measures, systems, or procedures.  
 34 (g) Information relating to competitive interests, the  
 35 disclosure of which would impair the competitive business of the  
 36 promoter providing the information.  
 37 (2) Proprietary confidential business information provided  
 38 in the written report required to be filed with the commission  
 39 after a match or obtained by the commission through an audit of  
 40 the promoter's books and records pursuant to s. 548.06 is  
 41 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 42 of the State Constitution. Information made confidential and  
 43 exempt by this subsection may be disclosed to another  
 44 governmental entity in the performance of its duties and  
 45 responsibilities.  
 46 (3) 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 proprietary confidential business information be  
 52 protected from disclosure. The disclosure of proprietary  
 53 confidential business information could injure a promoter in the  
 54 marketplace by giving the promoter's competitors insights into  
 55 its financial status and business plan, thereby putting the  
 56 promoter at a competitive disadvantage. The Legislature also  
 57 finds that the harm to a promoter in disclosing proprietary  
 58 confidential business information significantly outweighs any

Page 2 of 3

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

580-02558-14

2014808c1

59 public benefit derived from disclosure of the information. For  
60 these reasons, the Legislature declares that any proprietary  
61 confidential business information provided in the written report  
62 that is required to be filed with the commission after a match  
63 or obtained by the commission through an audit of the promoter's  
64 books and records pursuant to s. 548.06, Florida Statutes, is  
65 confidential and exempt from s. 119.07(1), Florida Statutes, and  
66 s. 24(a), Article I of the State Constitution.

67 Section 3. This act shall take effect on the same date that  
68 SB 810 or similar legislation takes effect, if such legislation  
69 is adopted in the same legislative session or an extension  
70 thereof and becomes law.

# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

## COMMITTEES:

Appropriations Subcommittee on Education, *Chair*  
Agriculture  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Education  
Gaming  
Health Policy  
Regulated Industries  
Rules

## SENATOR BILL GALVANO

26th District

March 14, 2014

Senator Jeremy Ring  
525 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399

Dear Chair Ring:

I respectfully request that SB 808, Public Records/Florida State Boxing Commission, be scheduled for a hearing in the Committee on Government Oversight and Accountability at your earliest convenience.

If I may be of assistance to you on this or any other matter, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,



Bill Galvano

cc: Joe McVaney  
Bethany Jones

### REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205
- 326 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-26-14

Meeting Date

Topic Boxing Bill

Bill Number SB 810453808  
*(if applicable)*

Name JEFF JOHASTON

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Lobbyist

Address \_\_\_\_\_  
*Street*

Phone 813 772-9858

*City*

*State*

*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing UFC

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)

3 126 2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 808  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: CS/SB 280

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Garcia

SUBJECT: Public Records/Participants in Treatment-based Drug Court Programs

DATE: March 28, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Munroe	Cibula	JU	<b>Favorable</b>
2.	Kim	McVaney	GO	<b>Fav/CS</b>
3.			RC	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 280 creates a public records exemption for information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records:

- Screenings for participation in the program.
- Substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

This bill provides that records may be released by consent of the participant and to governmental entities.

The bill provides that the exemption is subject to legislative review and repeal under the Open Government Sunset Review Act. The bill also contains a statement of public necessity as required by the Florida Constitution.

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

## II. Present Situation:

### Treatment-Based Drug Court Programs

Section 397.334, F.S., allows counties to fund a treatment-based drug court program under which persons in the justice system identified as having a substance abuse problem can receive individually tailored treatment.<sup>1</sup> Entry into a treatment-based drug court program must be voluntary. Written consent of the individual is necessary for a court to order him or her into a program.<sup>2</sup> As part of a program, a person may be required to receive substance abuse screenings and continual monitoring and evaluations.<sup>3</sup> Records of the screenings and evaluations can be reviewed by court officials as part of a process of determining the individual's compliance with the treatment-based drug court program.<sup>4</sup>

### Confidentiality of Treatment-based Drug Court Program Records

There is no existing public records exemption for records specific to participation in a treatment-based drug court program. A court may order records to be made confidential on a case-by-case basis; however, only the Legislature may create a new general public records exemption for judicial records.<sup>5</sup> Under existing law, drug court-related records contained in court files are not confidential, and a motion to make the records confidential must be filed, a hearing on the motion must be held, and the court must issue an order granting or denying the motion.<sup>6</sup> This motion driven process has a significant impact on judicial and court workload.<sup>7</sup>

Nevertheless, federal law may restrict the disclosure of some records relating to participants in a treatment-based drug court program. Specifically, federal law prohibits the disclosure of information that:

- Identifies a person who has applied for or been given diagnosis or treatment for alcohol or drug abuse at a federally assisted program. Such individuals include any individual who, after arrest on a criminal charge, is identified as an alcohol or drug abuser in order to determine that individual's eligibility to participate in a treatment program.
- Is information obtained by a federally assisted drug abuse or alcohol abuse program for the purpose of treating alcohol or drug abuse, making a diagnosis for that treatment, or making a referral for that treatment.<sup>8</sup>

An alcohol abuse or drug abuse program is considered to be federally assisted if it is:

- Conducted in whole or in part by any department or agency of the United States;
- Carried out under a license or other authorization granted by any department or agency of the United States;

---

<sup>1</sup> Section 397.334(1), F.S.

<sup>2</sup> Section 397.334(2), F.S.

<sup>3</sup> Section 397.334(4), F.S.

<sup>4</sup> Section 397.334(5), F.S.

<sup>5</sup> *In re Amendments to Florida Rule of Judicial Administration 2.420*, 68 So. 3d 228, 229-230 (Fla. 2011).

<sup>6</sup> Office of the State Courts Administrator, *2014 Judicial Impact Statement for SB 280* (December 2, 2013) (on file with the Senate Committee on Judiciary).

<sup>7</sup> *Id.*

<sup>8</sup> See 42 C.F.R. ss. 2.11-2.12.

- Supported by funds provided by any department or agency of the United States; or
- Assisted by the Internal Revenue Service of the Department of the Treasury through the allowance of income tax deductions for contributions to the program or through the granting of tax exempt status to the program.<sup>9</sup>

### **Confidentiality of Substance Abuse Treatment Records**

Florida law provides a public records exemption for substance abuse service providers. A service provider can be public agency, a private or not-for-profit agency, a practitioner or hospital.<sup>10</sup> Current law provides that the records of service providers revealing the identity, diagnosis, and prognosis of and service provision to any individual are confidential and exempt from public disclosure.<sup>11</sup> These records may be released with the written consent of the individual receiving treatment. If written consent is not given, records may be released in a medical emergency, to provide treatment or by court order. Records that do not identify an individual may be released for auditing and research purposes without written consent.

### **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.<sup>12</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>13</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act guarantees every person's right to inspect and copy

<sup>9</sup> 42 C.F.R. s. 2.12(b).

<sup>10</sup> Section 397.331(33), F.S.

<sup>11</sup> Section 397.501(7), F.S. provides:

**RIGHT TO CONFIDENTIALITY OF INDIVIDUAL RECORDS.—**

(a) The records of service providers which pertain to the identity, diagnosis, and prognosis of and service provision to any individual are confidential in accordance with this chapter and with applicable federal confidentiality regulations and are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such records may not be disclosed without the written consent of the individual to whom they pertain except that appropriate disclosure may be made without such consent:

1. To medical personnel in a medical emergency.
2. To service provider personnel if such personnel need to know the information in order to carry out duties relating to the provision of services to an individual.
3. To the secretary of the department or the secretary's designee, for purposes of scientific research, in accordance with federal confidentiality regulations, but only upon agreement in writing that the individual's name and other identifying information will not be disclosed.
4. In the course of review of service provider records by persons who are performing an audit or evaluation on behalf of any federal, state, or local government agency, or third-party payor providing financial assistance or reimbursement to the service provider; however, reports produced as a result of such audit or evaluation may not disclose names or other identifying information and must be in accordance with federal confidentiality regulations.
5. Upon court order based on application showing good cause for disclosure. In determining whether there is good cause for disclosure, the court shall examine whether the public interest and the need for disclosure outweigh the potential injury to the individual, to the service provider and the individual, and to the service provider itself.

<sup>12</sup> FLA. CONST., Art. I, s. 24(a).

<sup>13</sup> *Id.*



any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>14</sup>

Only the Legislature may create an exemption to public records requirements.<sup>15</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption. 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 provisions and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>16</sup>

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>17</sup> It requires the automatic repeal of such exemptions on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption. 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.<sup>18</sup>

### III. Effect of Proposed Changes:

The bill provides that information relating to a participant or a person considered for participation in a treatment-based drug court program which is contained in the following records is confidential and exempt<sup>19</sup> from public records disclosure requirements:

- Records created or compiled during screenings for participation in the program.
- Records created or compiled during substance abuse screenings.
- Behavioral health evaluations.
- Subsequent treatment status reports.

This bill provides that confidential and exempt records may be released by a participant in the drug court program or the participant's legal representative. Confidential and exempt records may also be released to governmental entities in furtherance of duties insofar as those duties are associated with drug screenings or treatment.<sup>20</sup>

<sup>14</sup> Section 119.07(1)(a), F.S.

<sup>15</sup> FLA. CONST., Art I s. 24(c).

<sup>16</sup> *Id.*

<sup>17</sup> Section 119.15, F.S.

<sup>18</sup> *Id.*

<sup>19</sup> 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).

<sup>20</sup> The drug court program can involve treatment providers, agencies, law enforcement as well as the court system. Section 397.334(5), F.S., provides: Treatment-based drug court programs may include pretrial intervention programs as provided in ss. 948.08, 948.16, and 985.345, treatment-based drug court programs authorized in chapter 39, postadjudicatory programs as provided in ss. 948.01, 948.06, and 948.20, and review of the status of compliance or noncompliance of sentenced offenders through a treatment-based drug court program. While enrolled in a treatment-based drug court program, the participant is

This bill also provides that a service provider's records containing the identity, diagnosis or prognosis of a participant may be released pursuant to s. 397.501(7), F.S.

This exemption applies retroactively to all drug court records currently held by the courts and agencies.

The bill provides that the public records exemption is subject to legislative review and repeal under the Open Government Sunset Review Act and as such, stands repealed October 2, 2019, unless reviewed and saved from repeal by reenactment of the Legislature.

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

The bill takes effect upon becoming a law.

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

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

The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, reduce the authority counties or municipalities have to raise revenue, or reduce the percentage of a state tax shared with counties or municipalities.

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

This bill creates a public records exemption. To become law, bills creating a public records exemption must be approved by a two-thirds vote of the members present and voting in each house of the Legislature.

According to the public necessity statement included in the bill, maintaining the confidentiality of records is necessary to encourage individuals to participate in treatment-based drug court programs.

##### **C. Trust Funds Restrictions:**

None.

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subject to a coordinated strategy developed by a drug court team under subsection (4). The coordinated strategy may include a protocol of sanctions that may be imposed upon the participant for noncompliance with program rules. The protocol of sanctions may include, but is not limited to, placement in a substance abuse treatment program offered by a licensed service provider as defined in s. 397.311 or in a jail-based treatment program or serving a period of secure detention under chapter 985 if a child or a period of incarceration within the time limits established for contempt of court if an adult. The coordinated strategy must be provided in writing to the participant before the participant agrees to enter into a treatment-based drug court program.

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

None.

**B. Private Sector Impact:**

Information relating to a person's participation in a treatment-based drug court program will be kept confidential.

**C. Government Sector Impact:**

By maintaining the confidentiality of records relating to a person's participation in a treatment-based drug court program, more people may be willing to participate. The exemption for drug court-related records will eliminate the need for motions, hearings, and orders to protect these records from disclosure. The Office of the State Court Administrator did not have any statewide statistics but did estimate that there were 70-100 motion hearings to make drug court records confidential annually in Broward County.<sup>21</sup> The precise impact will depend upon the number of motions and hearings that will be eliminated statewide. The fiscal impact on the expenditures of the State Courts System cannot be accurately determined due to the unavailability of data needed to quantify the decreased court workload.<sup>22</sup>

**VI. Technical Deficiencies:**

Florida courts are generally open to the public<sup>23</sup> and drug courts are no exception. The public necessity statement provides that this bill is necessary because the public disclosure of sensitive information could have a chilling effect on participation. While this bill makes certain drug court records confidential and exempt from public disclosure, this bill does not keep the public outside of the courtroom when the subject matter contained in the records are being discussed.

This bill does not provide for retroactive application of the public records exemption.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 387.334 of the Florida Statutes.

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<sup>21</sup> Email from the Office of the State Courts Administrator, on file with the Senate Governmental Oversight and Accountability Committee.

<sup>22</sup> Office of the State Courts Administrator, *supra* note 6.

<sup>23</sup> *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113 (1988).

**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 26, 2014:**

The CS makes the following changes:

- Clarifies and narrows the types of records that are confidential and exempt.
- Allows a records custodian to release records to another entity.
- Clarifies that service providers may release records pursuant to existing law.
- Provides for retroactive application of the exemption.

- B. **Amendments:**

None.



296184

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2014	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 20 - 41  
and insert:  
program which is contained in the following records is  
confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
of the State Constitution:

1. Records created or compiled during screenings for  
participation in the program.

2. Records created or compiled during substance abuse



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11 screenings.  
12 3. Behavioral health evaluations.  
13 4. Subsequent treatment status reports.  
14 (b) Such confidential and exempt information may be  
15 disclosed:  
16 1. Pursuant to a written request of the participant or  
17 person considered for participation, or his or her legal  
18 representative.  
19 2. To another governmental entity in the furtherance of its  
20 responsibilities associated with the screening of or providing  
21 treatment to a person in a treatment-based drug court program.  
22 (c) Records of a service provider which pertain to the  
23 identity, diagnosis, and prognosis of or provision of service to  
24 any person shall be disclosed pursuant to s. 397.501(7).  
25 (d) This exemption applies to such information described in  
26 paragraph (a) relating to a participant or a person considered  
27 for participation in a treatment-based drug court program  
28 before, on, or after the effective date of this exemption.  
29 (e) This subsection is subject to the Open Government  
30 Sunset Review Act in accordance with s. 119.15 and shall stand  
31 repealed on October 2, 2019, unless reviewed and saved from  
32 repeal through reenactment by the Legislature.  
33 Section 2. The Legislature finds that it is a public  
34 necessity that information relating to a participant or person  
35 considered for participation in a treatment-based drug court  
36 program under s. 397.334, Florida Statutes, which is contained  
37 in certain records be made confidential and exempt from s.  
38 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
39 State Constitution. Protecting information contained in records



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40 created or compiled during screenings for participation in a  
41 treatment-based drug court program, records created or compiled  
42 during substance abuse screenings, behavioral  
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 4 - 7

47 and insert:

48 requirements information from the screenings for  
49 participation in a treatment-based drug court program,  
50 substance abuse screenings, behavioral health  
51 evaluations, and subsequent treatment status reports  
52 regarding a participant or a person considered for  
53 participation in a treatment-based drug court program;  
54 providing for exceptions to the exemption; providing  
55 for retroactive application of the public record  
56 exemption; providing for

By Senator Garcia

38-00336-14

2014280\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 397.334, F.S.; exempting from public records  
 4 requirements information relating to a participant or  
 5 a person considered for participation in a treatment-  
 6 based drug court program and contained in certain  
 7 records, reports, and evaluations; providing for  
 8 future repeal and legislative review 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:

14 Section 1. Subsection (10) is added to section 397.334,  
 15 Florida Statutes, to read:

16 397.334 Treatment-based drug court programs.—

17 (10) (a) Information relating to a participant or a person  
 18 considered for participation in a treatment-based drug court  
 19 program which is contained in the following records, reports,  
 20 and evaluations is confidential and exempt from s. 119.07(1) and  
 21 s. 24(a), Art. I of the State Constitution:

22 1. Records relating to initial screenings for participation  
 23 in the program.

24 2. Records relating to substance abuse screenings.

25 3. Behavioral health evaluations.

26 4. Subsequent treatment status reports.

27 (b) This subsection is subject to the Open Government  
 28 Sunset Review Act in accordance with s. 119.15 and shall stand  
 29

Page 1 of 2

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

38-00336-14

2014280\_\_

30 repealed on October 2, 2019, unless reviewed and saved from  
 31 repeal through reenactment by the Legislature.

32 Section 2. The Legislature finds that it is a public  
 33 necessity that information relating to a participant or person  
 34 considered for participation in a treatment-based drug court  
 35 program under s. 397.334, Florida Statutes, which is contained  
 36 in certain records, reports, and evaluations be made  
 37 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 38 s. 24(a), Article I of the State Constitution. Protecting  
 39 information contained in records relating to initial screenings  
 40 for participation in a treatment-based drug court program,  
 41 records relating to substance abuse screenings, behavioral  
 42 health evaluations, and subsequent treatment status reports is  
 43 necessary to protect the privacy rights of participants or  
 44 individuals considered for participation in treatment-based drug  
 45 court programs. Protecting against the release of information  
 46 that is sensitive and personal in nature prevents unwarranted  
 47 damage to the reputation of treatment-based drug court program  
 48 participants. Public disclosure of such information could result  
 49 in a substantial chilling effect on participation in treatment-  
 50 based drug court programs. Preventing such chilling effect by  
 51 making this information confidential substantially outweighs any  
 52 public benefit derived from public disclosure of such  
 53 information. Accordingly, it is a public necessity that this  
 54 information be made confidential to protect the privacy rights  
 55 of program participants, encourage individuals to participate in  
 56 such programs, and promote the effective and efficient  
 57 administration of treatment-based drug court programs.

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

Page 2 of 2

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





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

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

January 14, 2014

The Honorable Jeremy Ring  
Chair, Government 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 280 Public Records/Participants in Treatment-based Drug Court Programs* 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](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

6  
3/28/14  
Meeting Date

Topic public records/drug court participants Bill Number 280  
*(if applicable)*

Name Sarah Naf Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director, Office of Community & Intergovernmental Relations, Office of the State Courts Administrator

Address 500 S. Duval St. Phone 850-922-5692  
*Street*

Tallahassee FL 32399 E-mail nafs@flcourts.org  
*City State Zip*

Speaking:  For  Against  Information

Representing State Courts System

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)

3/26/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 208

Name BRIAN PITTS

(if applicable)

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: SB 1020

INTRODUCER: Senator Soto

SUBJECT: Inspectors General

DATE: March 25, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McKay	McVaney	GO	<b>Favorable</b>
2.			CA	
3.			AP	

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**I. Summary:**

SB 1020 requires the Chief Inspector General of the State of Florida to post on the website of the Executive Office of the Governor the final investigative reports issued by the Office of Chief Inspector General and the agency inspector generals. Such postings do not include reports that are confidential or otherwise exempt from public disclosure.

The bill also requires each agency inspector general to publish on the agency's website the same final investigative reports, including all responses and rebuttals. Again, the postings may not include the reports that are confidential or otherwise exempt from public disclosure.

The bill requires each inspector general of a local government entity to publish on the local government entity's website any final investigative report. Postings may not include the reports that are confidential or otherwise exempt from public disclosure.

**II. Present Situation:**

**Chief Inspector General**

Section 14.32, F.S., creates in the Executive Office of the Governor the Office of Chief Inspector General. The Chief Inspector General is responsible for promoting accountability, integrity, and efficiency in the agencies under the jurisdiction of the Governor. The Chief Inspector General is appointed by and serves at the pleasure of the Governor, and serves as the inspector general for the Executive Office of the Governor. The Chief Inspector General must:

- Initiate investigations, recommend policies, and carry out other activities designed to deter, detect, and prevent, fraud, waste, mismanagement, and misconduct in government.
- Investigate any administrative action of any agency under the direct supervision of the Governor.
- Request assistance and information as necessary for the performance of the duties.

- Examine the records and reports of any agency under the direct supervision of the Governor.
- Coordinate complaint-handling activities with agencies.
- Coordinate the activities of the Whistle-blower's Act and maintain the whistle-blower's hotline.
- Report to and cooperate fully with the Department of Law Enforcement, the Department of Legal Affairs, and other law enforcement agencies when there are grounds to believe that there has been a violation of criminal law or that a civil action should be initiated.
- Act as liaison with outside agencies and the Federal Government to promote accountability, integrity, and efficiency in state government.
- Act as liaison and monitor the activities of the inspectors general in the agencies under the Governor's jurisdiction.
- Review, evaluate, and monitor the policies, practices, and operations of the Executive Office of the Governor.
- Conduct special investigations and management reviews at the request of the Governor.

The Chief Inspector General has various duties relating to public-private partnerships, including advising on internal controls, conducting audits, investigating complaints of fraud, and making recommendations for improvements in the actions taken by public-private partnerships to meet performance standards.

### **Agency Inspectors General**

#### *Duties*

Section 20.055, F.S., requires that each state agency<sup>1</sup> created in the organizational structure of state government have an inspector general office contained within the agency. The office is created to provide a focal point of accountability efforts within the agency. Each office is responsible for the following:

- Advising in the development of performance standards, their validation, and the compliance of agency activities with them.
- Assessing the reliability and validity of information provided by the agency on performance measures and standards.
- Improving agency performance.
- Supervising and coordinating audits, investigations, and reviews relating to the operations of the state agency.
- Conducting, supervising, or coordinating other activities carried out or financed by that state agency for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations.
- Providing central coordination of efforts to identify and remedy waste, fraud, and abuse.
- Coordinating agency-specific audit activities with those of peer federal and state agencies.
- Reviewing rules relating to the programs and operations of the agency and making recommendations concerning their impact.

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<sup>1</sup> For purposes of this section, the Executive Office of the Governor, the Department of Military Affairs, the Fish and Wildlife Conservation Commission, the Office of Insurance Regulation, the Office of Financial Regulation, the Public Service Commission, the Board of Governors of the State University System, the Florida Housing Finance Corporation, and the state courts system are considered "state agencies," in addition to the departments created in Ch. 20, F.S.

- Maintaining a balance among audit, investigative, and other accounting activities of the agency.
- Complying with the General Principles and Standards for Offices of Inspector General as published and revised by the Association of Inspectors General.<sup>2</sup>

### ***Appointment***

Inspectors general are appointed by the agency head. For agencies under the direction of the Governor, the appointment must be made after notifying the Governor and the Chief Inspector General in writing, at least seven days prior to an offer of employment, of the agency head's intention to hire the inspector general.<sup>3</sup>

### ***Removal and Qualifications***

Inspectors general may be removed only by the agency head. For agencies under the direction of the Governor, the agency head must notify the Governor and the Chief Inspector General, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal. For state agencies under the direction of the Governor and Cabinet, the agency head must notify the Governor and Cabinet, in writing, of the intention to terminate the inspector general, at least seven days prior to the removal.<sup>4</sup> Inspectors general must possess minimum educational and experience qualifications,<sup>5</sup> and the investigations they conduct must adhere to specific internal auditing standards.

### ***Internal Audits***

Each inspector general must review and evaluate internal controls necessary to ensure the fiscal accountability of the state agency. The inspector general must conduct financial, compliance, electronic data processing, and performance audits of the agency and prepare audit reports of his or her findings. The performance of the audit shall be under the direction of the inspector general, except that if the inspector general does not possess the specified qualifications, the director of auditing must perform the auditing functions.

Audits must be conducted in accordance with the current Standards for the Professional Practice of Internal Auditing and subsequent Internal Auditing Standards or Statements on Internal Auditing Standards published by the Institute of Internal Auditors, Inc., or, where appropriate, in accordance with generally accepted governmental auditing standards. All audit reports issued by internal audit staff shall include a statement that the audit was conducted pursuant to the appropriate standards.<sup>6</sup>

Audit work papers and reports must be public records to the extent that they do not include information that has been made confidential and exempt from the provisions of

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<sup>2</sup> Section 20.055(2), F.S.

<sup>3</sup> Section 20.055(3)(a), F.S.

<sup>4</sup> Section 20.055(3)(c), F.S.

<sup>5</sup> Section 20.055(4), F.S.

<sup>6</sup> Section 20.055(5)(a), F.S.

s. 119.07(1), F.S., or information protected under s. 112.3187(5), F.S., of the Whistle-blower's Act.<sup>7</sup>

### ***Reporting***

At the conclusion of each audit, the inspector general must submit preliminary findings and recommendations to the person responsible for supervision of the program function or operational unit who must respond to any adverse findings within 20 working days after receipt of the tentative findings. Such response and the inspector general's rebuttal to the response must be included in the final audit report.<sup>8</sup>

The inspector general must submit the final report to the agency head and to the Auditor General. The Auditor General, in connection with the independent post-audit of the same agency, must give appropriate consideration to internal audit reports and the resolution of findings therein. The Legislative Auditing Committee may inquire into the reasons or justifications for failure of the agency head to correct the deficiencies reported in internal audits that are also reported by the Auditor General and must take appropriate action.<sup>9</sup>

The inspector general must monitor the implementation of the state agency's response to any report on the state agency issued by the Auditor General or by the Office of Program Policy Analysis and Government Accountability. No later than six months after the Auditor General or the Office of Program Policy Analysis and Government Accountability publishes a report on the state agency, the inspector general must provide a written response to the agency head on the status of corrective actions taken. The inspector general must file a copy of such response with the Legislative Auditing Committee.<sup>10</sup>

### ***More Duties***

The inspector general must develop long-term and annual audit plans based on the findings of periodic risk assessments. The plan, where appropriate, should include post-audit samplings of payments and accounts. The Chief Financial Officer, to assist in fulfilling the responsibilities for examining, auditing, and settling accounts, claims, and demands related to claims against the state, and examining, auditing, adjusting, and settling accounts relating to those indebted to the state, may utilize audits performed by the inspectors general and internal auditors. For state agencies under the Governor, the audit plans shall be submitted to the Governor's Chief Inspector General. The plan must be submitted to the agency head for approval, and a copy of the approved plan must be submitted to the Auditor General.<sup>11</sup>

In carrying out its investigative duties and responsibilities, each inspector general must initiate, conduct, supervise, and coordinate investigations designed to detect, deter, prevent, and eradicate fraud, waste, mismanagement, misconduct, and other abuses in state government.

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<sup>7</sup> Section 20.055(5)(b), F.S.

<sup>8</sup> Section 20.055(5)(d), F.S.

<sup>9</sup> Section 20.055(5)(g), F.S.

<sup>10</sup> Section 20.055(5)(h), F.S.

<sup>11</sup> Section 20.055(5)(i), F.S.

For these purposes, each inspector general must do the following:

- Receive complaints and coordinate all activities of the agency as required by the Whistle-blower's Act.
- Receive and consider the complaints that do not meet the criteria for an investigation under the Whistle-blower's Act and conduct, supervise, or coordinate such inquiries, investigations, or reviews as the inspector general deems appropriate.
- Report expeditiously to the Department of Law Enforcement or other law enforcement agencies, as appropriate, when the inspector general has reasonable grounds to believe there has been a violation of criminal law.
- Conduct investigations and other inquiries free of actual or perceived impairment to the independence of the inspector general or the inspector general's office. This must include freedom from any interference with investigations and timely access to records and other sources of information.
- At the conclusion of an audit the subject of which is an entity contracting with the state or an individual substantially affected, submit the findings to the contracting entity or the individual substantially affected, who must be advised that they may submit a written response to the findings. The response and the inspector general's rebuttal to the response, if any, must be included in the final audit report.
- Submit in a timely fashion final reports on investigations conducted by the inspector general to the agency head.<sup>12</sup>

Each inspector general must submit a yearly report on its activities to the agency head, and provide any written complaints about the operations of the inspector general.<sup>13</sup>

### III. Effect of Proposed Changes:

**Section 1** amends s. 14.32, F.S., to add a requirement that the Chief Inspector General publish, on the website of the Executive Office of the Governor, final investigative reports performed by the Chief Inspector General or received from agency inspectors general. The Chief Inspector General may not publish a report on the website if the investigation is confidential or otherwise exempt from disclosure by law. The Chief Inspector General must publish reports within 10 days after finalizing the report or receiving the report from an agency inspector general.

**Section 2** amends s. 20.055, F.S., to add a requirement that if an investigation is not confidential or otherwise exempt from disclosure by law, an agency inspector general must publish final investigative reports, including all responses and rebuttals, on the agency's website. Within 10 days after finalizing a report, the inspector general must publish the report and provide a copy to the Chief Inspector General for publication on the website of the Executive Office of the Governor.

**Section 3** creates s. 286.0015, F.S., to require that if an investigation is not confidential or otherwise exempt from disclosure by law, a unit of local government must publish on its website the final investigative report by an inspector general prepared for or on behalf of the unit of local government. The unit of local government must publish a report under this section within

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<sup>12</sup> Section 20.055(6), F.S.

<sup>13</sup> Section 20.055(7) and (8), F.S.



10 days after finalizing the report. An investigation becomes final when the audit report or investigative report is presented to the unit of local government.

For purposes of this requirement, the bill defines the term “unit of local government” as a county, municipality, special district, local agency, authority, consolidated city-county government, or any other local governmental body or public body corporate or politic authorized or created by general or special law.

The bill takes effect 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 certain requirements are met. However, several exemptions and exceptions exist. The exceptions to the constitutional provision include a legislative determination that the law fulfills an important state interest and one of the following relevant conditions: (a) the law requiring such expenditure is approved by 2/3 of the membership of each chamber or (b) the expenditure is required to comply with a law that applies to all persons similarly situated.

In this instance, the bill does not contain a legislative determination that the bill fulfills an important state interest. However, the bill appears to apply to all persons similarly situated (state and local governmental entities in Florida that have inspectors general).

Subsection (d) of Art. VII, Sec. 18, of the State Constitution exempts those laws that have an insignificant fiscal impact from the requirements of the mandates provision. Whether a particular bill results in a significant impact on cities and counties must be determined on an aggregate, statewide basis. Laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10 (\$1.9 million for FY 2013-2014<sup>14</sup>), are exempt.<sup>15</sup>

The financial impact on cities and counties is unknown at this time. If the overall aggregate fiscal impact on cities and counties exceeds \$1.9 million per year, the bill, to be binding on all cities and counties, must meet the relevant conditions as an exception to the constitutional requirements.

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

None.

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<sup>14</sup> Based on the Demographic Estimating Conference’s final population estimate for April 1, 2014, which was adopted on February 10, 2014. The Executive Summary can be found at:

<http://edr.state.fl.us/Content/conferences/population/demographicsummary.pdf> (last visited on February 28, 2014).

<sup>15</sup> See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Fiscal Impact*, (September 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited on March 5, 2013).

C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The cost to comply with the provisions of this bill is unknown. However, the bill will increase the workload on state agencies, local governments and the Chief Inspector General to properly redact confidential and exempt information in final investigative reports and to post such reports on the appropriate websites.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill requires the final investigative reports to be published 10 days after the agency finalizes the report. This requirement may conflict with s. 112.532, F.S., relating to law enforcement officers' and correctional officers' rights. The final investigative report under s. 112.532, F.S., remains confidential until the employing law enforcement agency makes a final determination whether to issue a notice of disciplinary action. If the two sections are read together, the agency will not be required to publish a final investigative report until the agency makes that final determination on its action against the employee.

The bill appears to exempt from publication only those investigations that are confidential or otherwise exempt from disclosure. Information contained in the final investigative reports retains its status of confidential and exempt under other laws and must be redacted prior to publication.

**VIII. Statutes Affected:**

This bill substantially amends sections 14.32 and 20.055 of the Florida Statutes.

This bill creates section 286.0015 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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By Senator Soto

14-01445-14

20141020\_\_

A bill to be entitled

An act relating to inspectors general; amending s. 14.32, F.S.; requiring the Chief Inspector General to publish final investigative reports in a specified manner within a certain timeframe; amending s. 20.055, F.S.; requiring final investigative reports of inspectors general to be published on an agency website within a certain timeframe; creating s. 286.0015, F.S.; defining the term "unit of local government"; requiring specified reports of local governments to be published online within a certain timeframe; providing an effective date.

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

Section 1. Paragraph (1) is added to subsection (2) of section 14.32, Florida Statutes, to read:

14.32 Office of Chief Inspector General.—

(2) The Chief Inspector General shall:

(1) Publish, on the website of the Executive Office of the Governor, final investigative reports performed pursuant to this section or received from inspectors general pursuant to s. 20.055. The Chief Inspector General may not publish a report on the website if the investigation is confidential or otherwise exempt from disclosure by law. The Chief Inspector General shall publish reports under this paragraph within 10 days after finalizing the report or receiving the report pursuant to s. 20.055.

Section 2. Present subsections (7) through (9) of section

Page 1 of 3

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

14-01445-14

20141020\_\_

20.055, Florida Statutes, are renumbered as subsections (8) through (10), respectively, and a new subsection (7) is added to that section, to read:

20.055 Agency inspectors general.—

(7) If an investigation is not confidential or otherwise exempt from disclosure by law, the inspector general shall publish final investigative reports, including all responses and rebuttals authorized by this section, on the agency's website. Within 10 days after finalizing a report, the inspector general shall publish the report and provide a copy to the Chief Inspector General for publication on the website of the Executive Office of the Governor.

Section 3. Section 286.0015, Florida Statutes, is created to read:

286.0015 Investigative reports of local governments; online publication.—

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

(2) If the investigation is not confidential or otherwise exempt from disclosure by law, a unit of local government shall publish on its website the final investigative report by an inspector general prepared for or on behalf of the unit of local government. The unit of local government shall publish a report under this section within 10 days after finalizing the report. An investigation becomes final when the audit report or investigative report is presented to the unit of local

Page 2 of 3

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

14-01445-14

20141020\_\_

59 government.

60 Section 4. This act shall take effect July 1, 2014.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Judiciary, *Vice Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on General Government  
Community Affairs  
Environmental Preservation and Conservation  
Ethics and Elections

### SELECT COMMITTEE:

Select Committee on Patient Protection  
and Affordable Care Act

### SENATOR DARREN SOTO

*Deputy Democratic Whip*  
14th District

March 4, 2014

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

Chairman Ring,

I respectfully request that Senate Bill 1020, Inspectors General, be placed on the agenda as soon as possible.

Senate Bill 1020 requires the Chief Inspector General to publish, on the website of the Executive Office of the Governor, final investigative reports other than those which are confidential or otherwise exempt from disclosure by law within 10 days after finalizing or receiving the report. In addition, this bill requires local governments to publish their final investigative reports 10 days after finalizing the report.

Thank you for your consideration. Should you have any questions or concerns, please feel free to contact me at 850-487-5014.

Sincerely,

A handwritten signature in cursive script that reads "Darren M. Soto".

Darren M. Soto  
State Senator, District 14

Cc: Joe McVaney, Staff Director  
Bethany Jones, Committee Administrative Assistant

#### REPLY TO:

□ 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

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

DON GAETZ  
President of the Senate

GARRETT RICHTER  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1020  
*(if applicable)*

Name Dan Krassner

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Director

Address 715 N. Calhoun St. #4  
*Street*  
Tallahassee FL 32303  
*City State Zip*

Phone 850 321 0432

E-mail dan@integrityfl.org

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

Sen. Soto

*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 12 6 2014  
Meeting Date

Topic \_\_\_\_\_

Bill Number 1020  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705  
*City State Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14  
Meeting Date

Topic Inspectors General

Bill Number SB 1020  
*(if applicable)*

Name David Cruz

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Assistant General Counsel

Address P.O. Box 1757

Phone 701-3676

*Street*

Tallahassee

FL

*State*

32302

*Zip*

E-mail DCruz@fc cities.com

Speaking:  For  Against  Information

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/20/11)

**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 1262

INTRODUCER: Senator Brandes

SUBJECT: Public Records and Meetings/Insurance Flood Loss Model

DATE: March 25, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<b>Favorable</b>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

---

## I. Summary:

SB 1262 makes confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Trade secrets used in designing and constructing flood loss models that are provided to the Florida Commission on Hurricane Loss Projection Methodology (methodology commission), the Office of Insurance Regulation (OIR), or the consumer advocate under s. 627.0628, F.S.
- The portion of a meeting by the methodology commission or a rate filing by an insurer in which trade secrets pertaining to flood models are discussed.

The bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill expands existing public records and public meetings exemptions, the bill provides a statement of public necessity as required by the State Constitution. 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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

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

<sup>2</sup> *Id.*

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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 provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup> 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.<sup>12</sup>

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<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> 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 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)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> 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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

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

<sup>10</sup> 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.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

## Florida Commission on Hurricane Loss Projection Methodology

In 1995, the Florida Legislature created the Florida Commission on Hurricane Loss Projection Methodology (methodology commission), under s. 627.0628, F.S., which describes the legislative intent “to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates for residential property insurance coverage.”<sup>13</sup> The commission is administratively housed within the State Board of Administration, but independently exercises its powers and duties as specified in the statute.

A number of vendors produce highly complex computer models that purport to reflect an average annual expected loss from hurricanes and other perils. Models of this nature are driven by an array of internal assumptions, within a variety of scientific disciplines (e.g., meteorology, structural engineering, actuarial science, statistics, computer science). Although some basic assumptions may be common to more than one model, many of the detailed internal assumptions have been developed only after considerable research by each vendor, which closely guards that information as a trade secret. If all internal information of a model were published, that model could be replicated, and the vendor that produced the model would lose the entirety of its value.

Initially, s. 627.0628, F.S., did not contain an exemption from public records or public meetings. Accordingly, the methodology commission undertook a process to evaluate the participating computer models, which contained proprietary information, without the ability to exempt either records or meetings from full public disclosure. The methodology commission first established detailed standards that a model was required to meet in order to obtain approval. For the portion of the model that was nonproprietary, the methodology commission members questioned the vendor in open meetings; for the portion that was proprietary, the methodology commission hired a “professional team” of experts which went on-site to determine whether the model met the applicable standards, and reported its findings to the methodology commission in an open hearing.

In 2005, the Legislature enacted s. 627.0628(3)(f), which pertains to public records exemptions for the methodology commission.<sup>14</sup> The public records exemptions are:

- Section 627.0628(3)(f)1., F.S., which provides that trade secrets used in designing and constructing a hurricane loss model and submitted by a private company to the methodology commission, the OIR, or the consumer advocate are confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.
- Section 627.0628(3)(f)2., F.S., which provides that a portion of a meeting of the methodology commission or of a rate proceeding at which trade secrets used in designing and constructing a hurricane loss model are discussed is exempt from s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution.

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<sup>13</sup> Chapter 95-276, s. 6, Laws of Fla.

<sup>14</sup> Chapter, 2005-264, s 3, Laws of Fla.

### III. Effect of Proposed Changes:

This bill expands the existing public records exemption for hurricane loss models to include flood loss models.<sup>15</sup> Trade secrets used in designing and constructing flood loss models will be confidential and exempt from public records.

Current law also provides that portions of public meetings of the commission or a rate proceeding when trade secrets are discussed are exempt from public records. Exempt portions must be recorded and the recordings are exempt from public disclosure.<sup>16</sup>

By expanding the public records exemption for trade secrets to flood loss models, the public meetings exemption is also being expanded by operation of law.

The public records exemptions for the hurricane and flood loss models, as well as the related public meetings exemptions for trade secrets, will stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Because this bill expands existing public records and public meetings exemptions, the bill also provides a statement of public necessity explaining the public necessity for both exemptions as required by the State Constitution.

The bill shall take effect upon becoming a law if SB 542 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

### IV. Constitutional Issues:

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

None.

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

Section 24(c), Art. I of the Florida Constitution requires a newly created public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill expands existing public records and public meetings exemptions; therefore, it requires a two-thirds vote for final passage.

Section 24(c), Art. I of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill expands existing public records and public meetings exemptions; therefore, it contains a public necessity statement explaining the public necessity for both exemptions.

#### C. Trust Funds Restrictions:

None.

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<sup>15</sup> Section 627.0628(3)(f)1., F.S.

<sup>16</sup> Section 627.0682(3)(f)2.a., F.S.

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

None.

**B. Private Sector Impact:**

The exemptions will allow private vendors that produce models that project expected losses from flood to participate in the processes of the methodology commission without concern that its model will be replicated.

**C. Government Sector Impact:**

The exemptions will allow members of the methodology commission, the Office of Insurance Regulation, and the consumer advocate to have access to all information underlying the models that project flood losses.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 627.0628 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 Brandes

22-00990-14

20141262\_\_

A bill to be entitled

An act relating to public records and meetings; amending s. 627.0628, F.S.; providing an exemption from public records and public meetings requirements for trade secrets used to design an insurance flood loss model held in records or discussed in meetings of the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or the appointed consumer advocate; providing for legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Paragraph (f) of subsection (3) of section 627.0628, Florida Statutes, is amended to read:

627.0628 Florida Commission on Hurricane Loss Projection Methodology; public records exemption; public meetings exemption.—

(3) ADOPTION AND EFFECT OF STANDARDS AND GUIDELINES.—

(f)1. A trade secret, as defined in s. 688.002, ~~which that~~ is used in designing and constructing a hurricane or flood loss model and ~~which that~~ is provided pursuant to this section, by a private company, to the commission, office, or consumer advocate appointed pursuant to s. 627.0613~~7~~ is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 1 of 3

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

22-00990-14

20141262\_\_

2.a. That portion of a meeting of the commission or of a rate proceeding on an insurer's rate filing at which a trade secret made confidential and exempt by this paragraph is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. The closed meeting must be recorded, and no portion of the closed meeting may be off the record.

b. The recording of a closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

c. This ~~paragraph~~ ~~subparagraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019 ~~2015~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that a trade secret, as defined in s. 688.002, Florida Statutes, which is used in designing and constructing a flood loss model and which is provided by a private company to the Florida Commission on Hurricane Loss Projection Methodology, the Office of Insurance Regulation, or a consumer advocate appointed pursuant to s. 627.0613, Florida Statutes, be made confidential and exempt from public records requirements and from public meetings requirements.

(1) Disclosing trade secrets would negatively impact the business interests of a private company that has invested substantial economic resources in developing such model, and competitor companies would gain an unfair competitive advantage if provided access to such information. Reliable projections of flood losses are necessary in order to ensure that rates for flood insurance meet the statutory requirement that rates be

Page 2 of 3

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

22-00990-14

20141262\_\_

59 neither excessive nor inadequate. This goal is served by  
60 enabling the commission, the office, and the consumer advocate  
61 to have access to all aspects of flood loss models and by  
62 encouraging private companies to submit such models to the  
63 commission, office, and consumer advocate for review without  
64 concern that trade secrets will be disclosed through a public  
65 records request.

66 (2) In addition, the Legislature finds that it is a public  
67 necessity to protect trade secrets relating to such model which  
68 are discussed during a meeting of the commission or during a  
69 rate proceeding on an insurer's rate filing held by the office,  
70 because the release of such information via a public meeting or  
71 proceeding would allow competitors and other persons to attend  
72 those meetings and discover the protected trade secrets and  
73 would defeat the purpose of the public records exemption. The  
74 Legislature also finds that it is a public necessity to exempt  
75 from public records requirements the recordings generated during  
76 those portions of a commission meeting or a rate proceeding at  
77 which confidential and exempt trade secrets are discussed.  
78 Release of such recordings would compromise the discussions that  
79 take place during the closed meeting or proceeding and would  
80 negate the public meetings exemption. Current law provides a  
81 public records exemption for trade secrets. As such, release of  
82 the recordings generated during those closed portions of a  
83 meeting or proceeding on trade secrets would compromise the  
84 current protections already afforded to trade secrets.

85 Section 3. This act shall take effect upon becoming a law  
86 if SB 542 or similar legislation is adopted in the same  
87 legislative session or an extension thereof and becomes a law.





The Florida Senate

## Committee Agenda Request

**To:** Senator Jeremy Ring, Chair  
Committee on Governmental Oversight and Accountability

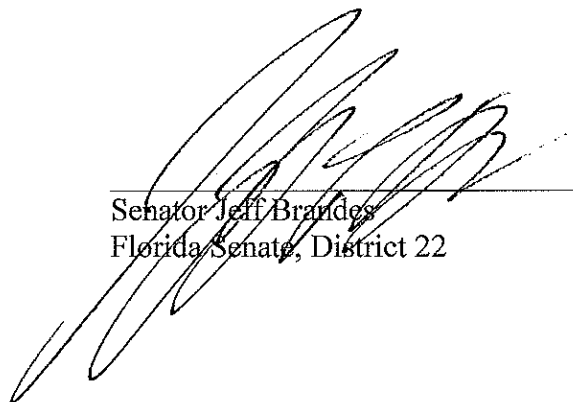
**Subject:** Committee Agenda Request

**Date:** March 12, 2014

---

I respectfully request that **Senate Bill # 1262**, relating to Public Records and Meetings/Insurance Flood Loss Model, be placed on the:

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



---

Senator Jeff Brandes  
Florida Senate, District 22

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 126 2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 1262

(if applicable)

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**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

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BILL: CS/SB 1640

INTRODUCER: Governmental Oversight and Accountability Committee and Commerce and Tourism Committee

SUBJECT: Entertainment Industry

DATE: March 27, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Hrdlicka</u>	<u>Hrdlicka</u>		<b>CM SPB 7056 as introduced</b>
1.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
2.	_____	_____	<u>AFT</u>	_____
3.	_____	_____	<u>AP</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

---

**I. Summary:**

CS/SB 1640 restructures Florida's approach to the entertainment industry in the state.

The bill transfers the Department of Economic Opportunity's Office of Film and Entertainment, including the Commissioner of Film and Entertainment and the Florida Film and Entertainment Advisory Council, to Enterprise Florida, Inc. (EFI). The office is established as the Division of Film and Entertainment within EFI and maintains its current responsibilities, with the exception of administering the entertainment industry economic development programs, which remains the responsibility of the department.

The bill makes several changes to the Entertainment Industry Financial Incentive Program, including:

- Extending the incentive program an additional four years and provides an additional \$50 million in tax credits for each fiscal year beginning Fiscal Year 2014-15 through 2019-20, for a total of \$300 million in available tax credits.
- Repealing the tax credit bonus for underutilized regions. Instead, the bill creates a set aside of 20 percent of the tax credits in the general production queue for underutilized counties. Any funds not certified after 10 months into the fiscal year become available for certification for other applications in the queue.

- Amending the tax credit bonus for wages paid to Florida students and recent graduates to include wages paid to state residents that are participating in the Road to Independence Program, have developmental disabilities, or are veterans.
- Creating a tax credit bonus of five percent for productions that complete a capital investment of at least \$2 million before the completion of the qualified production.
- Repealing the tax credit bonuses for “off-season” certified productions, for productions that conduct principal photography at a qualified production facility, and for family-friendly certified theatrical or direct-to-video movies and video games.

## II. Present Situation:

### The Office of Film and Entertainment

The Office of Film and Entertainment (OFE) within the Department of Economic Opportunity (DEO) develops, markets, promotes, and provides services to Florida’s entertainment industry, such as serving as a liaison between the industry and government entities and facilitating access to filming locations.<sup>1</sup> The OFE gathers statistical information related to the state’s entertainment industry, provides information and services to businesses, communities, organizations, and individuals engaged in entertainment industry activities, and administers field offices outside the state, and coordinates with regional offices maintained by counties and regions of the state. The OFE is also required to develop a 5-year strategic plan to guide its activities, which is updated on an annual basis and aligns with the DEO’s Strategic Plan for Economic Development.<sup>2</sup> The OFE’s mission is to build, support, and market the entertainment industry in Florida.

The head of the OFE is the Commissioner of Film and Entertainment. The commissioner is hired by the executive director of the DEO, after a national search by the DEO for a qualified person to fill the position. For Fiscal Year 2013-14, the OFE has an operating budget of approximately \$673,000 and five full-time-equivalent (FTE) positions (two of which are vacant). The OFE’s budget supports a field office in Los Angeles.

The OFE is assisted by the Florida Film and Entertainment Advisory Council (advisory council), which is composed of 17 members, of which seven members are appointed by the Governor, and five members each are appointed by the President of the Senate and the Speaker of the House of Representatives.<sup>3</sup> In addition, Enterprise Florida, Inc., Workforce Florida, Inc., and the Florida Tourism Industry Marketing Corporation (commonly referred to as “VISIT Florida”) each have a representative that serves as an ex officio nonvoting member of the council. The council provides the OFE and the DEO with industry insight and assists in the creation of the 5-year strategic plan.

Additionally, there are over 60 local film offices that have been established across the state, organized predominately by county and municipal governments, local chambers of commerce,

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<sup>1</sup> Section 288.1251, F.S. See also OFE website, available at <http://www.filminflorida.com/about/vm.asp> (last visited Feb. 25, 2014).

<sup>2</sup> The OFE’s Film and Entertainment Industry Strategic Plan for Economic Development is available at [http://www.filminflorida.com/about/OFE\\_Plan\\_V11.pdf](http://www.filminflorida.com/about/OFE_Plan_V11.pdf) (last visited Feb. 25, 2014).

<sup>3</sup> Section 288.1252, F.S.

economic development councils, convention and visitors bureaus, and tourist development councils.<sup>4</sup>

### **Entertainment Industry Financial Incentive Program<sup>5</sup>**

In 2003, the Legislature created the Entertainment Industry Financial Incentive Program (incentive program).<sup>6</sup> The incentive program's dual purposes are to:

- Promote Florida as a site for filming, creating, or producing movies, television series, commercials, digital media and other types of entertainment productions; and
- Sustain and develop the state's entertainment workforce, studios, and other related infrastructure.

The incentive program is administered by the OFE, subject to the policies and oversight of the DEO. Currently the incentive program is a 6-year program, which began July 1, 2010, and sunsets June 30, 2016. The incentive program provides tax credits for qualified expenditures related to filming and production activities in Florida. These tax credits may be applied against the corporate income tax or sales and use taxes. Additionally these tax credits may be transferred or sold one time.<sup>7</sup>

Over the six year period, there are a total of \$296 million in available credits. Annual limitations for tax credits are set at:

- \$53.5 million in Fiscal Year 2010-11;
- \$74.5 million in Fiscal Year 2011-12; and
- \$42 million in each Fiscal Year 2012-13, 2013-14, 2014-15, and 2015-16.<sup>8</sup>

The law provides that if the total tax credits applied for in a fiscal year is greater than the amount available for that year, then the excess credits are to be treated as if they had been applied for in the next fiscal year. All of the tax credits have already been awarded for all six years.<sup>9</sup>

### ***Eligibility and Application***

Generally, a production company that plans to engage in a production in Florida can apply to the OFE prior to beginning production for a certification of tax credits based upon estimated qualified expenditures planned for the production. A qualified production must meet the requirements in s. 288.1254, F.S., plus two additional criteria:

- Depending on the type of production and period of time in the incentive program, most of the production cast and below-the-line production crew<sup>10</sup> are Florida residents, or are students

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<sup>4</sup> For a list of Florida film commissions, see the OFE website, available at [http://www.filminflorida.com/lr/local\\_film\\_commissions.asp](http://www.filminflorida.com/lr/local_film_commissions.asp) (last visited Feb. 25, 2014)

<sup>5</sup> Information about the incentive program is also available on OFE's website, available at <http://filminflorida.com/ifi/incentives.asp> (last visited Feb. 25, 2014).

<sup>6</sup> Section 288.1254, F.S. See ch. 2003-81, L.O.F. In 2010, the incentive program was changed from a cash reimbursement type program to the current form. See ch. 2010-147, L.O.F.

<sup>7</sup> Also, tax credits may be relinquished to the DOR for 90 percent of the amount of the relinquished tax credit.

<sup>8</sup> Section 288.1254(7), F.S. In 2012, an additional year was added to the program. See s. 15, ch. 2012-32, L.O.F.

<sup>9</sup> See OFE, Fiscal Year 2012-2013 Annual Report, discussed below under The OFE Annual Report for FY 2012-13.

<sup>10</sup> "Below-the-line production crew" excludes actors, directors, producers, and writers.

enrolled full-time in a film- and entertainment-related course of study at a Florida university or college.

- The production does not contain obscene content, as defined in s. 847.001(10), F.S.<sup>11</sup>

**Queues**

Priority for tax credit certifications is made on a first-come, first-served basis within the appropriate “queue.”<sup>12</sup> There are three queues of eligible productions: general production, commercial and music video, and independent and emerging media production. As percentage of funding:

- 94 percent of the state incentive funding is dedicated to the general production queue;
- 3 percent is dedicated to the commercial and music video queue; and
- 3 percent is dedicated to the independent and emerging media production queue.

Further, under the general production queue, no more than 45 percent of the tax credits can be awarded to television series. First priority in the general production queue for tax credits not yet certified is given to high-impact television series and high-impact digital media projects, in alternating order, depending on the type of the first application received. OFE may certify a project out of order (ex: two high-impact television series productions in a row) if an application by the next appropriate type of production is not received within five business days.<sup>13</sup>

**Characteristics of Production Queues**

	<b>General Production</b>	<b>Commercial &amp; Music Video</b>	<b>Independent and Emerging Media Production Queue</b>
<b>Minimum amount of qualified expenditures</b>	\$625,000	\$100,000 per commercial or video <u>and</u> exceeds \$500,000 combined per FY year	At least \$100,000, but not more than \$625,000
<b>Amount of basic incentive</b>	20% of qualified expenditures, up to \$8 million	20% of qualified expenditures, up to \$500,000	20% of qualified expenditures, up to \$125,000

In addition to the amount of basic incentives, there are additional tax credits available for general production queue projects (also referred to as “bonuses”):

- 5 percent additional tax credit for feature films, independent films, or television series or pilots that are “off-season certified,” including those that are not able to complete 75 percent of their principal photography due to a hurricane or tropical storm. Off-season certified

<sup>11</sup> Pursuant to this section, “‘obscene’ means the status of material which: (a) The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest; (b) Depicts or describes, in a patently offensive way, sexual conduct as specifically defined herein; and (c) Taken as a whole, lacks serious literary, artistic, political, or scientific value. A mother’s breastfeeding of her baby is not under any circumstance ‘obscene.’”

<sup>12</sup> Section 288.1254(4), F.S.

<sup>13</sup> This rotating schedule was created in 2012. ch. 2012-32, L.O.F.

means that the production films 75 percent or more of its principal photography from June 1 to November 30.

- 5 percent additional tax credit for a production that incurs at least 65 percent of its principal photography days in an underutilized region. An “underutilized region” is one with a regional tax credit ratio for a fiscal year that is lower than its regional population ratio that year.<sup>14</sup>
- 15 percent additional tax credit for productions that employ students enrolled full-time in a film and entertainment-related or digital media-related course of study or recent graduates of such a course of study. The course of study must have occurred at an institution of higher education in Florida. This additional 15 percent may be applied to any qualified expenditures related to wages, salaries, or other compensation paid to such students or graduates.
- 5 percent additional tax credit for productions which conduct at least 50 percent of their principal photography at a qualified production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.
- 5 percent additional tax credit for qualified digital media projects or digital animation components of productions which have at least 50 percent of their qualified expenditures related to a qualified digital media production facility. This additional 5 percent may be applied to any qualified expenditures related to production activity at that facility.

Further, family-friendly certified theatrical or direct-to-video movies and video games are eligible for an additional tax credit of 5 percent of its actual qualified expenditures. The determination for “family-friendly” is made by the OFE, with the advice of the advisory council.

A family friendly production is one that:

- Has cross-generational appeal;
- Is considered suitable for viewing by children aged 5 years or older;
- Is appropriate in theme, content and language for a broad family audience;
- Responsibly resolves issues raised in the film; and
- Does not include any act of smoking, sex, nudity, or vulgar or profane language.

A qualified production is limited to a total tax credit of 30 percent of its actual qualified expenditures.

Current law defines “qualified expenditures” as production expenditures incurred by a qualified production in Florida for:<sup>15</sup>

- Goods purchased or leased from, or services provided by, a vendor or supplier in Florida that is registered with the Department of State or the Department of Revenue (DOR) and is doing business in Florida. Eligible production goods and services include:
  - Sound stages, back lots, production editing, digital effects, sound recordings, sets, and set construction;
  - Entertainment-related rental equipment, including cameras and grip or electrical equipment;
  - Newly purchased computer software and hardware, up to \$300,000; and
  - Meals, travel, and accommodations.
- Salary, wages, or other compensation paid to Florida residents, up to a maximum of \$400,000 per resident.

<sup>14</sup> “Underutilized region” is defined in s. 288.1254(1)(p), F.S.

<sup>15</sup> See s. 288.1254(1)(i), F.S.

Additionally, for a qualified production involving an event, such as an awards show, the term “qualified expenditures” excludes expenditures solely associated with the event itself and not directly required by the production. The term also excludes expenditures prior to certification, with the exception of those incurred for a commercial, a music video, or the pickup of additional episodes of a television series within a single season.

### ***Award of Credits***

After production ends and all certified expenditures are made in Florida, the production company must have an independent certified public accountant licensed in Florida conduct a compliance audit. The OFE is required to review the audit and report to the DEO the final verified amount of actual qualified expenditures. The DEO then must review and approve the final tax credit award, and notify the DOR. Tax credit awards are subject to the limitations discussed above.

Additionally, after production the company must make an irrevocable election to apply the tax credits to the corporate income taxes or sales and use taxes or a stated combination of both. This decision is binding on any distributee, successor, transferee, or purchaser. Tax credits that are unused in any year may be carried forward to the next for a maximum of five years.

The production must also include information, such as a logo at the end of the credits, that indicates that the production occurred in Florida in order to be eligible for the tax credits.

Section 288.1254(9), F.S., provides audit authority to DOR related to the tax credits, and for the revocation or forfeiture of tax credits under certain circumstances. Fraudulent applications for tax credits may also result in penalties and other costs in addition to repayment of the tax credits.

### **Sales Tax Exemption Certificate for a Qualified Production Company**

Entertainment industry qualified production companies are eligible for several exemptions from taxes under ch. 212, F.S. A qualified production company can obtain a certificate to avoid paying tax at the point of sale, rather than claiming a refund after paying the tax.<sup>16</sup> Qualified production companies are exempt from paying sales tax for the following:

- *Lease or rental of real property* that is used as an integral part of an activity or service performed directly in connection with the production of a qualified motion picture (the term “activity or service” includes photography, casting, location scouting, and designing sets).<sup>17</sup>
- *Fabrication labor* when a producer uses his or her own equipment and personnel to produce a qualified motion picture.<sup>18</sup>
- *Purchase or lease of motion picture and video equipment and sound recording equipment* used in Florida for motion picture or television production or for the production of master tapes or master records.<sup>19</sup>

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<sup>16</sup> Section 288.1258, F.S. See also DOR, Film in Florida Sales Tax Exemption, available at [http://dor.myflorida.com/dor/taxes/film\\_in\\_florida.html](http://dor.myflorida.com/dor/taxes/film_in_florida.html) (last visited Feb. 25, 2014).

<sup>17</sup> Section 212.031(1)(a)9., F.S.

<sup>18</sup> Section 212.06(1)(b), F.S. The term “qualified motion picture” is defined in the statute.

<sup>19</sup> Section 212.08(5)(f), F.S.



- *Sale, lease, storage, or use of blank master tapes, records, films, and video tapes.*<sup>20</sup>

The estimated cost of these exemptions is \$36.2 million for FY 2013-14.<sup>21</sup>

### **The OFE Annual Report for FY 2012-13**<sup>22</sup>

The OFE is directed to submit an annual report each November 1 to the Governor, the President of the Senate, and the Speaker of the House of Representatives, that outlines the incentive program's return on the state's investment and economic benefits to the state; the estimate of FTEs for each production that received tax credits; and the geographic distribution of the credits in Florida. The report is also required to include a report on the OFE's expenditures under s. 288.1253, F.S., and information describing the relationship between tax exemptions and incentives to industry growth.<sup>23</sup>

The OFE's annual report for FY 2012-13 reviewed the incentive program for the first 3 years of the 6-year program. As of November 1, 2013:

- 617 applications were received and processed;
- Overall, 297 projects have been certified for the 6 years; outcomes for these projects include the following estimates:
  - Over \$1.5 billion in qualified expenditures in Florida;
  - 190,681 positions with over \$930 million in wages paid;<sup>24</sup> and
  - 256,244 lodging/room nights.
- Certified productions include 69 motion pictures, 51 digital media productions, 128 television productions, television series pilots, telenovelas, award shows, and 49 commercials.
- 206 certified projects completed production in FY 2012-13; outcomes for these projects include (includes unverified data):
  - 14,623 production days;
  - Over \$604 million in qualified expenditures in Florida;
  - 84,617 positions with over \$353.8 million in wages paid;
  - 100,631 lodging/room nights; and
  - Almost \$131 million in final tax credits awarded.

Projected outcomes are based on information supplied with the applications. These outcomes are subject to change as some projects may withdraw or additional projects become certified.

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<sup>20</sup> Section 212.08(12), F.S.

<sup>21</sup> Florida Revenue Estimating Conference, 2013 Florida Tax Handbook.

<sup>22</sup> OFE, Fiscal Year 2013-2013 Annual Report (November 1, 2013), available at [http://www.filminflorida.com/ifi/PDFs/annualReports/Office%20of%20Film%20and%20Entertainment%20Annual%20Report%20FY2012-2013\\_Final%20Combined%20Draft.pdf](http://www.filminflorida.com/ifi/PDFs/annualReports/Office%20of%20Film%20and%20Entertainment%20Annual%20Report%20FY2012-2013_Final%20Combined%20Draft.pdf) (last visited Feb. 25, 2014).

<sup>23</sup> Sections 288.1254(10), 288.1253, and 288.1258(5), F.S.

<sup>24</sup> Positions are individual positions, not FTEs. Positions may be permanent or temporary. Production cast, crew, extras, and stand-ins, etc., may work for multiple productions and fill multiple positions. The OFE was directed in the 2011 Regular Session to report positions as estimates of FTEs, but according to the annual report the OFE is still developing methodology to report the data. See ch. 2011-76, L.O.F.

The OFE's annual report states that in 2012 the Florida Office of Economic and Demographic Research conducted an analysis of the economic impact of the incentive program which found an increase in state gross domestic product of \$15 to \$1 of tax credit awarded and a return of state tax revenue of \$2 for every \$5 of tax credit awarded.

The annual report also includes a calculation by the OFE on the return on investment for the sales tax exemptions to be "75.6:1"; the OFE also calculated a "combined" return on investment for both the sales tax exemptions and the incentive programs, which resulted in \$1.32 in expenditures by qualified productions for every \$1 of investment from the state from both programs.

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

CS/SB 1640 restructures Florida's approach to the entertainment industry in the state.

#### **Division of Film and Entertainment**

The bill transfers and renames the Office of Film and Entertainment as the Division of Film and Entertainment (division) of Enterprise Florida, Inc. The entertainment industry economic development programs administered by the DEO will function similar to the other economic development programs administered by the DEO. Generally, Enterprise Florida, Inc., markets the state to businesses, including working with regional offices to provide assistance and information on location decisions, workforce needs, and economic development programs. The DEO is responsible for administering the economic development programs. (**Section 2**, transferring and renumbering s. 288.1251, F.S., as s. 288.924, F.S., and amending that statute; **Section 8**, amending s. 288.92, F.S.)

The division will maintain the OFE's current responsibilities, except with respect to administration of the entertainment industry economic development programs. The Florida Film and Entertainment Advisory Council is also transferred to EFI and will maintain an advisory role to the division. (**Section 2**, transferring and renumbering s. 288.1251, F.S., as s. 288.924, F.S., and amending that statute; and **Section 3**, transferring and renumbering s. 288.1252, F.S., as s. 288.9242, F.S., and amending that statute)

**Sections 1, 4, and 7**, amend ss. 288.125, 288.1253, and 288.1258, F.S., to reflect the transfer of the OFE to Enterprise Florida, Inc. **Section 4** also transfers and renumbers s. 288.1253, F.S., as s. 288.9241, F.S. (dealing with allowable travel, entertainment, and incidental expenditures and reimbursement of the division).

#### **Entertainment Industry Financial Incentive Program**

**Section 5** amends s. 288.1254, F.S., related to the Entertainment Industry Financial Incentive Program.

#### ***Eligibility and Application***

The bill increases the requirements for a qualified production related to the amount of state residents that make up a production's cast and crew. For a production, the cast and crew must be

at least 70 percent state residents (current law is 60 percent); for a digital media production, the cast and crew must be at least 80 percent state residents (current law is 75 percent).

The bill amends the definition of “high-impact television series” to include telenovelas that have qualified expenditures of more than \$4.5 million, at least 45 principal photography days in the state, cast and crews that are at least 90 percent state residents, and have at least 90 percent of production occurring in the state.

The bill requires a production to include in its application documentation related to the planned aggregate nonqualifying expenditures the production will make in the state and proof of financing for the production. Under current law, a production has 90 days from the date it submits the application to provide proof of financing. The bill requires such proof to be submitted at the same time as the application. Additionally, an applicant applying to the independent and emerging media queue will now be required to submit proof of financing. Applications received by the DEO after all tax credits allocated for the fiscal year have been certified may be accepted until the DEO receives the application that causes the amount of tax credit eligibility requested to exceed 125 percent of the tax credits allocated for the fiscal year. Applications received requesting tax credit eligibility over the fiscal year allocation shall be assigned a queue number. Any applications in the queue on June 30<sup>th</sup> each year will be deemed denied. The DEO may deny an application if there are no additional tax credits available for certification.

The bill specifies that the DEO may only certify the amount of tax credits allocated in a fiscal year. However, the bill provides an exception for applications by high-impact television series that have an executed contract or order for season renewal. The DEO is permitted to certify such a qualified production for one additional ordered season per future fiscal year in which the production would occur.

Upon certification, the production is required to provide the DEO and the division with information related to the production’s needs for cast, crew, contractors, and vendors. The production must also provide a single point of contact. The division will publish this information online and include relevant information such as the starting date of the production and its location. The DEO and division may adopt procedures for a production to post such information itself within a week of certification.

Current law permits the DEO to withdraw the eligibility of a production for tax credits if the production does not continue on a reasonable basis or if the production does not provide proof of financing. The bill clarifies when the DEO may deny a certified production. The DEO may deny a certified production upon finding any circumstance that affects the reasonable schedule or timely completion of the production, including a break in production or loss of financing. The certified production must notify the DEO within five days after any circumstance affecting the timely completion of the production. However, a certified production that has lost financing may avoid denial by the DEO if it provides the DEO with proof of replacement financing within 10 days of the original loss.

### *General Production Queue*

The bill substantially amends several of the additional tax credits (bonuses) for the queue:

- The bill repeals the tax credit bonus for underutilized regions. Instead, the bill creates a set aside of 20 percent of the tax credits in the general production queue for underutilized counties. An “underutilized county” is one in which less than \$500,000 in qualified expenditures occurred in the last two fiscal years. Any funds not certified after 10 months into the fiscal year become available for certification for other applications in the queue.
- The bill amends the tax credit bonus for productions that employ students and recent graduates to include wages paid to state residents that are participating in the Road to Independence Program, have developmental disabilities, or are veterans.
- The bill creates a tax credit bonus of 5 percent for productions that complete a permanent capital investment of at least \$2 million before the completion of the qualified production. This additional 5 percent may be applied to any qualified expenditures.
- The bill repeals the tax credit bonus for “off-season” certified productions.
- The bill repeals the tax credit bonus for productions that conduct principal photography at a qualified production facility or a qualified digital media production facility.
- The bill repeals the tax credit bonus for family-friendly certified theatrical or direct-to-video movies and video games.

The bill also repeals the limitation on tax credits awarded to television series. The bill clarifies that first priority in the general production queue for tax credits not yet certified is given to high-impact television series and high-impact digital media projects, and thereafter is determined on a first-come, first-served basis.

Due to these changes, a qualified production is limited to a total tax credit of 25 percent of its actual qualified expenditures.

### *Allocation of Tax Credits*

The bill provides for the availability of additional tax credits in Fiscal Years 2014-15 and 2015-16 and extends the incentive program an additional four years. The bill provides for an additional \$50 million in tax credits in each Fiscal Year 2014-15 and 2015-16, and for \$50 million in tax credits in each Fiscal Year 2016-17, 2017-18, 2018-19, and 2019-20.

The bill provides an additional \$300 million in tax credits, for a total of \$596 million in credits for the 10 year incentive program. The bill again specifies that the additional credits provided are not available for certification prior to the fiscal year in which they are allocated.

The incentive program expires July 1, 2020.

**Sections 9, 10, and 11** amend ss. 288.212.08(5)(q), 220.1899(3), and 477.0135(5), F.S., to correct cross-references and make conforming changes.

**Section 12** provides 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.

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

The bill provides a total of \$300 million in additional tax credits for the incentive program. The bill provides for an additional \$50 million in tax credits for each Fiscal Year 2014-15 and 2015-16, and for \$50 million in tax credits for each Fiscal Year 2016-17, 2017-18, 2018-19, and 2019-20. The credits are not permitted to be certified prior to the fiscal year in which they are allocated, except for applications for additional ordered season renewals for high-impact television series.

The Revenue Estimating Conference has not yet adopted a fiscal impact for this bill.

**B. Private Sector Impact:**

Indeterminate, but expected to be positive.

**C. Government Sector Impact:**

The DEO stated that currently it has 3 FTE positions and one OPS position dedicated to administration of the incentive program.<sup>25</sup> The DEO states that because of the increase in funding for the program, it would require 5 FTE positions and additional OPS staff to implement this bill.

The DEO estimates that it would require \$703,000 to continue to implement the incentive program if the current three FTE positions are transferred to EFI. The DEO estimates that EFI would require \$673,000 to implement the bill.

If only the Commissioner of Film and Entertainment and the staff member located in the Los Angeles field office were transferred to EFI, then the DEO would require \$330,000 to implement the incentive program. In this scenario, the DEO estimates that EFI would require \$300,000 to implement the bill.

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<sup>25</sup> DEO, Fiscal Analysis on SPB 7056 (2/28/2014).

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill amends the following sections of the Florida Statutes: 212.08, 220.1899, 288.125, 288.1254, 288.1258, 288.92, and 477.0135.

This bill amends, transfers, and renumbers the following sections of the Florida Statutes: 288.1251, 288.1252, and 288.1253.

**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 26, 2014:**

The committee substitute restores the Florida Film and Entertainment Advisory Council as an advisory body to the Division of Film and Entertainment of EFI.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2014	.	
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The Committee on Governmental Oversight and Accountability  
(Simmons) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 219 - 235

and insert:

Section 3. Section 288.1252, Florida Statutes, is transferred, renumbered as section 288.9242, Florida Statutes, and amended to read:

288.9242 ~~288.1252~~ Florida Film and Entertainment Advisory Council; creation; purpose; membership; powers and duties.—

~~(1) CREATION. There is created within the department, for~~



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11 ~~administrative purposes only, the Florida Film and Entertainment~~  
12 ~~Advisory Council.~~

13       (1)~~(2)~~ PURPOSE.—The purpose of the Florida Film and  
14 Entertainment Advisory Council is to serve as an advisory body  
15 to the Division of Film and Entertainment ~~department and to the~~  
16 ~~Office of Film and Entertainment~~ to provide ~~these offices with~~  
17 industry insight and expertise related to developing, marketing,  
18 and promoting, ~~and providing service to~~ the state's  
19 entertainment industry.

20       (2)~~(3)~~ MEMBERSHIP.—

21       (a) The council shall consist of 17 members, 7 to be  
22 appointed by the Governor, 5 to be appointed by the President of  
23 the Senate, and 5 to be appointed by the Speaker of the House of  
24 Representatives.

25       (b) When making appointments to the council, the Governor,  
26 the President of the Senate, and the Speaker of the House of  
27 Representatives shall appoint persons who are residents of the  
28 state and who are highly knowledgeable of, active in, and  
29 recognized leaders in Florida's motion picture, television,  
30 video, sound recording, or other entertainment industries. These  
31 persons shall include, but not be limited to, representatives of  
32 local film commissions, representatives of entertainment  
33 associations, a representative of the broadcast industry,  
34 representatives of labor organizations in the entertainment  
35 industry, and board chairs, presidents, chief executive  
36 officers, chief operating officers, or persons of comparable  
37 executive position or stature of leading or otherwise important  
38 entertainment industry businesses and offices. Council members  
39 shall be appointed in such a manner as to equitably represent





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40 the broadest spectrum of the entertainment industry and  
41 geographic areas of the state.

42 (c) Council members shall serve for 4-year terms.

43 (d) Subsequent appointments shall be made by the official  
44 who appointed the council member whose expired term is to be  
45 filled.

46 (e) ~~A representative of Enterprise Florida, Inc.,~~ A  
47 representative of Workforce Florida, Inc., and a representative  
48 of VISIT Florida shall serve as ex officio, nonvoting members of  
49 the council, and shall be in addition to the 17 appointed  
50 members of the council.

51 (f) Absence from three consecutive meetings shall result in  
52 automatic removal from the council.

53 (g) A vacancy on the council shall be filled for the  
54 remainder of the unexpired term by the official who appointed  
55 the vacating member.

56 (h) No more than one member of the council may be an  
57 employee of any one company, organization, or association.

58 (i) Any member shall be eligible for reappointment but may  
59 not serve more than two consecutive terms.

60 (3)~~(4)~~ MEETINGS; ORGANIZATION.—

61 (a) The council shall meet no less frequently than once  
62 each quarter of the calendar year, but may meet more often as  
63 set by the council.

64 (b) The council shall annually elect from its appointed  
65 membership one member to serve as chair of the council and one  
66 member to serve as vice chair. The Division of Film and  
67 Entertainment ~~Office of Film and Entertainment~~ shall provide  
68 staff assistance to the council, which shall include, but not be



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69 limited to, keeping records of the proceedings of the council,  
70 and serving as custodian of all books, documents, and papers  
71 filed with the council.

72 (c) A majority of the members of the council shall  
73 constitute a quorum.

74 (d) Members of the council shall serve without  
75 compensation, but shall be entitled to reimbursement for per  
76 diem and travel expenses in accordance with s. 112.061 while in  
77 performance of their duties.

78 (4)~~(5)~~ POWERS AND DUTIES.—The Florida Film and  
79 Entertainment Advisory Council shall have all the powers  
80 necessary or convenient to carry out and effectuate the purposes  
81 and provisions of this act, including, but not limited to, the  
82 power to:

83 (a) Adopt bylaws for the governance of its affairs and the  
84 conduct of its business.

85 (b) Advise the Division of Film and Entertainment and  
86 ~~consult with the Office of Film and Entertainment~~ on the  
87 content, development, and implementation of the 5-year strategic  
88 plan ~~to guide the activities of the office.~~

89 ~~(c) Review the Commissioner of Film and Entertainment's~~  
90 ~~administration of the programs related to the strategic plan,~~  
91 ~~and Advise the Division of Film and Entertainment commissioner~~  
92 ~~on its~~ the programs and any changes that might be made to better  
93 meet the strategic plan.

94 (d) Consider and study the needs of the entertainment  
95 industry for the purpose of advising the Division of Film and  
96 Entertainment ~~film commissioner and the department.~~

97 (e) Identify ~~and make recommendations on~~ state agency and



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98 local government actions that may have an impact on the  
99 entertainment industry or that may appear to industry  
100 representatives as an official state or local action affecting  
101 production in the state, and advise the Division of Film and  
102 Entertainment of such actions.

103 (f) Consider all matters submitted to it by the Division of  
104 Film and Entertainment ~~film commissioner and the department.~~

105 ~~(g) Advise and consult with the film commissioner and the~~  
106 ~~department, at their request or upon its own initiative,~~  
107 ~~regarding the promulgation, administration, and enforcement of~~  
108 ~~all laws and rules relating to the entertainment industry.~~

109 ~~(g)(h)~~ Suggest policies and practices ~~for the conduct of~~  
110 ~~business by the Office of Film and Entertainment or by the~~  
111 ~~department that will improve interaction with internal~~  
112 ~~operations affecting the entertainment industry and will enhance~~  
113 ~~the economic development in initiatives of the state for the~~  
114 ~~industry.~~

115 ~~(i) Appear on its own behalf before boards, commissions,~~  
116 ~~departments, or other agencies of municipal, county, or state~~  
117 ~~government, or the Federal Government.~~

118  
119 ===== T I T L E A M E N D M E N T =====

120 And the title is amended as follows:

121 Delete lines 14 - 21

122 and insert:

123 transferring, renumbering, and amending s. 288.1252,  
124 F.S.; revising the powers and duties of the Florida  
125 Film and Entertainment Advisory Council; conforming  
126 provisions to changes made by the act; transferring,

By the Committee on Commerce and Tourism

577-02086A-14

20141640\_\_

1 A bill to be entitled  
 2 An act relating to the entertainment industry;  
 3 amending s. 288.125, F.S.; specifying the application  
 4 of the term "entertainment industry"; transferring,  
 5 renumbering, and amending s. 288.1251, F.S.; renaming  
 6 the Office of Film and Entertainment within the  
 7 Department of Economic Opportunity as the Division of  
 8 Film and Entertainment and housing the division within  
 9 Enterprise Florida, Inc.; requiring Enterprise  
 10 Florida, Inc., to conduct a national search for a film  
 11 commissioner; requiring the president of Enterprise  
 12 Florida, Inc., to hire the film commissioner; revising  
 13 the requirements of the division's 5-year plan;  
 14 authorizing the board of directors of Enterprise  
 15 Florida, Inc., to establish a council to serve as an  
 16 advisory body to the division for matters relating to  
 17 the entertainment industry; conforming provisions to  
 18 changes made by the act; repealing s. 288.1252, F.S.,  
 19 relating to the Florida Film and Entertainment  
 20 Advisory Council and its creation, purpose,  
 21 membership, powers, and duties; transferring,  
 22 renumbering, and amending s. 288.1253, F.S.;  
 23 conforming provisions to changes made by the act;  
 24 amending s. 288.1254, F.S.; redefining and deleting  
 25 terms; requiring the department, rather than the  
 26 Office of Film and Entertainment, to be responsible  
 27 for applications for the entertainment industry  
 28 financial incentive program; revising provisions  
 29 relating to the application process, tax credit

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30 eligibility, election and distribution of tax credits,  
 31 annual allocation of tax credits, forfeiture of tax  
 32 credits, and annual report; extending the repeal date;  
 33 conforming provisions to changes made by the act;  
 34 specifying a date on which the applications on file  
 35 with the department and not yet certified are deemed  
 36 denied; amending s. 288.1258, F.S.; conforming  
 37 provisions to changes made by the act; requiring the  
 38 department to develop a standardized application form  
 39 in cooperation with the division and other agencies;  
 40 amending s. 288.92, F.S.; requiring Enterprise  
 41 Florida, Inc., to have a division relating to film and  
 42 entertainment; amending ss. 212.08, 220.1899, and  
 43 477.0135, F.S.; conforming cross-references and  
 44 provisions to changes made by the act; providing an  
 45 effective date.

46  
 47 Be It Enacted by the Legislature of the State of Florida:

48  
 49 Section 1. Section 288.125, Florida Statutes, is amended to  
 50 read:

51 288.125 Definition of "entertainment industry".—For the  
 52 purposes of ss. 288.1254, 288.1258, 288.924, and 288.9241 ~~ss.~~  
 53 ~~288.1251-288.1258~~, the term "entertainment industry" means those  
 54 persons or entities engaged in the operation of motion picture  
 55 or television studios or recording studios; those persons or  
 56 entities engaged in the preproduction, production, or  
 57 postproduction of motion pictures, made-for-television movies,  
 58 television programming, digital media projects, commercial

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59 advertising, music videos, or sound recordings; and those  
60 persons or entities providing products or services directly  
61 related to the preproduction, production, or postproduction of  
62 motion pictures, made-for-television movies, television  
63 programming, digital media projects, commercial advertising,  
64 music videos, or sound recordings, including, but not limited  
65 to, the broadcast industry.

66 Section 2. Section 288.1251, Florida Statutes, is  
67 transferred, renumbered as section 288.924, Florida Statutes,  
68 and amended to read:

69 288.924 ~~288.1251~~ Promotion and development of entertainment  
70 industry; Division Office of Film and Entertainment; creation;  
71 purpose; powers and duties.—

72 (1) CREATION.—

73 ~~(a)~~ The Division of Film and Entertainment is ~~There is~~  
74 ~~hereby~~ created within Enterprise Florida, Inc., the department  
75 ~~the Office of Film and Entertainment~~ for the purpose of  
76 developing, marketing, promoting, and providing services to the  
77 state's entertainment industry. The division shall serve as a  
78 liaison between the entertainment industry and other state and  
79 local governmental agencies, local film commissions, and labor  
80 organizations.

81 ~~(2)(b)~~ COMMISSIONER.—Enterprise Florida, Inc., The  
82 ~~department~~ shall conduct a national search for a qualified  
83 person to fill the position of Commissioner of Film and  
84 Entertainment when the position is vacant. The president of  
85 Enterprise Florida, Inc., executive director of the department  
86 has the responsibility to hire the film commissioner.  
87 Qualifications for the film commissioner include, but are not

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88 limited to, the following:

89 ~~(a)1-~~ A working knowledge of the equipment, personnel,  
90 financial, and day-to-day production operations of the  
91 industries to be served by the division Office of Film and  
92 ~~Entertainment;~~

93 ~~(b)2-~~ Marketing and promotion experience related to the  
94 film and entertainment industries to be served;

95 ~~(c)3-~~ Experience working with a variety of individuals  
96 representing large and small entertainment-related businesses,  
97 industry associations, local community entertainment industry  
98 liaisons, and labor organizations; and

99 ~~(d)4-~~ Experience working with a variety of state and local  
100 governmental agencies.

101 ~~(3)(2)~~ POWERS AND DUTIES.—

102 (a) The Division Office of Film and Entertainment, in  
103 performance of its duties, shall develop and+

104 1. In consultation with the Florida Film and Entertainment  
105 ~~Advisory Council,~~ update a 5-year the strategic plan every 5  
106 years to guide the activities of the division Office of Film and  
107 ~~Entertainment~~ in the areas of entertainment industry  
108 development, marketing, promotion, liaison services, field  
109 office administration, and information. The plan shall+

110 ~~a-~~ be annual in construction and ongoing in nature.

111 1. At a minimum, the plan must discuss the following:

112 ~~a.b-~~ Include recommendations relating to The organizational  
113 structure of the division, including any field offices outside  
114 the state.

115 b. The coordination of the division with local or regional  
116 offices maintained by counties and regions of the state, local

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117 film commissions, and labor organizations, and the coordination  
 118 of such entities with each other to facilitate a working  
 119 relationship office.

120 c. Strategies to identify, solicit, and recruit  
 121 entertainment production opportunities for the state, including  
 122 implementation of programs for rural and urban areas designed to  
 123 develop and promote the state's entertainment industry.

124 ~~d.e. Include~~ An annual budget projection for the division  
 125 ~~office~~ for each year of the plan.

126 d. Include an operational model for the office to use in  
 127 implementing programs for rural and urban areas designed to:

128 ~~(I) develop and promote the state's entertainment industry.~~

129 ~~(II) Have the office serve as a liaison between the~~  
 130 ~~entertainment industry and other state and local governmental~~  
 131 ~~agencies, local film commissions, and labor organizations.~~

132 ~~(III) Gather statistical information related to the state's~~  
 133 ~~entertainment industry.~~

134 e.(IV) Provision of ~~Provide~~ information and service to  
 135 businesses, communities, organizations, and individuals engaged  
 136 in entertainment industry activities.

137 ~~(V) Administer field offices outside the state and~~  
 138 ~~coordinate with regional offices maintained by counties and~~  
 139 ~~regions of the state, as described in sub-sub-subparagraph (II),~~  
 140 ~~as necessary.~~

141 f.e. Include Performance standards and measurable outcomes  
 142 for the programs to be implemented by the division office.

143 2. The plan shall be annually reviewed and approved by the  
 144 board of directors of Enterprise Florida, Inc.

145 ~~f. Include an assessment of, and make recommendations on,~~

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146 ~~the feasibility of creating an alternative public-private~~  
 147 ~~partnership for the purpose of contracting with such a~~  
 148 ~~partnership for the administration of the state's entertainment~~  
 149 ~~industry promotion, development, marketing, and service~~  
 150 ~~programs.~~

151 ~~2. Develop, market, and facilitate a working relationship~~  
 152 ~~between state agencies and local governments in cooperation with~~  
 153 ~~local film commission offices for out-of-state and indigenous~~  
 154 ~~entertainment industry production entities.~~

155 ~~3. Implement a structured methodology prescribed for~~  
 156 ~~coordinating activities of local offices with each other and the~~  
 157 ~~commissioner's office.~~

158 (b) The division shall also:

159 1.4. Represent the state's indigenous entertainment  
 160 industry to key decisionmakers within the national and  
 161 international entertainment industry, and to state and local  
 162 officials.

163 ~~2.5.~~ Prepare an inventory and analysis of the state's  
 164 entertainment industry, including, but not limited to,  
 165 information on crew, related businesses, support services, job  
 166 creation, talent, and economic impact and coordinate with local  
 167 offices to develop an information tool for common use.

168 ~~6. Identify, solicit, and recruit entertainment production~~  
 169 ~~opportunities for the state.~~

170 ~~3.7.~~ Assist rural communities and other small communities  
 171 in the state in developing the expertise and capacity necessary  
 172 for such communities to develop, market, promote, and provide  
 173 services to the state's entertainment industry.

174 (c)(b) The division Office of Film and Entertainment, in

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175 the performance of its duties, may:

176 1. Conduct or contract for specific promotion and marketing  
177 functions, including, but not limited to, production of a  
178 statewide directory, production and maintenance of an Internet  
179 website, establishment and maintenance of a toll-free telephone  
180 number, organization of trade show participation, and  
181 appropriate cooperative marketing opportunities.

182 2. Conduct its affairs, carry on its operations, establish  
183 offices, and exercise the powers granted by this act in any  
184 state, territory, district, or possession of the United States.

185 3. Carry out any program of information, special events, or  
186 publicity designed to attract entertainment industry to Florida.

187 4. Develop relationships and leverage resources with other  
188 public and private organizations or groups in their efforts to  
189 publicize to the entertainment industry in this state, other  
190 states, and other countries the depth of Florida's entertainment  
191 industry talent, crew, production companies, production  
192 equipment resources, related businesses, and support services,  
193 including the establishment of and expenditure for a program of  
194 cooperative advertising with these public and private  
195 organizations and groups in accordance with the provisions of  
196 chapter 120.

197 5. Provide and arrange for reasonable and necessary  
198 promotional items and services for such persons as the division  
199 office deems proper in connection with the performance of the  
200 promotional and other duties of the division office.

201 6. Prepare an ~~annual~~ economic impact analysis on  
202 entertainment industry-related activities in the state.

203 7. Request or accept any grant, payment, or gift of funds

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204 or property made by this state, the United States, or any  
205 department or agency thereof, or by any individual, firm,  
206 corporation, municipality, county, or organization, for any or  
207 all of the purposes of the ~~Office of Film and Entertainment's~~ 5-  
208 year strategic plan or those permitted activities enumerated in  
209 this paragraph. ~~Such funds shall be deposited in the Grants and~~  
210 ~~Donations Trust Fund of the Executive Office of the Governor for~~  
211 ~~use by the Office of Film and Entertainment in carrying out its~~  
212 ~~responsibilities and duties as delineated in law. The division~~  
213 ~~office~~ may expend such funds in accordance with the terms and  
214 conditions of any such grant, payment, or gift in the pursuit of  
215 its administration or in support of fulfilling its duties and  
216 responsibilities. The division office shall separately account  
217 for the public funds and the private funds ~~deposited into the~~  
218 ~~trust fund~~.

219 (4) ADVISORY COUNCIL.—The board of directors of Enterprise  
220 Florida, Inc., may establish a council to serve as an advisory  
221 body to the division to provide industry insight and expertise  
222 related to developing, marketing, promoting, and providing  
223 service to the state's entertainment industry, including  
224 development of the 5-year strategic plan. The council must  
225 consist of individuals who are residents of the state; who are  
226 highly knowledgeable of, and active in, the motion picture,  
227 television, video, sound recording, or other entertainment  
228 industries; and who are recognized leaders in these industries  
229 in the state. These individuals may include representatives of  
230 local film commissions, representatives of entertainment  
231 associations, representatives of the broadcast industry,  
232 representatives of labor organizations in the entertainment

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233 industry, and executives of leading or otherwise important  
 234 entertainment industry businesses and offices.

235 Section 3. Section 288.1252, Florida Statutes, is repealed.

236 Section 4. Section 288.1253, Florida Statutes, is  
 237 transferred, renumbered as section 288.9241, Florida Statutes,  
 238 and amended to read:

239 288.9241 ~~288.1253~~ Travel and entertainment expenses.—

240 (1) As used in this section, the term "travel expenses"  
 241 means the actual, necessary, and reasonable costs of  
 242 transportation, meals, lodging, and incidental expenses normally  
 243 incurred by an employee of the Division Office of Film and  
 244 Entertainment, which costs are defined and prescribed by rules  
 245 adopted by the department, subject to approval by the Chief  
 246 Financial Officer.

247 (2) Notwithstanding ~~the provisions of~~ s. 112.061, the  
 248 department shall adopt rules by which the Division of Film and  
 249 Entertainment ~~it~~ may make expenditures by reimbursement to: the  
 250 Governor, the Lieutenant Governor, security staff of the  
 251 Governor or Lieutenant Governor, the Commissioner of Film and  
 252 Entertainment, or staff of the Division Office of Film and  
 253 Entertainment for travel expenses or entertainment expenses  
 254 incurred by such individuals solely and exclusively in  
 255 connection with the performance of the statutory duties of the  
 256 ~~division Office of Film and Entertainment~~. The rules are subject  
 257 to approval by the Chief Financial Officer before adoption. The  
 258 rules shall require the submission of paid receipts, or other  
 259 proof of expenditure prescribed by the Chief Financial Officer,  
 260 with any claim for reimbursement.

261 (3) The Division Office of Film and Entertainment shall

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262 include in the annual report for the entertainment industry  
 263 financial incentive program required under s. 288.1254(10) a  
 264 report of the division's office's expenditures for the previous  
 265 fiscal year. The report must consist of a summary of all travel,  
 266 entertainment, and incidental expenses incurred within the  
 267 United States and all travel, entertainment, and incidental  
 268 expenses incurred outside the United States, as well as a  
 269 summary of all successful projects that developed from such  
 270 travel.

271 (4) The Division Office of Film and Entertainment and its  
 272 employees and representatives, when authorized, may accept and  
 273 use complimentary travel, accommodations, meeting space, meals,  
 274 equipment, transportation, and any other goods or services  
 275 necessary for or beneficial to the performance of the division's  
 276 office's duties and purposes, so long as such acceptance or use  
 277 is not in conflict with part III of chapter 112. The department  
 278 shall, by rule, develop internal controls to ensure that such  
 279 goods or services accepted or used pursuant to this subsection  
 280 are limited to those that will assist solely and exclusively in  
 281 the furtherance of the division's office's goals and are in  
 282 compliance with part III of chapter 112.

283 (5) Any claim submitted under this section is not required  
 284 to be sworn to before a notary public or other officer  
 285 authorized to administer oaths, but any claim authorized or  
 286 required to be made under any provision of this section shall  
 287 contain a statement that the expenses were actually incurred as  
 288 necessary travel or entertainment expenses in the performance of  
 289 official duties of the Division Office of Film and Entertainment  
 290 and shall be verified by written declaration that it is true and



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291 correct as to every material matter. Any person who willfully  
 292 makes and subscribes to any claim which he or she does not  
 293 believe to be true and correct as to every material matter or  
 294 who willfully aids or assists in, procures, or counsels or  
 295 advises with respect to, the preparation or presentation of a  
 296 claim pursuant to this section that is fraudulent or false as to  
 297 any material matter, whether such falsity or fraud is with the  
 298 knowledge or consent of the person authorized or required to  
 299 present the claim, commits a misdemeanor of the second degree,  
 300 punishable as provided in s. 775.082 or s. 775.083. Whoever  
 301 receives a reimbursement by means of a false claim is civilly  
 302 liable, in the amount of the overpayment, for the reimbursement  
 303 of the public fund from which the claim was paid.

304 Section 5. Section 288.1254, Florida Statutes, is amended  
 305 to read:

306 288.1254 Entertainment industry financial incentive  
 307 program.—

308 (1) DEFINITIONS.—As used in this section, the term:

309 (a) "Certified production" means a qualified production  
 310 that has tax credits allocated to it by the department based on  
 311 the production's estimated qualified expenditures, up to the  
 312 production's maximum certified amount of tax credits, by the  
 313 department. The term does not include a production if its first  
 314 day of principal photography or project start date in this state  
 315 occurs before the production is certified by the department,  
 316 unless the production spans more than 1 fiscal year, was a  
 317 certified production on its first day of principal photography  
 318 or project start date in this state, and submits an application  
 319 for continuing the same production for the subsequent fiscal

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320 year.

321 (b) "Digital media project" means a production of  
 322 interactive entertainment that is produced for distribution in  
 323 commercial or educational markets. The term includes a video  
 324 game or production intended for Internet or wireless  
 325 distribution, an interactive website, digital animation, and  
 326 visual effects, including, but not limited to, three-dimensional  
 327 movie productions and movie conversions. The term does not  
 328 include a production that contains content that is obscene as  
 329 defined in s. 847.001.

330 (c) "High-impact digital media project" means a digital  
 331 media project that has qualified expenditures greater than \$4.5  
 332 million.

333 (d) "High-impact television series" means:

334 1. A production created to run multiple production seasons  
 335 which has ~~and having~~ an estimated order of at least seven  
 336 episodes per season and qualified expenditures of at least  
 337 \$625,000 per episode; or

338 2. A telenovela that has qualified expenditures of more  
 339 than \$4.5 million; a minimum of 45 principal photography days  
 340 filmed in this state; a production cast, including background  
 341 actors, and crew of which at least 90 percent are legal  
 342 residents of this state; and at least 90 percent of its  
 343 production occurring in this state.

344 ~~(e) "Off-season certified production" means a feature film,~~  
 345 ~~independent film, or television series or pilot that films 75~~  
 346 ~~percent or more of its principal photography days from June 1~~  
 347 ~~through November 30.~~

348 (e)-(f) "Principal photography" means the filming of major

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349 or significant components of the qualified production which  
350 involve lead actors.

351 ~~(f)(g)~~ "Production" means a theatrical, ~~or~~ direct-to-video,  
352 or direct-to-internet motion picture; a made-for-television  
353 motion picture; visual effects or digital animation sequences  
354 produced in conjunction with a motion picture; a commercial; a  
355 music video; an industrial or educational film; an infomercial;  
356 a documentary film; a television pilot program; a presentation  
357 for a television pilot program; a television series, including,  
358 but not limited to, a drama, a reality show, a comedy, a soap  
359 opera, a telenovela, a game show, an awards show, or a  
360 miniseries production; a direct-to-internet television series;  
361 or a digital media project by the entertainment industry. One  
362 season of a television series is considered one production. The  
363 term does not include a weather or market program; a sporting  
364 event or a sporting event broadcast; a gala; a production that  
365 solicits funds; a home shopping program; a political program; a  
366 political documentary; political advertising; a gambling-related  
367 project or production; a concert production; a local, regional,  
368 or Internet-distributed-only news show or current-events show; a  
369 sports news or sports recap show; a pornographic production; or  
370 any production deemed obscene under chapter 847. A production  
371 may be produced on or by film, tape, or otherwise by means of a  
372 motion picture camera; electronic camera or device; tape device;  
373 computer; any combination of the foregoing; or any other means,  
374 method, or device.

375 ~~(g)(h)~~ "Production expenditures" means the costs of  
376 tangible and intangible property used for, and services  
377 performed primarily and customarily in, production, including

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378 preproduction and postproduction, but excluding costs for  
379 development, marketing, and distribution. The term includes, but  
380 is not limited to:

381 1. Wages, salaries, or other compensation paid to legal  
382 residents of this state, including amounts paid through payroll  
383 service companies, for technical and production crews,  
384 directors, producers, and performers.

385 2. Net expenditures for sound stages, backlots, production  
386 editing, digital effects, sound recordings, sets, and set  
387 construction.

388 3. Net expenditures for rental equipment, including, but  
389 not limited to, cameras and grip or electrical equipment.

390 4. Up to \$300,000 of the costs of newly purchased computer  
391 software and hardware unique to the project, including servers,  
392 data processing, and visualization technologies, which are  
393 located in and used exclusively in the state for the production  
394 of digital media.

395 5. Expenditures for meals, travel, and accommodations. For  
396 purposes of this paragraph, the term "net expenditures" means  
397 the actual amount of money a qualified production spent for  
398 equipment or other tangible personal property, after subtracting  
399 any consideration received for reselling or transferring the  
400 item after the qualified production ends, if applicable.

401 ~~(h)(i)~~ "Qualified expenditures" means production  
402 expenditures incurred in this state by a qualified production  
403 for:

404 1. Goods purchased or leased from, or services, including,  
405 but not limited to, insurance costs and bonding, payroll  
406 services, and legal fees, which are provided by, a vendor or

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407 supplier in this state that is registered with the Department of  
 408 State or the Department of Revenue, has a physical location in  
 409 this state, and employs one or more legal residents of this  
 410 state. This does not include rebilled goods or services provided  
 411 by an in-state company from out-of-state vendors or suppliers.  
 412 When services provided by the vendor or supplier include  
 413 personal services or labor, only personal services or labor  
 414 provided by residents of this state, evidenced by the required  
 415 documentation of residency in this state, qualify.

416 2. Payments to legal residents of this state in the form of  
 417 salary, wages, or other compensation up to a maximum of \$400,000  
 418 per resident unless otherwise specified in subsection (4). A  
 419 completed declaration of residency in this state must accompany  
 420 the documentation submitted to the department office for  
 421 reimbursement.

422  
 423 For a qualified production involving an event, such as an awards  
 424 show, the term does not include expenditures solely associated  
 425 with the event itself and not directly required by the  
 426 production. The term does not include expenditures incurred  
 427 before certification, with the exception of those incurred for a  
 428 commercial, a music video, or the pickup of additional episodes  
 429 of a high-impact television series within a single season. Under  
 430 no circumstances may the qualified production include in the  
 431 calculation for qualified expenditures the original purchase  
 432 price for equipment or other tangible property that is later  
 433 sold or transferred by the qualified production for  
 434 consideration. In such cases, the qualified expenditure is the  
 435 net of the original purchase price minus the consideration

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436 received upon sale or transfer.

437 ~~(i)-(j)~~ "Qualified production" means a production in this  
 438 state meeting the requirements of this section. The term does  
 439 not include a production:

440 1. In which, ~~for the first 2 years of the incentive~~  
 441 ~~program, less than 50 percent, and thereafter, less than 70 60~~  
 442 ~~percent,~~ of the positions that make up its production cast and  
 443 below-the-line production crew, or, in the case of digital media  
 444 projects, less than 80 75 percent of such positions, are filled  
 445 by legal residents of this state, whose residency is  
 446 demonstrated by a valid Florida driver ~~driver's~~ license or other  
 447 state-issued identification confirming residency, or students  
 448 enrolled full-time in a film-and-entertainment-related course of  
 449 study at an institution of higher education in this state; or  
 450 2. That contains obscene content as defined in s.  
 451 847.001(10).

452 ~~(j)-(k)~~ "Qualified production company" means a corporation,  
 453 limited liability company, partnership, or other legal entity  
 454 engaged in one or more productions in this state.

455 ~~(l)~~ "Qualified digital media production facility" means a  
 456 ~~building or series of buildings and their improvements in which~~  
 457 ~~data processing, visualization, and sound synchronization~~  
 458 ~~technologies are regularly applied for the production of~~  
 459 ~~qualified digital media projects or the digital animation~~  
 460 ~~components of qualified productions.~~

461 ~~(m)~~ "Qualified production facility" means a ~~building or~~  
 462 ~~complex of buildings and their improvements and associated~~  
 463 ~~backlot facilities in which regular filming activity for film or~~  
 464 ~~television has occurred for a period of no less than 1 year and~~

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465 which contain at least one sound stage of at least 7,800 square  
466 feet.

467 (n) "Regional population ratio" means the ratio of the  
468 population of a region to the population of this state. The  
469 regional population ratio applicable to a given fiscal year is  
470 the regional population ratio calculated by the Office of Film  
471 and Entertainment using the latest official estimates of  
472 population certified under s. 186.901, available on the first  
473 day of that fiscal year.

474 (o) "Regional tax credit ratio" means a ratio the numerator  
475 of which is the sum of tax credits awarded to productions in a  
476 region to date plus the tax credits certified, but not yet  
477 awarded, to productions currently in that region and the  
478 denominator of which is the sum of all tax credits awarded in  
479 the state to date plus all tax credits certified, but not yet  
480 awarded, to productions currently in the state. The regional tax  
481 credit ratio applicable to a given year is the regional tax  
482 credit ratio calculated by the Office of Film and Entertainment  
483 using credit award and certification information available on  
484 the first day of that fiscal year.

485 (p) "Underutilized region" for a given state fiscal year  
486 means a region with a regional tax credit ratio applicable to  
487 that fiscal year that is lower than its regional population  
488 ratio applicable to that fiscal year. The following regions are  
489 established for purposes of making this determination:

490 1. North Region, consisting of Alachua, Baker, Bay,  
491 Bradford, Calhoun, Clay, Columbia, Dixie, Duval, Escambia,  
492 Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Holmes, Jackson,  
493 Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Nassau,

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494 Okaloosa, Putnam, Santa Rosa, St. Johns, Suwannee, Taylor,  
495 Union, Wakulla, Walton, and Washington Counties.

496 2. Central East Region, consisting of Brevard, Flagler,  
497 Indian River, Lake, Okeechobee, Orange, Osecola, Seminole, St.  
498 Lucie, and Volusia Counties.

499 3. Central West Region, consisting of Citrus, Hernando,  
500 Hillsborough, Manatee, Marion, Polk, Pasco, Pinellas, Sarasota,  
501 and Sumter Counties.

502 4. Southwest Region, consisting of Charlotte, Collier,  
503 DeSoto, Glades, Hardee, Hendry, Highlands, and Lee Counties.

504 5. Southeast Region, consisting of Broward, Martin, Miami-  
505 Dade, Monroe, and Palm Beach Counties.

506 (k) ~~(q)~~ "Interactive website" means a website or group of  
507 websites that includes interactive and downloadable content, and  
508 creates 25 new Florida full-time equivalent positions operating  
509 from a principal place of business located within Florida. An  
510 interactive website or group of websites must provide  
511 documentation that those jobs were created to the department  
512 before Office of Film and Entertainment prior to the award of  
513 tax credits. Each subsequent program application must provide  
514 proof that 25 Florida full-time equivalent positions are  
515 maintained.

516 (2) CREATION AND PURPOSE OF PROGRAM.—The entertainment  
517 industry financial incentive program is created ~~within the~~  
518 ~~Office of Film and Entertainment. The purpose of this program is~~  
519 to encourage the use of this state as a site for entertainment  
520 production, for filming, and for the digital production of  
521 entertainment films, and to develop and sustain the workforce  
522 and infrastructure for film, digital media, and entertainment

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523 production.

524 (3) APPLICATION PROCEDURE; APPROVAL PROCESS.—

525 (a) *Program application.*—A qualified production company  
 526 producing a qualified production in this state may submit a  
 527 program application to the ~~department Office of Film and~~  
 528 ~~Entertainment~~ for the purpose of determining qualification for  
 529 an award of tax credits authorized by this section no earlier  
 530 than ~~150 180~~ days before the first day of principal photography  
 531 or project start date in this state. The applicant shall provide  
 532 the ~~department Office of Film and Entertainment~~ with information  
 533 required to determine whether the production is a qualified  
 534 production and to determine the qualified expenditures and other  
 535 information necessary for the ~~department office~~ to determine  
 536 eligibility for the tax credit.

537 (b) *Required documentation.*—The ~~department Office of Film~~  
 538 ~~and Entertainment~~ shall develop an application form for  
 539 qualifying an applicant as a qualified production. The form must  
 540 include, but need not be limited to, production-related  
 541 information concerning employment of residents in this state, a  
 542 detailed budget of planned qualified expenditures and aggregate  
 543 nonqualified expenditures in this state, proof of financing for  
 544 the production, and the applicant's signed affirmation that the  
 545 information on the form has been verified and is correct. The  
 546 ~~Division Office~~ of Film and Entertainment of Enterprise Florida,  
 547 Inc., and local film commissions shall distribute the form.

548 (c) *Application process.*—The ~~department Office of Film and~~  
 549 ~~Entertainment~~ shall establish a process by which an application  
 550 is accepted and reviewed and by which tax credit eligibility and  
 551 award amount are determined. The department may consult with the

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552 ~~Division Office~~ of Film and Entertainment of Enterprise Florida,  
 553 Inc., ~~or may request assistance from~~ a duly appointed local film  
 554 commission in determining compliance with this section.

555 1. Applications may be accepted until, and shall include,  
 556 the application that causes the amount of tax credit eligibility  
 557 requested to exceed 125 percent of tax credits allocated for the  
 558 fiscal year under paragraph (7) (a). Applications received after  
 559 all tax credits allocated for the fiscal year have been  
 560 certified shall be assigned a queue number that is determined by  
 561 the date and time the application was received by the  
 562 department. Applications in the queue are deemed denied on June  
 563 30 of each year.

564 2. A ~~certified~~ high-impact television series may submit an  
 565 initial application for no more than two successive seasons,  
 566 notwithstanding the fact that the ~~second season has successive~~  
 567 seasons have not been ordered. The ~~successive season's~~ qualified  
 568 expenditure amounts for the second season shall be based on the  
 569 current season's estimated qualified expenditures. Upon the  
 570 completion of production of each season, a high-impact  
 571 television series may submit an application for no more than one  
 572 additional season. To be certified for credits, the applicant  
 573 must provide proof that the additional season has been ordered  
 574 as part of the application for the additional season.

575 (d) *Certification.*—

576 1. The ~~department Office of Film and Entertainment~~ shall  
 577 review the application within 15 business days after receipt.  
 578 Upon the ~~department's its~~ determination, in consultation with  
 579 the Division of Film and Entertainment of Enterprise Florida,  
 580 Inc., that the application contains all the information required

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581 by this subsection and meets the criteria set out in this  
 582 section, the ~~department Office of Film and Entertainment shall~~  
 583 ~~deny qualify the applicant and recommend to the department that~~  
 584 ~~the applicant be certified for the maximum tax credit award~~  
 585 ~~amount. Within 5 business days after receipt of the~~  
 586 ~~recommendation, the department shall reject the application~~  
 587 ~~recommendation~~ or certify the maximum ~~recommended~~ tax credit  
 588 award, if any funds are available, to the applicant and to the  
 589 executive director of the Department of Revenue.

590 2. In a fiscal year, the department may certify only the  
 591 amount of tax credits allocated for that fiscal year, as  
 592 provided under subsection (7). However, the department may  
 593 certify a high-impact television series for additional tax  
 594 credits allocated in a future fiscal year if the high-impact  
 595 television series has an executed contract or order for season  
 596 renewal effective for the future fiscal year from which tax  
 597 credits would be allocated. The department may certify one  
 598 additional ordered season per future fiscal year in which the  
 599 qualified production would occur.

600 (e) Employment.—Upon certification by the department, the  
 601 production must provide the department and the Division of Film  
 602 and Entertainment of Enterprise Florida, Inc., with a single  
 603 point of contact and information related to the production's  
 604 needs for cast, crew, contractors, and vendors. The division  
 605 shall publish this information online, including the type of  
 606 production, the projected start date of the production, the  
 607 locations in this state for such production, and the e-mail or  
 608 other contact information for the production's point of contact.  
 609 The department, in consultation with the division, may adopt

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610 procedures for a production to post such information itself  
 611 within 7 days after certification.

612 ~~(f)(e) Grounds for denial.~~

613 1. The department Office of Film and Entertainment shall  
 614 deny an application if it determines that the application is not  
 615 complete, ~~or~~ the production or application does not meet the  
 616 requirements of this section, or there are no additional credits  
 617 for certification as provided under paragraph (c). ~~Within 90~~  
 618 days after submitting a program application, except with respect  
 619 to applications in the independent and emerging media queue, a  
 620 production must provide proof of project financing to the Office  
 621 of Film and Entertainment, otherwise the project is deemed  
 622 denied and withdrawn. A project that has been ~~denied~~ ~~withdrawn~~  
 623 may submit a new application upon providing the Office of Film  
 624 and Entertainment proof of financing.

625 2. The department shall deny a certified production upon  
 626 any circumstance affecting the reasonable schedule or timely  
 627 completion of the certified production, including a break in  
 628 production, change in the production schedule, or loss of  
 629 financing for the production. A certified production must notify  
 630 the department within 5 days after any circumstance affecting  
 631 its timely completion. A certified production may not be denied  
 632 if it provides the department with proof of replacement  
 633 financing within 10 days after the loss of financing for the  
 634 production. To keep a reasonable schedule, the certified  
 635 production must begin principal photography or the production  
 636 project in this state no more than 45 calendar days before or  
 637 after the principal photography or project start date provided  
 638 in the production's program application.

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639 ~~(g)(f)~~ Verification of actual qualified expenditures.-  
 640 1. The department, in consultation with the Division of  
 641 Film and Entertainment, Office of Film and Entertainment shall  
 642 develop a process to verify the actual qualified expenditures of  
 643 a certified production. The process must require:  
 644 a. A certified production to submit, within 180 days in a  
 645 ~~timely manner~~ after production ends in this state and after  
 646 making all of its qualified expenditures in this state, data  
 647 substantiating each qualified expenditure, including  
 648 documentation on the net expenditure on equipment and other  
 649 tangible personal property by the qualified production, to an  
 650 independent certified public accountant licensed in this state;  
 651 b. Such accountant to conduct a compliance audit, at the  
 652 certified production's expense, to substantiate each qualified  
 653 expenditure and submit the results as a report, along with the  
 654 required substantiating data, to the department Office of Film  
 655 and Entertainment; and  
 656 c. The department Office of Film and Entertainment to  
 657 review the accountant's submittal and verify report to the  
 658 ~~department~~ the final verified amount of actual qualified  
 659 expenditures made by the certified production.  
 660 2. The department shall determine and approve the final tax  
 661 credit award amount to each certified applicant based on the  
 662 final verified amount of actual qualified expenditures and shall  
 663 notify the executive director of the Department of Revenue in  
 664 writing that the certified production has met the requirements  
 665 of the incentive program and of the final amount of the tax  
 666 credit award. The final tax credit award amount may not exceed  
 667 the maximum tax credit award amount certified under paragraph

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668 (d).  
 669 ~~(h)(g)~~ Promoting Florida.-The department Office of Film and  
 670 Entertainment shall ensure that, as a condition of receiving a  
 671 tax credit under this section, marketing materials promoting  
 672 this state as a tourist destination or film and entertainment  
 673 production destination are included, when appropriate, at no  
 674 cost to the state, which must, at a minimum, include placement  
 675 of a "Filmed in Florida" or "Produced in Florida" logo in the  
 676 opening titles and end credits. The placement of a "Filmed in  
 677 Florida" or "Produced in Florida" logo on all packaging material  
 678 and hard media is also required, unless such placement is  
 679 prohibited by licensing or other contractual obligations. The  
 680 size and placement of such logo shall be commensurate to other  
 681 logos used. If no logos are used, the statement "Filmed in  
 682 Florida using Florida's Entertainment Industry Financial  
 683 Incentive," or a similar statement approved by the Division  
 684 Office of Film and Entertainment of Enterprise Florida, Inc.,  
 685 shall be used. The Division Office of Film and Entertainment of  
 686 Enterprise Florida, Inc., shall provide a logo and supply it for  
 687 the purposes specified in this paragraph. A 30-second "Visit  
 688 Florida" promotional video must also be included on all optical  
 689 disc formats of a film, unless such placement is prohibited by  
 690 licensing or other contractual obligations. The 30-second  
 691 promotional video shall be approved and provided by the Florida  
 692 Tourism Industry Marketing Corporation in consultation with the  
 693 Division Commissioner of Film and Entertainment of Enterprise  
 694 Florida, Inc.  
 695 (4) TAX CREDIT ELIGIBILITY; TAX CREDIT AWARDS; QUEUES;  
 696 ELECTION AND DISTRIBUTION; CARRYFORWARD; CONSOLIDATED RETURNS;

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697 PARTNERSHIP AND NONCORPORATE DISTRIBUTIONS; MERGERS AND  
698 ACQUISITIONS.—

699 (a) *Priority for tax credit award.*—The priority of a  
700 qualified production for tax credit awards must be determined on  
701 a first-come, first-served basis within its appropriate queue.  
702 Each qualified production must be placed into the appropriate  
703 queue and is subject to the requirements of that queue.

704 (b) *Tax credit eligibility.*—

705 1. General production queue.—Ninety-four percent of tax  
706 credits authorized pursuant to subsection (7) ~~(6)~~ in any state  
707 fiscal year must be dedicated to the general production queue.  
708 The general production queue consists of all qualified  
709 productions other than those eligible for the commercial and  
710 music video queue or the independent and emerging media  
711 production queue. A qualified production that demonstrates a  
712 minimum of \$625,000 in qualified expenditures is eligible for  
713 tax credits equal to 20 percent of its actual qualified  
714 expenditures, up to a maximum of \$8 million. A qualified  
715 production that incurs qualified expenditures during multiple  
716 state fiscal years may combine those expenditures to satisfy the  
717 \$625,000 minimum threshold.

718 a. For the first 10 months of each fiscal year, 20 percent  
719 of the credits in the general production queue shall be set  
720 aside for qualified productions in underutilized counties. A  
721 qualified production eligible for these funds is a production  
722 for which at least 70 percent of its principal photography days  
723 occur within an underutilized county designated as an  
724 underutilized county at the time that the production is  
725 certified. The term “underutilized county” means a county in

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726 which less than \$500,000 in qualified expenditures were made in  
727 the last 2 fiscal years. Any funds not yet certified from this  
728 set-aside at the end of the 10-month period may be certified to  
729 qualified productions pursuant to this section ~~An off-season~~  
730 ~~certified production that is a feature film, independent film,~~  
731 ~~or television series or pilot is eligible for an additional 5~~  
732 ~~percent tax credit on actual qualified expenditures. An off-~~  
733 ~~season certified production that does not complete 75 percent of~~  
734 ~~principal photography due to a disruption caused by a hurricane~~  
735 ~~or tropical storm may not be disqualified from eligibility for~~  
736 ~~the additional 5 percent credit as a result of the disruption.~~

737 b. ~~If more than 45 percent of the sum of total tax credits~~  
738 ~~initially certified and awarded after April 1, 2012, total tax~~  
739 ~~credits initially certified after April 1, 2012, but not yet~~  
740 ~~awarded, and total tax credits available for certification after~~  
741 ~~April 1, 2012, but not yet certified has been awarded for high-~~  
742 ~~impact television series, then no high-impact television series~~  
743 ~~is eligible for tax credits under this subparagraph. Tax credits~~  
744 ~~initially certified for a high-impact television series after~~  
745 ~~April 1, 2012, may not be awarded if the award will cause the~~  
746 ~~percentage threshold in this sub-subparagraph to be exceeded.~~  
747 ~~This sub-subparagraph does not prohibit the award of tax credits~~  
748 ~~certified before April 1, 2012, for high-impact television~~  
749 ~~series.~~

750 b.e. Subject to sub-subparagraph b., First priority in the  
751 queue for tax credit awards not yet certified shall be given to  
752 high-impact television series and high-impact digital media  
753 projects. For the purposes of determining priority between a  
754 high-impact television series and a high-impact digital media



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755 project, the first position must go to the first application  
 756 received. Thereafter, priority shall be determined by  
 757 ~~alternating between a high-impact television series and a high-~~  
 758 ~~impact digital media project on a first-come, first-served~~  
 759 ~~basis. However, if the Office of Film and Entertainment receives~~  
 760 ~~an application for a high-impact television series or high-~~  
 761 ~~impact digital media project that would be certified but for the~~  
 762 ~~alternating priority, the office may certify the project as~~  
 763 ~~being in the priority position if an application that would~~  
 764 ~~normally be the priority position is not received within 5~~  
 765 ~~business days.~~

766 d. A qualified production for which at least 67 percent of  
 767 its principal photography days occur within a region designated  
 768 as an underutilized region at the time that the production is  
 769 certified is eligible for an additional 5 percent tax credit.

770 ~~c.e.~~ A qualified production is eligible for an additional  
 771 15 percent tax credit on qualified expenditures that are wages,  
 772 salaries, or other compensation paid to the following  
 773 individuals employed by the qualified production: ~~that employe~~  
 774 students enrolled full-time in a film and entertainment-related  
 775 or digital media-related course of study at an institution of  
 776 higher education in this state, individuals participating in the  
 777 Road-to-Independence Program under s. 409.1451, individuals with  
 778 developmental disabilities as defined under s. 393.063 residing  
 779 in this state, veterans residing in this state, and individuals  
 780 ~~is eligible for an additional 15 percent tax credit on qualified~~  
 781 ~~expenditures that are wages, salaries, or other compensation~~  
 782 ~~paid to such students. The additional 15 percent tax credit is~~  
 783 ~~also applicable to persons hired within 12 months after~~

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784 graduating from a film and entertainment-related or digital  
 785 media-related course of study at an institution of higher  
 786 education in this state. ~~The additional 15 percent tax credit~~  
 787 ~~applies to qualified expenditures that are wages, salaries, or~~  
 788 ~~other compensation paid to such recent graduates for 1 year~~  
 789 ~~after the date of hiring.~~

790 ~~f.~~ A qualified production for which 50 percent or more of  
 791 its principal photography occurs at a qualified production  
 792 facility, or a qualified digital media project or the digital  
 793 animation component of a qualified production for which 50  
 794 percent or more of the project's or component's qualified  
 795 expenditures are related to a qualified digital media production  
 796 facility, is eligible for an additional 5 percent tax credit on  
 797 actual qualified expenditures for production activity at that  
 798 facility.

799 d. A qualified production that completes a capital  
 800 investment of at least \$2 million before the completion of the  
 801 qualified production is eligible for an additional 5 percent tax  
 802 credit. The capital investment must be permanent and must remain  
 803 in this state after the production ends in this state.

804 ~~e.g.~~ A qualified production is not eligible for tax credits  
 805 provided under this paragraph totaling more than 25 percent ~~30~~  
 806 ~~percent~~ of its actual qualified expenses.

807 2. Commercial and music video queue.—Three percent of tax  
 808 credits authorized pursuant to subsection (7) ~~(6)~~ in any state  
 809 fiscal year must be dedicated to the commercial and music video  
 810 queue. A qualified production company that produces national or  
 811 regional commercials or music videos may be eligible for a tax  
 812 credit award if it demonstrates a minimum of \$100,000 in

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813 qualified expenditures per national or regional commercial or  
 814 music video and exceeds a combined threshold of \$500,000 after  
 815 combining actual qualified expenditures from qualified  
 816 commercials and music videos during a single state fiscal year.  
 817 After a qualified production company that produces commercials,  
 818 music videos, or both reaches the threshold of \$500,000, it is  
 819 eligible to apply for certification for a tax credit award. The  
 820 maximum credit award shall be equal to 20 percent of its actual  
 821 qualified expenditures up to a maximum of \$500,000. If there is  
 822 a surplus at the end of a fiscal year after the department  
 823 ~~Office of Film and Entertainment~~ certifies and determines the  
 824 tax credits for all qualified commercial and video projects,  
 825 such surplus tax credits shall be carried forward to the  
 826 following fiscal year and are available to any eligible  
 827 qualified productions under the general production queue.

828 3. Independent and emerging media production queue.—Three  
 829 percent of tax credits authorized pursuant to subsection (7) ~~(6)~~  
 830 in any state fiscal year must be dedicated to the independent  
 831 and emerging media production queue. This queue is intended to  
 832 encourage independent film and emerging media production in this  
 833 state. Any qualified production, excluding commercials,  
 834 infomercials, or music videos, which demonstrates at least  
 835 \$100,000, but not more than \$625,000, in total qualified  
 836 expenditures is eligible for tax credits equal to 20 percent of  
 837 its actual qualified expenditures. If a surplus exists at the  
 838 end of a fiscal year after the department ~~Office of Film and~~  
 839 ~~Entertainment~~ certifies and determines the tax credits for all  
 840 qualified independent and emerging media production projects,  
 841 such surplus tax credits shall be carried forward to the

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842 following fiscal year and are available to any eligible  
 843 qualified productions under the general production queue.

844 ~~4. Family-friendly productions.—A certified theatrical or~~  
 845 ~~direct-to-video motion picture production or video game~~  
 846 ~~determined by the Commissioner of Film and Entertainment, with~~  
 847 ~~the advice of the Florida Film and Entertainment Advisory~~  
 848 ~~Council, to be family-friendly, based on review of the script~~  
 849 ~~and review of the final release version, is eligible for an~~  
 850 ~~additional tax credit equal to 5 percent of its actual qualified~~  
 851 ~~expenditures. Family-friendly productions are those that have~~  
 852 ~~cross-generational appeal; would be considered suitable for~~  
 853 ~~viewing by children age 5 or older; are appropriate in theme,~~  
 854 ~~content, and language for a broad family audience; embody a~~  
 855 ~~responsible resolution of issues; and do not exhibit or imply~~  
 856 ~~any act of smoking, sex, nudity, or vulgar or profane language.~~

857 ~~(c) Withdrawal of tax credit eligibility.—A qualified or~~  
 858 ~~certified production must continue on a reasonable schedule,~~  
 859 ~~which includes beginning principal photography or the production~~  
 860 ~~project in this state no more than 45 calendar days before or~~  
 861 ~~after the principal photography or project start date provided~~  
 862 ~~in the production's program application. The department shall~~  
 863 ~~withdraw the eligibility of a qualified or certified production~~  
 864 ~~that does not continue on a reasonable schedule.~~

865 ~~(c)(d) Election and distribution of tax credits.—~~

866 1. A certified production company receiving a tax credit  
 867 award under this section shall, at the time the credit is  
 868 awarded by the department after production is completed and all  
 869 requirements to receive a credit award have been met, make an  
 870 irrevocable election to apply the credit against taxes due under

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871 chapter 220, against state taxes collected or accrued under  
 872 chapter 212, or against a stated combination of the two taxes.  
 873 The election is binding upon any distributee, successor,  
 874 transferee, or purchaser. The department shall notify the  
 875 Department of Revenue of any election made pursuant to this  
 876 paragraph.

877 2. A qualified production company is eligible for tax  
 878 credits against its sales and use tax liabilities and corporate  
 879 income tax liabilities as provided in this section. However, tax  
 880 credits awarded under this section may not be claimed against  
 881 sales and use tax liabilities or corporate income tax  
 882 liabilities for any tax period beginning before July 1, 2011,  
 883 regardless of when the credits are applied for or awarded.

884 (d) ~~(e)~~ Tax credit carryforward.—If the certified production  
 885 company cannot use the entire tax credit in the taxable year or  
 886 reporting period in which the credit is awarded, any excess  
 887 amount may be carried forward to a succeeding taxable year or  
 888 reporting period. A tax credit applied against taxes imposed  
 889 under chapter 212 or may be carried forward for a maximum of 5  
 890 ~~years after the date the credit is awarded. A tax credit applied~~  
 891 ~~against taxes imposed under~~ chapter 220 may be carried forward  
 892 for a maximum of 5 years after the date the credit is awarded,  
 893 after which the credit expires and may not be used.

894 (e) ~~(f)~~ Consolidated returns.—A certified production company  
 895 that files a Florida consolidated return as a member of an  
 896 affiliated group under s. 220.131(1) may be allowed the credit  
 897 on a consolidated return basis up to the amount of the tax  
 898 imposed upon the consolidated group under chapter 220.

899 (f) ~~(g)~~ Partnership and noncorporate distributions.—A

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900 qualified production company that is not a corporation as  
 901 defined in s. 220.03 may elect to distribute tax credits awarded  
 902 under this section to its partners or members in proportion to  
 903 their respective distributive income or loss in the taxable year  
 904 in which the tax credits were awarded.

905 (g) ~~(h)~~ Mergers or acquisitions.—Tax credits available under  
 906 this section to a certified production company may succeed to a  
 907 surviving or acquiring entity subject to the same conditions and  
 908 limitations as described in this section; however, they may not  
 909 be transferred again by the surviving or acquiring entity.

910 (5) TRANSFER OF TAX CREDITS.—

911 (a) Authorization.—Upon application to ~~the Office of Film~~  
 912 ~~and Entertainment~~ and approval by the department, a certified  
 913 production company, or a partner or member that has received a  
 914 distribution under paragraph (4) (f) ~~(4) (g)~~, may elect to  
 915 transfer, in whole or in part, any unused credit amount granted  
 916 under this section. An election to transfer any unused tax  
 917 credit amount under chapter 212 or chapter 220 must be made no  
 918 later than 5 years after the date the credit is awarded, after  
 919 which period the credit expires and may not be used. The  
 920 department shall notify the Department of Revenue of the  
 921 election and transfer.

922 (b) Number of transfers permitted.—A certified production  
 923 company that elects to apply a credit amount against taxes  
 924 remitted under chapter 212 is permitted a one-time transfer of  
 925 unused credits to one transferee. A certified production company  
 926 that elects to apply a credit amount against taxes due under  
 927 chapter 220 is permitted a one-time transfer of unused credits  
 928 to no more than four transferees, and such transfers must occur

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929 in the same taxable year.

930 (c) *Transferee rights and limitations.*—The transferee is  
931 subject to the same rights and limitations as the certified  
932 production company awarded the tax credit, except that the  
933 initial transferee shall be permitted a one-time transfer of  
934 unused credits to no more than two subsequent transferees, and  
935 such transfers must occur in the same taxable year as the  
936 credits were received by the initial transferee, after which the  
937 subsequent transferees may not sell or otherwise transfer the  
938 tax credit.

939 (6) RELINQUISHMENT OF TAX CREDITS.—

940 (a) Beginning July 1, 2011, a certified production company,  
941 or any person who has acquired a tax credit from a certified  
942 production company pursuant to subsections (4) and (5), may  
943 elect to relinquish the tax credit to the Department of Revenue  
944 in exchange for 90 percent of the amount of the relinquished tax  
945 credit.

946 (b) The Department of Revenue may approve payments to  
947 persons relinquishing tax credits pursuant to this subsection.

948 (c) Subject to legislative appropriation, the Department of  
949 Revenue shall request the Chief Financial Officer to issue  
950 warrants to persons relinquishing tax credits. Payments under  
951 this subsection shall be made from the funds from which the  
952 proceeds from the taxes against which the tax credits could have  
953 been applied pursuant to the irrevocable election made by the  
954 certified production company under subsection (4) are deposited.

955 (7) ANNUAL ALLOCATION OF TAX CREDITS.—

956 (a) The aggregate amount of the tax credits that may be  
957 certified pursuant to paragraph (3)(d) may not exceed:

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958 1. For fiscal year 2010-2011, \$53.5 million.

959 2. For fiscal year 2011-2012, \$74.5 million.

960 3. For fiscal years 2012-2013, 2013-2014, 2014-2015, and  
961 2015-2016, \$42 million per fiscal year.

962 4. Beginning July 1, 2014, for fiscal years 2014-2015 and  
963 2015-2016, an additional \$50 million per fiscal year.

964 5. Beginning July 1, 2016, for fiscal years 2016-2017,  
965 2017-2018, 2018-2019, and 2019-2020, \$50 million per fiscal  
966 year.

967 (b) Any portion of the maximum amount of tax credits  
968 established per fiscal year in paragraph (a) that is not  
969 certified as of the end of a fiscal year shall be carried  
970 forward and made available for certification during the  
971 following 2 fiscal years in addition to the amounts available  
972 for certification under paragraph (a) for those fiscal years.

973 (c) Upon approval of the final tax credit award amount  
974 pursuant to subparagraph (3)(g)2. ~~(3)(f)2.~~, an amount equal to  
975 the difference between the maximum tax credit award amount  
976 previously certified under paragraph (3)(d) and the approved  
977 final tax credit award amount shall immediately be available for  
978 recertification during the current and following fiscal years in  
979 addition to the amounts available for certification under  
980 paragraph (a) for those fiscal years.

981 (d) Amounts available on and after July 1, 2014, for  
982 certification may not be certified before the fiscal year in  
983 which the amounts are listed in paragraph (a), except as  
984 provided in subparagraph (3)(d)2. ~~If, during a fiscal year, the~~  
985 ~~total amount of credits applied for, pursuant to paragraph~~  
986 ~~(3)(a), exceeds the amount of credits available for~~

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987 ~~certification in that fiscal year, such excess shall be treated~~  
 988 ~~as having been applied for on the first day of the next fiscal~~  
 989 ~~year in which credits remain available for certification.~~

990 (8) RULES, POLICIES, AND PROCEDURES.—

991 (a) The department may adopt rules pursuant to ss.  
 992 120.536(1) and 120.54 and develop policies and procedures to  
 993 implement and administer this section, including, but not  
 994 limited to, rules specifying requirements for the application  
 995 and approval process, records required for substantiation for  
 996 tax credits, procedures for making the election in paragraph  
 997 (4) (c) ~~(4) (d)~~, the manner and form of documentation required to  
 998 claim tax credits awarded or transferred under this section, and  
 999 marketing requirements for tax credit recipients.

1000 (b) The Department of Revenue may adopt rules pursuant to  
 1001 ss. 120.536(1) and 120.54 to administer this section, including  
 1002 rules governing the examination and audit procedures required to  
 1003 administer this section and the manner and form of documentation  
 1004 required to claim tax credits awarded, transferred, or  
 1005 relinquished under this section.

1006 (9) AUDIT AUTHORITY; REVOCATION AND FORFEITURE OF TAX  
 1007 CREDITS; FRAUDULENT CLAIMS.—

1008 (a) *Audit authority.*—The Department of Revenue may conduct  
 1009 examinations and audits as provided in s. 213.34 to verify that  
 1010 tax credits under this section are received, transferred, and  
 1011 applied according to the requirements of this section. If the  
 1012 Department of Revenue determines that tax credits are not  
 1013 received, transferred, or applied as required by this section,  
 1014 it may, in addition to the remedies provided in this subsection,  
 1015 pursue recovery of such funds pursuant to the laws and rules

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1016 governing the assessment of taxes.

1017 (b) *Revocation of tax credits.*—The department may revoke or  
 1018 modify any written decision qualifying, certifying, or otherwise  
 1019 granting eligibility for tax credits under this section if it is  
 1020 discovered that the tax credit applicant submitted any false  
 1021 statement, representation, or certification in any application,  
 1022 record, report, plan, or other document filed in an attempt to  
 1023 receive tax credits under this section. The department shall  
 1024 immediately notify the Department of Revenue of any revoked or  
 1025 modified orders affecting previously granted tax credits.  
 1026 Additionally, the applicant must notify the Department of  
 1027 Revenue of any change in its tax credit claimed.

1028 (c) *Forfeiture of tax credits.*—A determination by the  
 1029 Department of Revenue, as a result of an audit pursuant to  
 1030 paragraph (a) or from information received from the department  
 1031 or the Division Office of Film and Entertainment of Enterprise  
 1032 Florida, Inc., that an applicant received tax credits pursuant  
 1033 to this section to which the applicant was not entitled is  
 1034 grounds for forfeiture of previously claimed and received tax  
 1035 credits. The applicant is responsible for returning forfeited  
 1036 tax credits to the Department of Revenue, and such funds shall  
 1037 be paid into the General Revenue Fund of the state. Tax credits  
 1038 purchased in good faith are not subject to forfeiture unless the  
 1039 transferee submitted fraudulent information in the purchase or  
 1040 failed to meet the requirements in subsection (5).

1041 (d) *Fraudulent claims.*—Any applicant that submits  
 1042 fraudulent information under this section is liable for  
 1043 reimbursement of the reasonable costs and fees associated with  
 1044 the review, processing, investigation, and prosecution of the

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1045 fraudulent claim. An applicant that obtains a credit payment  
 1046 under this section through a claim that is fraudulent is liable  
 1047 for reimbursement of the credit amount plus a penalty in an  
 1048 amount double the credit amount. The penalty is in addition to  
 1049 any criminal penalty to which the applicant is liable for the  
 1050 same acts. The applicant is also liable for costs and fees  
 1051 incurred by the state in investigating and prosecuting the  
 1052 fraudulent claim.

1053 (10) ANNUAL REPORT.—Each November 1, the department Office  
 1054 ~~of Film and Entertainment~~ shall submit an annual report for the  
 1055 previous fiscal year to the Governor, the President of the  
 1056 Senate, and the Speaker of the House of Representatives which  
 1057 outlines the incentive program's return on investment and  
 1058 economic benefits to the state. The report must also include an  
 1059 estimate of the full-time equivalent positions created by each  
 1060 production that received tax credits under this section and  
 1061 information relating to the distribution of productions  
 1062 receiving credits by geographic region and type of production.  
 1063 The report must also include the expenditures report required  
 1064 under s. 288.9241 ~~s. 288.1253(3)~~ and the information describing  
 1065 the relationship between tax exemptions and incentives to  
 1066 industry growth required under s. 288.1258(5). The department  
 1067 may work with the Division of Film and Entertainment of  
 1068 Enterprise Florida, Inc., to develop the annual report.

1069 (11) REPEAL.—This section is repealed July 1, 2020 ~~July 1,~~  
 1070 ~~2016~~, except that:

1071 (a) Tax credits certified under paragraph (3) (d) before  
 1072 July 1, 2020 ~~July 1, 2016~~, may be awarded under paragraph (3) (g)  
 1073 ~~(3) (f)~~ on or after July 1, 2020 ~~July 1, 2016~~, if the other

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1074 requirements of this section are met.

1075 (b) Tax credits carried forward under paragraph (4) (d)  
 1076 ~~(4) (e)~~ remain valid for the period specified.

1077 (c) Subsections (5), (8), and (9) shall remain in effect  
 1078 until July 1, 2025 ~~July 1, 2021~~.

1079 Section 6. Beginning July 1, 2014, applications on file  
 1080 with the Department of Economic Opportunity to receive a tax  
 1081 credit through the entertainment industry financial incentive  
 1082 program under s. 288.1254, Florida Statutes, which are not yet  
 1083 certified are deemed denied.

1084 Section 7. Section 288.1258, Florida Statutes, is amended  
 1085 to read:

1086 288.1258 Entertainment industry qualified production  
 1087 companies; application procedure; categories; duties of the  
 1088 Department of Revenue; records and reports.—

1089 (1) PRODUCTION COMPANIES AUTHORIZED TO APPLY.—

1090 (a) Any production company engaged in this state in the  
 1091 production of motion pictures, made-for-TV motion pictures,  
 1092 television series, commercial advertising, music videos, or  
 1093 sound recordings may submit an application to the Department of  
 1094 Revenue to be approved by the department Office of Film and  
 1095 ~~Entertainment~~ as a qualified production company for the purpose  
 1096 of receiving a sales and use tax certificate of exemption from  
 1097 the Department of Revenue.

1098 (b) As used in ~~For the purposes of~~ this section, the term  
 1099 "qualified production company" means any production company that  
 1100 has submitted a properly completed application to the Department  
 1101 of Revenue and that is subsequently qualified by the department  
 1102 ~~Office of Film and Entertainment~~.

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1103 (2) APPLICATION PROCEDURE.—

1104 (a) The Department of Revenue will review all submitted  
1105 applications for the required information. Within 10 working  
1106 days after the receipt of a properly completed application, the  
1107 Department of Revenue will forward the completed application to  
1108 the ~~department Office of Film and Entertainment~~ for approval.

1109 (b)1. The ~~department Office of Film and Entertainment~~ shall  
1110 establish a process by which an entertainment industry  
1111 production company may be approved by the department office as a  
1112 qualified production company and may receive a certificate of  
1113 exemption from the Department of Revenue for the sales and use  
1114 tax exemptions under ss. 212.031, 212.06, and 212.08.

1115 2. Upon determination by the ~~department Office of Film and~~  
1116 ~~Entertainment~~ that a production company meets the established  
1117 approval criteria and qualifies for exemption, the department  
1118 Office of Film and Entertainment shall return the approved  
1119 application or application renewal or extension to the  
1120 Department of Revenue, which shall issue a certificate of  
1121 exemption.

1122 3. The ~~department Office of Film and Entertainment~~ shall  
1123 deny an application or application for renewal or extension from  
1124 a production company if it determines that the production  
1125 company does not meet the established approval criteria.

1126 (c) The ~~department Office of Film and Entertainment~~ shall  
1127 develop, with the cooperation of the Department of Revenue, the  
1128 Division of Film and Entertainment of Enterprise Florida, Inc.,  
1129 and local government entertainment industry promotion agencies,  
1130 a standardized application form for use in approving qualified  
1131 production companies.

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1132 1. The application form shall include, but not be limited  
1133 to, production-related information on employment, proposed  
1134 budgets, planned purchases of items exempted from sales and use  
1135 taxes under ss. 212.031, 212.06, and 212.08, a signed  
1136 affirmation from the applicant that any items purchased for  
1137 which the applicant is seeking a tax exemption are intended for  
1138 use exclusively as an integral part of entertainment industry  
1139 preproduction, production, or postproduction activities engaged  
1140 in primarily in this state, and a signed affirmation from the  
1141 ~~department Office of Film and Entertainment~~ that the information  
1142 on the application form has been verified and is correct. In  
1143 lieu of information on projected employment, proposed budgets,  
1144 or planned purchases of exempted items, a production company  
1145 seeking a 1-year certificate of exemption may submit summary  
1146 historical data on employment, production budgets, and purchases  
1147 of exempted items related to production activities in this  
1148 state. Any information gathered from production companies for  
1149 the purposes of this section shall be considered confidential  
1150 taxpayer information and shall be disclosed only as provided in  
1151 s. 213.053.

1152 2. The application form may be distributed to applicants by  
1153 the ~~department, the Division Office~~ of Film and Entertainment of  
1154 Enterprise Florida, Inc., or local film commissions.

1155 (d) All applications, renewals, and extensions for  
1156 designation as a qualified production company shall be processed  
1157 by the ~~department Office of Film and Entertainment~~.

1158 (e) ~~If in the event that~~ the Department of Revenue  
1159 determines that a production company no longer qualifies for a  
1160 certificate of exemption, or has used a certificate of exemption

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1161 for purposes other than those authorized by this section and  
 1162 chapter 212, the Department of Revenue shall revoke the  
 1163 certificate of exemption of that production company, and any  
 1164 sales or use taxes exempted on items purchased or leased by the  
 1165 production company during the time such company did not qualify  
 1166 for a certificate of exemption or improperly used a certificate  
 1167 of exemption shall become immediately due to the Department of  
 1168 Revenue, along with interest and penalty as provided by s.  
 1169 212.12. In addition to the other penalties imposed by law, any  
 1170 person who knowingly and willfully falsifies an application, or  
 1171 uses a certificate of exemption for purposes other than those  
 1172 authorized by this section and chapter 212, commits a felony of  
 1173 the third degree, punishable as provided in ss. 775.082,  
 1174 775.083, and 775.084.

## (3) CATEGORIES.—

1175  
 1176 (a)1. A production company may be qualified for designation  
 1177 as a qualified production company for a period of 1 year if the  
 1178 company has operated a business in Florida at a permanent  
 1179 address for a period of 12 consecutive months. Such a qualified  
 1180 production company shall receive a single 1-year certificate of  
 1181 exemption from the Department of Revenue for the sales and use  
 1182 tax exemptions under ss. 212.031, 212.06, and 212.08, which  
 1183 certificate shall expire 1 year after issuance or upon the  
 1184 cessation of business operations in the state, at which time the  
 1185 certificate shall be surrendered to the Department of Revenue.

1186 2. The department Office of Film and Entertainment shall  
 1187 develop a method by which a qualified production company may  
 1188 annually renew a 1-year certificate of exemption for a period of  
 1189 up to 5 years without requiring the production company to

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1190 resubmit a new application during that 5-year period.

1191 3. Any qualified production company may submit a new  
 1192 application for a 1-year certificate of exemption upon the  
 1193 expiration of that company's certificate of exemption.

1194 (b)1. A production company may be qualified for designation  
 1195 as a qualified production company for a period of 90 days. Such  
 1196 production company shall receive a single 90-day certificate of  
 1197 exemption from the Department of Revenue for the sales and use  
 1198 tax exemptions under ss. 212.031, 212.06, and 212.08, which  
 1199 certificate shall expire 90 days after issuance, with extensions  
 1200 contingent upon approval of the department Office of Film and  
 1201 ~~Entertainment~~. The certificate shall be surrendered to the  
 1202 Department of Revenue upon its expiration.

1203 2. Any production company may submit a new application for  
 1204 a 90-day certificate of exemption upon the expiration of that  
 1205 company's certificate of exemption.

## (4) DUTIES OF THE DEPARTMENT OF REVENUE.—

1207 (a) The Department of Revenue shall review the initial  
 1208 application and notify the applicant of any omissions and  
 1209 request additional information if needed. An application shall  
 1210 be complete upon receipt of all requested information. The  
 1211 Department of Revenue shall forward all complete applications to  
 1212 the department Office of Film and Entertainment within 10  
 1213 working days.

1214 (b) The Department of Revenue shall issue a numbered  
 1215 certificate of exemption to a qualified production company  
 1216 within 5 working days of the receipt of an approved application,  
 1217 application renewal, or application extension from the  
 1218 department Office of Film and Entertainment.

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1219 (c) The Department of Revenue may adopt ~~promulgate~~ such  
 1220 rules and shall prescribe and publish such forms as may be  
 1221 necessary to effectuate the purposes of this section or any of  
 1222 the sales tax exemptions which are reasonably related to the  
 1223 provisions of this section.

1224 (d) The Department of Revenue ~~may is authorized to~~  
 1225 establish audit procedures in accordance with the provisions of  
 1226 ss. 212.12, 212.13, and 213.34 which relate to the sales tax  
 1227 exemption provisions of this section.

1228 (5) RELATIONSHIP OF TAX EXEMPTIONS AND INCENTIVES TO  
 1229 INDUSTRY GROWTH; REPORT TO THE LEGISLATURE.—The department  
 1230 ~~Office of Film and Entertainment~~ shall keep annual records from  
 1231 the information provided on taxpayer applications for tax  
 1232 exemption certificates ~~beginning January 1, 2001~~. These records  
 1233 also must reflect a ratio of the annual amount of sales and use  
 1234 tax exemptions under this section, plus the incentives awarded  
 1235 pursuant to s. 288.1254 to the estimated amount of funds  
 1236 expended by certified productions. In addition, the department  
 1237 ~~office~~ shall maintain data showing annual growth in Florida-  
 1238 based entertainment industry companies and entertainment  
 1239 industry employment and wages. The employment information must  
 1240 include an estimate of the full-time equivalent positions  
 1241 created by each production that received tax credits pursuant to  
 1242 s. 288.1254. The department Office of Film and Entertainment  
 1243 shall include this information in the annual report for the  
 1244 entertainment industry financial incentive program required  
 1245 under s. 288.1254(10).

1246 Section 8. Subsection (1) of section 288.92, Florida  
 1247 Statutes, is amended to read:

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1248 288.92 Divisions of Enterprise Florida, Inc.—

1249 (1) Enterprise Florida, Inc., may create and dissolve  
 1250 divisions as necessary to carry out its mission. Each division  
 1251 shall have distinct responsibilities and complementary missions.  
 1252 At a minimum, Enterprise Florida, Inc., shall have divisions  
 1253 related to the following areas:

- 1254 (a) International Trade and Business Development;
- 1255 (b) Business Retention and Recruitment;
- 1256 (c) Tourism Marketing;
- 1257 (d) Minority Business Development; ~~and~~
- 1258 (e) Sports Industry Development; and
- 1259 (f) Film and Entertainment.

1260 Section 9. Paragraph (q) of subsection (5) of section  
 1261 212.08, Florida Statutes, is amended to read:

1262 212.08 Sales, rental, use, consumption, distribution, and  
 1263 storage tax; specified exemptions.—The sale at retail, the  
 1264 rental, the use, the consumption, the distribution, and the  
 1265 storage to be used or consumed in this state of the following  
 1266 are hereby specifically exempt from the tax imposed by this  
 1267 chapter.

1268 (5) EXEMPTIONS; ACCOUNT OF USE.—

1269 (q) *Entertainment industry tax credit; authorization;*  
 1270 *eligibility for credits*.—The credits against the state sales tax  
 1271 authorized pursuant to s. 288.1254 shall be deducted from any  
 1272 sales and use tax remitted by the dealer to the department by  
 1273 electronic funds transfer and may only be deducted on a sales  
 1274 and use tax return initiated through electronic data  
 1275 interchange. The dealer shall separately state the credit on the  
 1276 electronic return. The net amount of tax due and payable must be

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1277 remitted by electronic funds transfer. If the credit for the  
1278 qualified expenditures is larger than the amount owed on the  
1279 sales and use tax return that is eligible for the credit, the  
1280 unused amount of the credit may be carried forward to a  
1281 succeeding reporting period as provided in s. 288.1254(4) (d) ~~s.~~  
1282 ~~288.1254(4) (e)~~. A dealer may only obtain a credit using the  
1283 method described in this subparagraph. A dealer is not  
1284 authorized to obtain a credit by applying for a refund.

1285 Section 10. Subsection (3) of section 220.1899, Florida  
1286 Statutes, is amended to read:

1287 220.1899 Entertainment industry tax credit.-

1288 (3) To the extent that the amount of a tax credit exceeds  
1289 the amount due on a return, the balance of the credit may be  
1290 carried forward to a succeeding taxable year pursuant to s.  
1291 288.1254(4) (d) ~~s. 288.1254(4) (e)~~.

1292 Section 11. Subsection (5) of section 477.0135, Florida  
1293 Statutes, is amended to read:

1294 477.0135 Exemptions.-

1295 (5) A license is not required of any individual providing  
1296 makeup, special effects, or cosmetology services to an actor,  
1297 stunt person, musician, extra, or other talent during a  
1298 production recognized by the Department of Economic Opportunity  
1299 ~~the Office of Film and Entertainment~~ as a qualified production  
1300 as defined in s. 288.1254(1). Such services are not required to  
1301 be performed in a licensed salon. Individuals exempt under this  
1302 subsection may not provide such services to the general public.

1303 Section 12. This act shall take effect July 1, 2014.



The Florida Senate

## Committee Agenda Request

**To:** Senator Jeremy Ring, Chair  
Committee on Governmental Oversight and Accountability

**Subject:** Committee Agenda Request

**Date:** March 6, 2014

---

I respectfully request that **Senate Bill #1640**, relating to Entertainment Industry, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

---

Senator Nancy C. Detert  
Florida Senate, District 28

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14

Meeting Date

Topic Entertainment Industry Tax Incentive Bills

Bill Number HB983 / SB1640

(if applicable)

Name Alexander Lau

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title Camera operator / video editor (entertainment production industry worker)

Address 508 Harbor Blvd. Unit 202

Phone 928-853-8921

Street

Destin

City

FL

State

32541

Zip

E-mail ajlau@icloud.com

Speaking:  For  Against  Information

Representing Film Florida - Okaloosa County

Wave to Support

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**

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3 126 12014

Meeting Date

Topic \_\_\_\_\_ Bill Number 1640  
Name BRIAN PITTS (if applicable)  
Job Title TRUSTEE Amendment Barcode \_\_\_\_\_ (if applicable)  
Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291  
*Street*  
SAINT PETERSBURG FLORIDA 33705  
*City* *State* *Zip*  
E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:  For  Against  Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

THE FLORIDA SENATE  
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3-26-14  
Meeting Date

Topic SB 1640

Bill Number SB 1640  
*(if applicable)*

Name Cindy Karr

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Actor

Address 1002 Harmony Lane  
Street  
Cherment FL 34711  
City State Zip

Phone 352-227-1727

E-mail Cindykarr247@gmail.com

Speaking:  For  Against  Information

Representing SB1640 Film Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
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Meeting Date

Topic SB 1640 Support

Bill Number SB 1640 Support  
*(if applicable)*

Name Alfreda Ryals + Angel B. Davis

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Talent Scouts

Address 3401 Volney Ct  
*Street*  
Jacksonville Fla 32277  
*City State Zip*

Phone 904.329.1665

E-mail aaelitemanagement@gmail.com

Speaking:  For  Against  Information

Representing Film Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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Meeting Date \_\_\_\_\_

Topic SB 1640

Bill Number SB 1640  
*(if applicable)*

Name Andy Winton

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Actor

Address 15 Wales  
*Street*

Phone 863-289-4386

*City* \_\_\_\_\_ *State* \_\_\_\_\_ *Zip* \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
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*Meeting Date* \_\_\_\_\_

Topic SB 1640 Support Bill Number SB 1640  
*(if applicable)*

Name Jeanne Corcoran Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Director, Sarasota County Film Commission

Address 1680 Fruitville Rd Phone \_\_\_\_\_  
*Street*

Sarasota FL 34202 E-mail \_\_\_\_\_  
*City State Zip*

Speaking:  For  Against  Information

Representing Film Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
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3/26/14  
Meeting Date

Topic Entertainment Industry

Bill Number SB 1040  
*(if applicable)*

Name David Cruz

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Assistant General Counsel

Address P.O. Box 1757  
*Street*

Phone 701-3076

Tallahassee, FL 32302  
*City State Zip*

E-mail DCRUZ@FCCities.com

Speaking:  For  Against  Information

Representing Florida League of Cities

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
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3/26/14

Meeting Date

Topic ENTERTAINMENT INDUSTRY

Bill Number SB 1640  
*(if applicable)*

Name FRENCH BROWN

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title ATTORNEY

Address 119 S. MONROE ST. # 300

Phone 850-222-7500

Street

TALLAHASSEE

FL

32301

City

State

Zip

E-mail frenchb@hgsLaw.com

Speaking:  For  Against  Information

Representing FLORIDA CHAMBER of COMMERCE

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/26/2014  
Meeting Date

Topic Film Florida - Film Incentive Bill Number 5B1640  
Name Jose Miguel Vasquez Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title Entertainment Industry Prod. worker/Educator (if applicable)  
Address 460 Fontana Circle Apt 203 Phone 407-729-2915  
Street \_\_\_\_\_  
City Orlando State FL Zip 32765 E-mail jmv@josemiguelvasquez.com

Speaking:  For  Against  Information

Representing ~~Pro~~ Seminole Wave to Support

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

03/26/2014

Meeting Date

Topic FILM FLORIDA - FILM INCENTIVE

Bill Number SB1040  
*(if applicable)*

Name JAMANTHA LAINE

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title PHOTOGRAPHER / FILM STUDENT

Address 440 N. SEMORAN APT 2

Phone 304 307 4559

Street

WINTER PARK

FL

32792

City

State

Zip

E-mail SLAINEPHOTO@GMAIL.COM

Speaking:  For  Against  Information

Representing ORANGE Wave to Support

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

March 26 2014

Meeting Date

Topic Film Florida Tax Incentives

Bill Number SB 1640 / HB 983  
*(if applicable)*

Name Tunde Laleye

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Actor

Address 300 10th Street South Apt 945

Phone (727) 600-7092

St Petersburg Florida 33705  
*Street City State Zip*

E-mail LALAYEA1@YAHOO.COM

Speaking:  For  Against  Information

Representing Waive and Support

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date

Topic FILM INCENTIVE

Bill Number SB 1660  
*(if applicable)*

Name RALPH R. CLEMENTE

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title PGM. CHAIR

Address 2023 STILLWOOD DR.

Phone 402 582-2413

*Street*

WINGERTERE FL 34786

*City*

*State*

*Zip*

E-mail RCLEMENTE@VALENCIA COLLEGE.EDU

Speaking:  For  Against  Information

Representing WAVE to Support

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic Film Incentive

Bill Number SB1640  
*(if applicable)*

Name GEORGE FERNANDEZ

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 3183 FERNS GLEN DR  
*Street*  
TALLAHASSEE FL 32309  
*City State Zip*

Phone 305 972 6018

E-mail GEFERND@GMAIL.COM

Speaking:  For  Against  Information

Representing Wave to Support

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/2014  
Meeting Date

Topic Film Incentive (Film Florida) Bill Number ~~000~~ SB 1640  
(if applicable)

Name JOMARIE PAYTON Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Entertainment Production Industry Educator

Address P.O. Box 173106 Phone (305) 542-8884

HiALEAH, FL 33017  
City State Zip

E-mail JPGAMAMA@COMCAST.NET

Speaking:  For  Against  Information

Representing Dade County Wave to Support

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

26 March 14  
Meeting Date

Topic Film Florida Film Incentive Bill Number SB 1640  
(if applicable)

Name Alex Zuko Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title ACTOR - ENTERTAINMENT PRODUCTION  
INDUSTRY WORKER

Address 7616 SW 36th Ave Phone 352.222.3960  
Street

Gainesville FL 32608 E-mail ALEXZUKO.ACTOR@  
City State Zip GMAIL.COM

Speaking:  For  Against  Information

Representing Alachua Wave & Support

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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

MARCH 26, 2014

Meeting Date

Topic FILM FLORIDA Bill Number SB 1640

Name KEVIN GADDIE - Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title INDUSTRY ENTERTAINMENT PRODUCTION INDUSTRY WORKER (if applicable)

Address 5901 STARLITE LANE Phone (850) 516-8849

MILTON FL 32570  
City State Zip

E-mail kgaddie24@aol.com

Speaking:  For  Against  Information

Representing OKALOOSA COUNTY Wave & Support

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14  
Meeting Date

Topic Film Incentive - Film Florida Bill Number SB 1640  
*(if applicable)*

Name Stephen Wise Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Producer / Business Owner rep - Kinematic Entertainment

Address 401 N Tarragona Escambia County Phone 850-292-3522  
*Street*

Pensacola FL 32501 E-mail steve@kinematicent.com  
*City State Zip*

Speaking:  For  Against  Information

Representing \_\_\_\_\_ Wave to Support

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic Film Incentive

Bill Number SB 1640  
*(if applicable)*

Name Isidoro Adrian Brunori

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Producer

Address 6810 14<sup>th</sup> St North

Phone 727 748 7143

Street

St Petersburg FL 33702

City

State

Zip

E-mail adrian\_brunori@yahoo

Speaking:  For  Against  Information

Representing Wave and support

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14

Meeting Date

Topic Film/TV Incentive Bill Number SB 1640  
Name ROBERT STERRETT Amendment Barcode \_\_\_\_\_ (if applicable)  
Job Title Location Mgr/Producer/BOD Casperilla (if applicable)  
Address 9422 Azalea Ridge Cir Phone \_\_\_\_\_  
*Street* Tampa FL 33647 E-mail \_\_\_\_\_  
*City* *State* *Zip*

Speaking:  For  Against  Information

Representing Wave and support

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB-1640  
*(if applicable)*

Name Rebecca Taylor

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title CO-OWNER IZON Models & Talent

Address 15 S. Palafox  
*Street*

Phone \_\_\_\_\_

Pensacola, FL 32502  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Wave and support

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

3/26/14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB1640  
*(if applicable)*

Name STEVEN SHEA

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title FILM PRODUCER

Address 4432 LIPTON CT

Phone \_\_\_\_\_

Street

ORLANDO FL 32817

City

State

Zip

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Wave and support

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14

Meeting Date

Topic entertainment industry

Bill Number 1640  
*(if applicable)*

Name Susan Harbin

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Advocate

Address 100 S. Monroe

Phone (770) 546 8845

Street

Tallahassee FL 32301

City

State

Zip

E-mail sharbin@fl-counties.com

Speaking:  For  Against  Information

Representing Florida Association of Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

Meeting Date \_\_\_\_\_

Topic Waiver & Support

Bill Number SB 1040  
*(if applicable)*

Name Lura Reagle - Scarpa

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Executive Producer

Address 233 Monterey Ave

Phone 904-325-5930

*Street*  
St Augustine, FL  
*City State Zip*

E-mail lura@mommycatproductions.com

Speaking:  For  Against  Information

Representing St Johns County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

March 26<sup>th</sup> 2014  
Meeting Date

Topic Film and Television Tax Incentives

Bill Number #HB983/SB1640  
*(if applicable)*

Name Jeffrey Donnelly

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Actor

Address 3600 Titanic Circle

Phone 321.302.2182

*Street*

Indianantic KC 32903

*City*

*State*

*Zip*

E-mail JeffreySDonnelly@gmail.com

Speaking:  For  Against  Information

Representing Waive and Support !!!

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic WAVE & Support

Bill Number SB 1640  
*(if applicable)*

Name Nancy McBride, Reel Casting

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Casting Director

Address \_\_\_\_\_  
*Street*

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Volusia / Brevard Counties

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26

Meeting Date

Topic Waive and support

Bill Number ASB 1640  
(if applicable)

Name George Jacob

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Mommycat Productions

Address Cinimataphis

Phone \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing St Johns County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-26-14

Meeting Date

Topic Film Incentive

Bill Number SB 1640  
(if applicable)

Name Michael Carr

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title President

Address 164 Bay Bridge Dr

Phone 904-501-9568

Street  
St. Augustine, FL 32080  
City State Zip

E-mail mmike@mummycat.com

Speaking:  For  Against  Information

*Waive I support products*  
Mummy Cat Productions St. Johns County  
*GA*

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-26-14

Meeting Date

Topic TV-Film Bill

Bill Number 1640  
*(if applicable)*

Name Pamela Tuscony

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title VP Production - Universal Studios

Address 1000 Universal Studios Plaza - B-22A

Phone 407 224 6449

Street

Orlando

FL  
State

32819  
Zip

E-mail pamela.tuscony@universalorlando.com

Speaking:  For  Against  Information

Representing Universal Studios Florida Production

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/20/11)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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Meeting Date \_\_\_\_\_

Topic Film Incentive Bill Number SB-1640  
(if applicable)

Name CARL KESSER Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title President / Kesser Productions

Address 2140 South Dixie Hwy Phone 305-491-7130  
Street

Miami FL 33133 E-mail CARLKESSER@Comcast  
City State Zip .NET

Speaking:  For  Against  Information

Representing Film Florida

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14  
Meeting Date

Topic Entertainment Industry Incentive

Bill Number HB 983  
*(if applicable)*

Name KUNAL PATEL

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title CEO PHYKEN MEDIA

Address 401 S. ROSALIND AVE STE 201

Phone 407-212-7266

*Street*

ORLANDO FL 32801

*City*

*State*

*Zip*

E-mail KUNAL@PHYKENMEDIA  
.com

Speaking:  For  Against  Information

Representing PHYKEN MEDIA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14  
Meeting Date

Topic HB 983 Entertainment Industry Incentive Bill Number HB 983  
Name Sheila Duffy-Lehman Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title C.O.O. Tropics Survival & Comets Ads (if applicable)

Address 1125 NE 125<sup>th</sup> St. Phone 305-899-7229  
N. MIAMI FL 33161  
City State Zip

Speaking:  For  Against  Information

Representing \_\_\_\_\_

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

Topic Entertainment Industry Incentives Bill Number 983  
(if applicable)

Name Dr Kazi F. Hussain Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Executive Producer

Address 3275 S. John Young Pkwy Suite 224 Phone 407 800 5394  
Street  
Kissimmee FL 34746 E-mail dr.kazi.hussain@  
City State Zip qmail.com

Speaking:  For  Against  Information

Representing TWC Pegasus Film Works  
twc.pegasus.films@qmail.com

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14

Meeting Date

Topic Entertainment Industry Incentive Program

Bill Number 983

(if applicable)

Name Judson French Jr

Amendment Barcode \_\_\_\_\_

(if applicable)

Job Title Director, Research, FSU Film School

Address 690 Osceola Ave

Street

Phone 407-252-4404

Winter Park

City

FL

State

32785

Zip

E-mail judfrench@gmail.com

Speaking:



For



Against



Information

Representing

Digital Media Alliance Florida

Appearing at request of Chair:



Yes



No

Lobbyist registered with Legislature:



Yes



No

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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)

3-26-2014  
Meeting Date

Topic Film & Entertainment

Bill Number SB 1640  
(if applicable)

Name Edward Labrador

Amendment Barcode —  
(if applicable)

Job Title Director, Intergovernmental Affairs

Address 115 S. Andrews Avenue

Phone 954-357-7575

Street

Fort Lauderdale, FL 33301

City

State

Zip

E-mail elabrador@broward.org

Speaking:  For  Against  Information

Representing Broward County

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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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)

3-26-14  
Meeting Date

Topic Entertainment Industry

Bill Number 1640  
*(if applicable)*

Name Will McKinley

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 106 E College Ave

Phone 681-1980

Street

TLH  
City

FL  
State

32301  
Zip

E-mail will@poolemckinley.com

Speaking:  For  Against  Information

Representing Motion Picture Association of America

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/20/11)

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

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

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

---

BILL: SB 1108

INTRODUCER: Community Affairs Committee

SUBJECT: OGSR/Children of Agency Officers and Employees/Identifying Information

DATE: March 25, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Stearns	Yeatman		<b>CA SPB 7042 as introduced</b>
1.	Kim	McVaney	GO	<b>Favorable</b>
2.			RC	

---

**I. Summary:**

SB 1108 continues the public records exemption for the personal identifying information of an agency employee's dependent child covered by an agency insurance plan. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.

**II. Present Situation:**

**Public Access**

Florida has a long history of providing public access to the records of governmental and other public entities. In 1992, Florida voters approved an amendment to the State Constitution which raised the statutory right of access to public records to a constitutional level.

Section 24, Art. I of the State Constitution provides in pertinent part:

(a) Every person has the right to inspect or copy any public records 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

...

(c) This section shall be self-executing. The legislature, however, may provide by general law passed by a two-thirds vote of each house for the exemption of records from the requirements of subsection (a) and the exemption of meetings from the requirements of

subsection (b); provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law. . . . Laws enacted pursuant to this subsection shall contain only exemptions from the requirements of subsections (a) and (b) and provisions governing the enforcement of this section, and shall relate to one subject.

### **Florida's Public Records Law**

Most of Florida's public records law is contained in chapter 119, F.S., and specifies conditions under which the public must be given access to governmental records. Section 119.07(1)(a), F.S., provides that every person who has custody of a public record<sup>1</sup> must permit the record to be inspected and examined by any person, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record. Unless specifically exempted, all agency<sup>2</sup> records are to be available for public inspection.

Section 119.011(12), F.S., defines the term "public record" to include 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 Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are "intended to perpetuate, communicate, or formalize knowledge."<sup>3</sup>

Only the Legislature is authorized to create exemptions to open government requirements.<sup>4</sup> Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>5</sup> A bill enacting an exemption<sup>6</sup> may not contain other substantive provisions although it may contain multiple exemptions relating to one subject.<sup>7</sup>

There is a difference between records that the Legislature exempts from public inspection and those that the Legislature makes confidential and exempt from public inspection. If a record is made confidential, such record may not be released by an agency to anyone other than the person

<sup>1</sup> Section 119.011(12), F.S., defines "public record" to include "all documents, papers, letters, maps, books, tapes, photographs, film, 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."

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

<sup>3</sup> *Shevin v. Byron, Harless, Shafer, Reid, and Assocs., Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>4</sup> FLA. CONST., art. I, s. 24(c).

<sup>5</sup> *Memorial Hospital-West Volusia v. News-Journal Corporation*, 729 So.2d 373, 380 (Fla. 1999); *Halifax Hospital Medical Center v. News-Journal Corporation*, 724 So.2d 567 (Fla. 1999).

<sup>6</sup> Section 119.15, F.S., provides that an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

<sup>7</sup> FLA. CONST., art. I, s. 24(c).



or entities designated in the statute.<sup>8</sup> If a record is simply exempt from mandatory disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>9</sup>

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

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.<sup>10</sup> 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.<sup>11</sup>

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.<sup>12</sup> 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.<sup>13</sup>

The Act also requires specified questions to be considered during the review process.<sup>14</sup>

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.<sup>15</sup> A public necessity statement and a

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<sup>8</sup> 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). See Attorney General Opinion 85-62, August 1, 1985.

<sup>9</sup> *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5<sup>th</sup> DCA), review denied, 589 So.2d. 289 (Fla.1991).

<sup>10</sup> 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.).

<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

<sup>13</sup> *Id.*

<sup>14</sup> 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?

<sup>15</sup> 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.

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 exception<sup>16</sup> to the exemption is created.<sup>17</sup>

### **Exemption of Personal Identifying Information of the Dependent Children of Agency Personnel**

In 2009, the Legislature amended s. 119.071(4)(b), F.S., to create a public records exemption for the personal identifying information of a dependent child of a current or former agency employee covered by an agency health insurance plan. This exemption makes a dependent's personal identifying information exempt from public inspection and copying.

The exemption was created after a court ordered a school board to release information in response to a public records request for employees' health insurance policy information and the name, address, gender, age, title and telephone numbers of dependent children covered by the policy.<sup>18</sup>

This exemption will expire on October 2, 2014, pursuant to the Open Government Sunset Review Act, unless saved by reenactment by the Legislature.

In the summer of 2013, a survey of Florida agencies conducted by Senate and House committee staff found overwhelming support for the public records exemption with a number of responses indicating that the law provided important protection from identity theft for the family members of agency employees.<sup>19</sup>

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

**Section 1** amends s. 119.071, F.S., to remove the scheduled repeal of the public records exemption for the personal identifying information of a dependent child of an agency employee. As a result, the records will remain exempt from disclosure requirements under the public records laws.

**Section 2** provides the bill takes effect on October 1, 2014.

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

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

None.

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<sup>16</sup> An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

<sup>17</sup> 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).

<sup>18</sup> *Chandler v. School Board of Polk County*, Case No. 2008CA-004389 (Fla. 10<sup>th</sup> Jud. Cir. 2008).

<sup>19</sup> On file with the Senate Committee on Community Affairs.

**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 exemption may protect the family members of agency employees from identity theft.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By the Committee on Community Affairs

578-01867-14

20141108\_\_

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., relating  
 4 to an exemption from public record requirements for  
 5 personal identifying information of certain dependent  
 6 children of current or former agency officers or  
 7 employees; making an editorial change; removing the  
 8 scheduled repeal of the exemption; providing an  
 9 effective date.

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

11  
 12  
 13 Section 1. Paragraph (b) of subsection (4) of section  
 14 119.071, Florida Statutes, is amended to read:

15 119.071 General exemptions from inspection or copying of  
 16 public records.—

17 (4) AGENCY PERSONNEL INFORMATION.—

18 (b)1. Medical information pertaining to a prospective,  
 19 current, or former officer or employee of an agency which, if  
 20 disclosed, would identify that officer or employee is exempt  
 21 from s. 119.07(1) and s. 24(a), Art. I of the State  
 22 Constitution. However, such information may be disclosed if the  
 23 person to whom the information pertains or the person's legal  
 24 representative provides written permission or pursuant to court  
 25 order.

26 2.a. Personal identifying information of a dependent child  
 27 of a current or former officer or employee of an agency, which  
 28 dependent child is insured by an agency group insurance plan, is  
 29 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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

578-01867-14

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30 Constitution. For purposes of this exemption, "dependent child"  
 31 has the same meaning as in s. 409.2554.

32 b. This exemption is remedial in nature and applies to such  
 33 personal identifying information held by an agency before, on,  
 34 or after the effective date of this exemption.

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

39 Section 2. This act shall take effect October 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.)

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

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BILL: CS/SB 608

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Hukill

SUBJECT: Monuments on the Capitol Complex

DATE: March 25, 2014

REVISED: 03/26/14

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ryon</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>McKay</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 608 establishes a framework for the placement of monuments on the Capitol Complex that requires the Florida Historical Commission (Commission) to approve the design and placement of Capitol Complex monuments authorized by the Legislature. The bill requires the Department of Management Services (DMS) to submit recommendations to the Commission on the design and placement of authorized monuments, which the Commission must consider.

The bill also requires the DMS, in consultation with the Commission, to set aside an area of the Capitol Complex to be dedicated as a memorial garden for the placement of authorized monuments. The Commission is authorized to direct existing monuments situated on the Capitol Complex to be moved to the memorial garden.

Finally, the bill establishes the POW-MIA Chair of Honor Memorial in the Capitol Complex to honor the sacrifices endured by members of the U.S. Armed Forces who were held as prisoners of war or remain missing in action. The new framework provided in the bill will be applied to determine the appropriate design and placement of the Chair of Honor. The Commission, in carrying out its new duty, is required to consult with the DMS, the Florida Department of Veterans' Affairs, and the Florida chapters of the Rolling Thunder, Inc., when approving the design and placement of the Chair of Honor. The Chair of Honor will be funded by the Florida chapters of the Rolling Thunder, Inc., without appropriation of state funds.

## II. Present Situation:

### Veterans in Florida

Florida has the third largest population of veterans in the nation with over 1.5 million, behind only California and Texas.<sup>1</sup> Florida has more than 113,000 veterans from World War II, the largest number in the nation.<sup>2</sup> In addition, approximately 75 percent of Florida's veteran population is wartime veterans, including more than 231,000 veterans of the Afghanistan and Iraq wars and 498,000 Vietnam-era veterans. There are approximately 187,000 military retirees who call Florida home.<sup>3</sup>

### Military Recognition by Florida Legislature

The Legislature recognizes the military service of Florida residents through the Florida Veterans' Hall of Fame and the Florida Medal of Honor Wall. The Florida Veterans' Hall of Fame recognizes and honors those military veterans who, through their works and lives during or after military service, made a significant contribution to the State of Florida.<sup>4</sup> The Florida Medal of Honor Wall recognizes and honors those who are accredited, or associated by birth, to the State of Florida, who through their conspicuous bravery and gallantry during wartime, and at considerable risk to their own lives, earned the Medal of Honor.<sup>5</sup>

### POW-MIA

More than 83,000 Americans are missing from World War II, the Korean War, the Cold War, the Vietnam War and the 1991 Gulf War.<sup>6</sup> As of October, 2013, there are a total of 1,643 unaccounted for military servicemembers in Southeast Asia since the end of the Vietnam War, with 57 indicating Florida as their home of record.<sup>7</sup> In addition, 32 military servicemembers from Florida have either been accounted for (including POW returnees and POW escapees) or their remains have been recovered and identified since the end of the war.<sup>8</sup>

In accordance with the Missing Service Personnel Act,<sup>9</sup> the current number of personnel missing from operations in Iraq and other current conflicts is seven: two service members from Operation Desert Storm; and one service member and three Department of Defense contractors from Operation Iraqi Freedom; and one service member from Operation Enduring Freedom.<sup>10</sup>

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<sup>1</sup> FDVA, Annual Report Fiscal Year 2012-13, Facts and Figures. p. 4. Available at: <http://floridavets.org/wp-content/uploads/2013/12/Annual-Report-2012-13-Final.pdf>

<sup>2</sup> *Id.*

<sup>3</sup> FDVA, Fast Facts, available at: [http://floridavets.org/?page\\_id=50](http://floridavets.org/?page_id=50).

<sup>4</sup> s. 265.003, F.S.

<sup>5</sup> s. 265.002, F.S.

<sup>6</sup> Department of Defense Prisoner of War, Missing Personnel Office (DPMO), available at: <http://www.dtic.mil/dpmo/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 10 U.S.C. sections 1501-1513, Missing Service Personnel Act (MSPA). The MSPA tasks the DPMO with responsibility for policy, control and oversight of the entire process of investigation and recovery of missing persons (including matters related to search, rescue, escape and evasion) and for coordination between the Department of Defense and other U.S. agencies on all matters concerning missing persons.

<sup>10</sup> DPMO website, available at: <http://www.dtic.mil/dpmo/>

### **Rolling Thunder, Inc.**

Incorporated in 1995, Rolling Thunder, Inc. is a class 501(c)(4) non-profit organization with over 94 chartered chapters throughout the United States and members abroad, including eight chapters in Florida.<sup>11</sup>

The major function of Rolling Thunder, Inc. is to publicize the POW-MIA issue, educate the public that many American Prisoners of War were left behind after all previous wars, and help correct the past and to protect future veterans from being left behind should they become Prisoners Of War-Missing In Action.<sup>12</sup>

### **Managing Agency for the Capitol Center**

Chapter 272, F.S., provides that the Capitol Center<sup>13</sup> is under the general control and supervision of the DMS,<sup>14</sup> which includes the management and maintenance of both the grounds and buildings.<sup>15</sup> Additionally, the DMS has the authority to provide for the establishment of parks, walkways, and parkways on the grounds of the Capitol Center.<sup>16</sup> This responsibility has historically included assistance in establishing and maintaining public memorials throughout the Capitol Center, including project management oversight of the design and construction of memorials.<sup>17</sup> After an entity is assigned a designated space within the Capitol Center for an exhibit, the entity is the manager of the exhibit's content and display, in consultation with the DMS.<sup>18</sup>

The “Capitol Complex” is defined to include:

“that portion of Tallahassee, Leon County, Florida, commonly referred to as the Capitol, the Historic Capitol, the Senate Office Building, the House Office Building, the Knott Building, the Pepper Building, the Holland Building, and the curtilage of each, including the state-owned lands and public streets adjacent thereto within an area bounded by and including Monroe Street, Jefferson Street, Duval Street, and Gaines Street. The term shall also include the State Capital Circle Office Complex located in Leon County, Florida.”<sup>19</sup>

### **Florida Historical Commission**

The Florida Historical Commission (Commission) was established by the Legislature in 2001 to enhance public participation and involvement in the preservation and protection of the state's historic and archaeological sites and properties.<sup>20</sup> The Commission is created within the

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<sup>11</sup> Rolling Thunder, Inc. website, available at: <http://www.rollingthunder1.com/index.html>.

<sup>12</sup> *Id.*

<sup>13</sup> Section 272.12, F.S., describes the Tallahassee area bounded by Martin Luther King, Jr. Boulevard, College Avenue, Franklin Boulevard, East Jefferson Street, and the Seaboard Coastline Railway right-of-way as the Capitol Center.

<sup>14</sup> Section 272.03, F.S.

<sup>15</sup> Section 272.09, F.S.

<sup>16</sup> Section 272.07, F.S.

<sup>17</sup> Department of Management Services, House Bill 731 Agency Analysis (October 25, 2013) (on file with the Senate Committee on Military and Veterans Affairs, Space, and Domestic Security).

<sup>18</sup> *Id.*

<sup>19</sup> Section 281.01, F.S.

<sup>20</sup> Chapter 2001-199, L.O.F.

Department of State and is tasked with advising and assisting the Division of Historical Resources in carrying out its programs, duties and responsibilities.<sup>21</sup>

Seven members of the Commission are appointed by the Governor in consultation with the Secretary of State, two by the President of the Senate and two by the Speaker of the House of Representatives.<sup>22</sup> The Commission must include:

- A licensed architect with expertise in historic preservation and architectural history;
- A professional historian in the field of American history;
- A professional architectural historian;
- An archaeologist specializing in the field of prehistory;
- An archaeologist specializing in the historic period; and
- Representatives of the general public with demonstrated interest in the preservation of Florida's historical and archaeological heritage.<sup>23</sup>

The Commission is statutorily required to provide assistance, advice, and recommendations to the Division of Historical Resources in:

- Establishing priorities for the identification, acquisition, protection, and preservation of historic and archaeological sites and properties;
- Establishing criteria for use in assessing the significance of historic and archaeological sites and properties;
- Evaluating proposals for awards of special category historic preservation grants-in-aid administered by the Division of Historical Resources;
- Providing an active outreach program to encourage public understanding of and involvement in the preservation of the state's historic and archaeological sites and properties;
- Identifying and expressing public goals for historic preservation and gathering public ideas necessary for the formulation of alternative policies; and
- Recommending rules relating to the historic preservation programs administered by the Division of Historical Resources pursuant to ch. 267, F.S.<sup>24</sup>

### III. Effect of Proposed Changes:

**Section 1** creates s. 265.0031, F.S., to establish the POW-MIA Chair of Honor Memorial in the Capitol Complex to honor the sacrifices endured by members of the U.S. Armed Forces who were held as prisoners of war or remain missing in action. The bill directs the Florida Historical Commission to approve the design and placement of the Chair of Honor, taking into consideration recommendations from the DMS, the Florida Department of Veterans' Affairs, and the Florida chapters of the Rolling Thunder, Inc. The Chair of Honor will be funded by the Florida chapters of the Rolling Thunder, Inc., without appropriation of state funds.

**Section 2** creates s. 265.111, F.S., to establish a framework for the placement of monuments on the Capitol Complex. The bill defines the term "monument" to mean a permanent structure such

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<sup>21</sup> Section 267.0612, F.S.

<sup>22</sup> Section 267.0612(1)(a)1., F.S.

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

<sup>24</sup> s. 267.0612(6)(a)-(f), F.S.



as a marker, statue, sculpture, plaque, or other artifice, including living plant material, placed in remembrance or recognition of a significant person or event in Florida history.

The bill prohibits the placement of a monument on the premises of the Capitol Complex unless authorized by general law and unless the design and placement of the monument is approved by the Florida Historical Commission (Commission). The DMS must submit recommendations to the Commission regarding the design and placement of an authorized monument.

The bill also requires the DMS in consultation with the Commission to set aside an area of the Capitol Complex to be dedicated as a memorial garden for authorized monuments to be placed. The Commission is authorized to direct existing monuments situated on the Capitol Complex to be moved to the memorial garden.

**Section 3** amends s. 267.0612, F.S., to add oversight of the design and placement of authorized monuments to the duties and responsibilities of the Commission. In this new role, the Commission must consider recommendations submitted by the DMS regarding the design and placement of monuments.

**Section 4** provides 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.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:**

DMS will incur minimal costs associated with the maintenance of the POW-MIA Chair of Honor monument area.<sup>25</sup> The DMS could incur additional costs in creating the memorial garden and moving existing monuments to the garden pursuant to the direction of the commission.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill grants authority to an advisory commission to direct the actions of a state executive branch agency, inconsistent with the general powers of a commission,<sup>26</sup> and the specific duty of the Florida Historical Commission to serve in an “advisory capacity.”

Senate Bill 250 directs the DMS to designate an area in the Capitol courtyard for a memorial for Henry Morrison Flagler.<sup>27</sup>

**VIII. Statutes Affected:**

This bill creates the following sections of the Florida Statutes: 265.0031 and 265.111.

This bill amends section 267.0612 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 Military and Veterans Affairs, Space, and Domestic Security on March 5, 2014:**

The committee substitute makes the following changes:

- Prohibits monuments from being placed on the premises of the Capitol Complex unless authorized by general law.
- Requires the Commission to approve the design and placement of monuments authorized by the Legislature, taking into consideration recommendations from the DMS.
- Requires the DMS in consultation with the Commission to set aside an area of the Capitol Complex to be dedicated as a memorial garden for authorized monuments to be placed or for existing monuments to be resituated.
- Requires the Commission to approve the design and placement of the POW-MIA Chair of Honor, taking into consideration recommendations of the DMS, the Florida

<sup>25</sup> See *supra* note 16.

<sup>26</sup> Section 20.03(10), F.S.

<sup>27</sup> As of March 21, 2014, SB 250 has been reported favorably by two Senate committees, and is in the Appropriations Committee.

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Department of Veterans' Affairs, and the Florida chapters of the Rolling Thunder,  
Inc.

**B. Amendments:**

None.

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

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By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Hukill

583-02177-14

2014608c1

1 A bill to be entitled  
 2 An act relating to monuments on the Capitol Complex;  
 3 creating s. 265.0031, F.S.; providing legislative  
 4 intent; defining the term "Capitol Complex";  
 5 establishing the POW-MIA Chair of Honor Memorial;  
 6 requiring the Florida chapters of Rolling Thunder,  
 7 Inc., to fund the memorial; subjecting the memorial to  
 8 approval by the Florida Historical Commission;  
 9 requiring the commission to consider recommendations  
 10 of the Department of Veterans' Affairs and the Florida  
 11 chapters of Rolling Thunder, Inc., regarding specific  
 12 aspects of the memorial; creating s. 265.111, F.S.;  
 13 defining the term "monument"; prohibiting the  
 14 construction and placement of a monument on the  
 15 premises of the Capitol Complex unless authorized by  
 16 general law; subjecting the design and placement of a  
 17 monument to the approval of the Florida Historical  
 18 Commission; requiring the Department of Management  
 19 Services to submit recommendations to the Florida  
 20 Historical Commission; requiring the Department of  
 21 Management Services to set aside an area of the  
 22 Capitol Complex for a memorial garden; establishing  
 23 requirements for the memorial garden; amending s.  
 24 267.0612, F.S.; revising the powers and duties of the  
 25 Florida Historical Commission to conform to changes  
 26 made by the act; providing an effective date.

27  
 28 Be It Enacted by the Legislature of the State of Florida:  
 29

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583-02177-14

2014608c1

30 Section 1. Section 265.0031, Florida Statutes, is created  
 31 to read:  
 32 265.0031 POW-MIA Chair of Honor Memorial.—  
 33 (1) It is the intent of the Legislature to recognize and  
 34 honor the sacrifices endured by members of the Armed Forces of  
 35 the United States who were held as prisoners of war or remain  
 36 missing in action.  
 37 (2) For purposes of this section, the term "Capitol  
 38 Complex" has the same meaning as in s. 281.01.  
 39 (3) There is established the POW-MIA Chair of Honor  
 40 Memorial.  
 41 (a) The POW-MIA Chair of Honor Memorial shall be funded by  
 42 the Florida chapters of Rolling Thunder, Inc., without  
 43 appropriation of state funds.  
 44 (b) Pursuant to s. 267.0612(9), the Florida Historical  
 45 Commission shall approve the design and placement of the POW-MIA  
 46 Chair of Honor Memorial in the Capitol Complex. In addition to  
 47 recommendations from the Department of Management Services, the  
 48 commission shall consider recommendations from the Department of  
 49 Veterans' Affairs and the Florida chapters of Rolling Thunder,  
 50 Inc., in determining the appropriate design and placement of the  
 51 memorial.  
 52 Section 2. Section 265.111, Florida Statutes, is created to  
 53 read:  
 54 265.111 Capitol Complex; monuments.—  
 55 (1) For purposes of this section, the term "monument" means  
 56 a permanent structure such as a marker, statue, sculpture,  
 57 plaque, or other artifice, including living plant material,  
 58 placed in remembrance or recognition of a significant person or

Page 2 of 4

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59 event in Florida history.

60 (2) The construction and placement of a monument on the  
 61 premises of the Capitol Complex, as defined in s. 281.01, is  
 62 prohibited unless authorized by general law and unless the  
 63 design and placement of the monument is approved by the Florida  
 64 Historical Commission, pursuant to s. 267.0612(9). The  
 65 Department of Management Services shall submit recommendations  
 66 to the Florida Historical Commission regarding the design and  
 67 placement of an authorized monument.

68 (3) The Department of Management Services, in consultation  
 69 with the Florida Historical Commission, shall set aside an area  
 70 of the Capitol Complex and dedicate a memorial garden on which  
 71 authorized monuments shall be placed. Except for historically  
 72 authenticated monuments from the restoration of the Historic  
 73 Capitol, monuments situated on the Capitol Complex, as of July  
 74 1, 2014, may be moved to the memorial garden as directed by the  
 75 Florida Historical Commission. The memorial garden may not be  
 76 placed in an area within 50 feet of the outer perimeter of the  
 77 grounds surrounding the Historic Capitol.

78 Section 3. Subsection (9) is added to section 267.0612,  
 79 Florida Statutes, to read:

80 267.0612 Florida Historical Commission; creation;  
 81 membership; powers and duties.—In order to enhance public  
 82 participation and involvement in the preservation and protection  
 83 of the state's historic and archaeological sites and properties,  
 84 there is created within the Department of State the "Florida  
 85 Historical Commission." The commission shall serve in an  
 86 advisory capacity to the director of the Division of Historical  
 87 Resources to assist the director in carrying out the purposes,

Page 3 of 4

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

583-02177-14

2014608c1

88 duties, and responsibilities of the division, as specified in  
 89 this chapter.

90 (9) The commission shall approve the design and placement  
 91 of a monument authorized by general law to be placed on the  
 92 premises of the Capitol Complex pursuant to s. 265.111. Prior to  
 93 approval, the commission shall consider the recommendations of  
 94 the Department of Management Services regarding the design and  
 95 placement of such a monument.

96 Section 4. 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:

Appropriations Subcommittee on Finance and Tax, *Chair*  
Appropriations  
Appropriations Subcommittee on Education  
Commerce and Tourism  
Communications, Energy, and Public Utilities  
Community Affairs  
Governmental Oversight and Accountability

## JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

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

March 5, 2014

The Honorable Jeremy Ring  
525 Knott Building  
404 S. Monroe Street  
Tallahassee, FL 32399

Re: Senate Bill 608 – POW-MIA Chair of Honor Memorial

Dear Chairman Ring:

Senate Bill 608, relating to the POW-MIA Chair of Honor Memorial, has been referred to the Governmental Oversight and Accountability Committee. I am requesting your consideration to include SB 608 on your next agenda. Should you need any additional information please do not hesitate to contact my office.

Thank you for your consideration.

Sincerely,

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

Dorothy L. Hukill, District 8

cc: Joe McVaney, Staff Director of the Governmental Oversight and Accountability Committee  
Bethany Jones, Administrative Assistant of the Governmental Oversight and Accountability Committee

## REPLY TO:

209 Dunlawton Avenue, Unit 17, Port Orange, Florida 32127 (386) 304-7630 FAX: (888) 263-3818  
 Ocala City Hall, 110 SE Watula Avenue, 3rd Floor, Ocala, Florida 34471 (352) 694-0160

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

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3-26-14

Meeting Date

Topic Capitol Monuments Bill Number CS/SB 608

Name David Murrell Amendment Barcode \_\_\_\_\_ (if applicable)

Job Title Director of Legislative Services (if applicable)

Address 300 E. Broadway Street Phone 850-222-3329

Tallahassee FL 32327 E-mail davidm@flpba.org  
City State Zip

Speaking:  For  Against  Information

Representing Florida Police Benevolent Association

Appearing at request of Chair:  Yes  No Lobbyist registered with Legislature:  Yes  No

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

This form is part of the public record for this meeting. S-001 (10/20/11)

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

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

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

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**BILL:** CS/SB 864

**INTRODUCER:** Governmental Oversight and Accountability Committee; Senator Hays and others

**SUBJECT:** Instructional Materials for K-12 Public Education

**DATE:** March 27, 2014      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hand</u>	<u>Klebacha</u>	<u>ED</u>	<b>Favorable</b>
2.	<u>Mckay</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 864 maximizes local control by eliminating the state-level instructional materials review, selection and adoption process, and identifying parameters for district school boards to satisfy their constitutional duty and responsibility to select and provide adequate instructional materials for K-12 public school students.

The bill incorporates certain elements of the current state-level review process and creates additional transparency and accountability provisions for district school board adoption of instructional materials, including the ability for public review and comment.

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

**II. Present Situation:**

**Local School District Responsibility for Instructional Materials**

Decisions regarding instructional materials are the duty of the school district.<sup>1</sup> For example:

- The district school board has the duty to provide adequate instructional materials for all students in accordance with law.<sup>2</sup>

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<sup>1</sup> Section 1006.28, F.S.

<sup>2</sup> Section 1006.28(1), F.S.; The term “adequate instructional materials” means “a sufficient number of student or site licenses or sets of materials that are available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware



- The district school superintendent has the duty to recommend plans for improving, providing, distributing, accounting for, and caring for instructional materials.<sup>3</sup>
- The school principal has the duty for management and care of instructional materials, including the proper use of instructional materials.<sup>4</sup>

### State-Level Instructional Materials Adoption Process

The Legislature has historically tasked the Department of Education with conducting a state-level review,<sup>5</sup> selection<sup>6</sup> and adoption<sup>7</sup> process for certain instructional materials<sup>8</sup> to provide school districts with a vetted list for selecting instructional materials.

An overview of the state-level instructional materials adoption process is that:

- The Commissioner of Education must annually determine the areas in which instructional materials, and the number of titles in each area, that will be submitted for adoption.<sup>9</sup>
- The Commissioner must appoint experts in the content areas submitted for adoption, and classroom teachers or district-level content supervisors to review the instructional materials and evaluate the content for alignment with the applicable Florida academics standards.<sup>10</sup>
- The Department shall advertise that it will accept sealed bids from publishers or manufacturers for the furnishing of instructional materials proposed to be adopted.<sup>11</sup>

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or software that serve as the basis for instruction for each student in the core courses of mathematics, language arts, social studies, science, reading, and literature.” *Id.*

<sup>3</sup> Section 1006.28(2)(a), F.S.

<sup>4</sup> Section 1006.28(3), F.S.

<sup>5</sup> Section 1006.29, F.S.

<sup>6</sup> Section 1006.34, F.S.

<sup>7</sup> Section 1006.34, F.S.

<sup>8</sup> Section 1006.29(2), F.S.; The term “instructional materials” means “items having intellectual content that by design serve as a major tool for assisting in the instruction of a subject or course. These items may be available in a bound, unbound, or kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, consumables, learning laboratories, manipulatives, electronic media, and computer courseware or software.” *Id.* “Major tool” is defined by the State Board of Education as material that provides instructional content and student learning activities for each of the: Florida academic standards benchmarks that are in the course descriptions for reading, language arts, literature, math, science, social studies, physical education, health, world languages, visual arts and performing arts; intended outcomes or student performance standards of the Career and Technical Educational Curriculum Frameworks; and course objectives as outlined by the appropriate organizations for Advanced Placement, International Baccalaureate, and Advanced International Certificate of Education. Rule 6A-7.0710(1), F.A.C., incorporating by reference the document titled “Policies and Procedures for the Florida Instructional Materials Adoption 2011,” available at <https://www.flrules.org/Gateway/reference.asp?No=Ref-00244>

<sup>9</sup> Section 1006.29, F.S. The term of adoption of instructional materials is for a 5-year period. Section 1006.36(1), F.S. The Department of Education must annually publish an official schedule of subject areas to be called for adoption for each of the succeeding 2 years, and a tentative schedule for years 3, 4, and 5. Section 1006.36(2), F.S. The schedule is developed to promote balance among the subject areas so that the required expenditure for new instructional materials is approximately the same each year in order to maintain curricular consistency. Section 1006.36(2), F.S.

<sup>10</sup> Section 1006.29(1)(b), F.S. These reviewers are required to go through training, sign an affidavit, and comply with numerous procedures and evaluation requirements. *See ss.* 1006.29(5); 1006.30; 1006.31; and 1006.32, F.S.

<sup>11</sup> Section 1006.33(1)(a), F.S. This procurement process is detailed. *See ss.* 1006.32; 1006.33; and 1006.34, F.S. A refundable cash deposit is required. *See ss.* 1006.34(2)(a); 1006.34(5), F.S.

- The State Board of Education must prescribe the procedures by which the Department of Education will evaluate instructional materials submitted by publishers and manufacturers in each adoption.<sup>12</sup>
- The Department of Education will contract with bidders that are awarded the adoption of any instructional materials.<sup>13</sup>
- The Commissioner may conduct an independent investigation to determine the accuracy of state-adopted instructional materials, and may remove instructional materials from the list of state-adopted materials if the content is in error and the publisher refuses to correct the error.<sup>14</sup>

Upon request for public inspection, sample copies of all instructional materials that are under Department of Education contract are made available by the publisher to the department and district school superintendent of each district school board that adopts the instructional materials from the state list.<sup>15</sup>

### **Instructional Materials Reviewers**

Reviewers must evaluate all materials submitted by publishers in each adoption to consider to what extent the materials:

- Align with the applicable performance standards and developed criteria.<sup>16</sup>
- Reflect appropriate diversity and ensure that materials do not reflect unfairly upon race, color, creed, national origin, ancestry, gender, or occupation.<sup>17</sup>
- Include the Constitution and the Declaration of Independence in appropriate social studies content areas.<sup>18</sup>
- Meet appropriate factors,<sup>19</sup> such as:
  - The age of the student who normally could be expected to have access to the material.
  - The educational purpose served by the material.
  - The degree to which the material would be supplemented and explained by mature classroom instruction as part of a normal classroom instructional program.
  - The degree to which the material represents the broad racial, ethnic, socioeconomic, and cultural diversity of students in the state.
  - The absence of pornography or other material that is otherwise harmful to minors.

### **Instructional Materials Publishers**

Publishers of instructional materials must, in part:

- Submit detailed specifications of the physical characteristics of the instructional materials.<sup>20</sup>

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<sup>12</sup> Section 1006.34(1), F.S.

<sup>13</sup> Section 1006.34(3), F.S. Any publisher or manufacturer to whom a contract is let must give a bond in the amount as required by the Department. *Id.*

<sup>14</sup> Section 1006.35, F.S.

<sup>15</sup> Section 1006.33(4), F.S.

<sup>16</sup> Section 1006.31(2), F.S.

<sup>17</sup> Section 1006.31(2)(d), F.S.

<sup>18</sup> Section 1006.31(2)(d), F.S.

<sup>19</sup> Section 1006.34(2)(b), F.S.

<sup>20</sup> Section 1006.38(3)(a), F.S.

- Provide evidence that the materials address performance standards.<sup>21</sup>
- Furnish the instructional materials at a price which matches the lowest price offered anywhere else in the United States.<sup>22</sup>
- Guarantee that any instructional materials sold in Florida will be equal in quality to the instructional materials sold elsewhere in the United States and will be kept up-to-date.<sup>23</sup>
- Maintain or contract with a depository in the state and keep an inventory sufficient to fill and receive orders.<sup>24</sup>

Publishers and manufacturers of instructional materials are required, for core subject areas, to maintain in the depository:

- For the first 3 years of the contract, an inventory of instructional materials sufficient to receive and fill orders.<sup>25</sup>
- After the 3<sup>rd</sup> contract year, an inventory sufficient to receive and fill orders for replacements.<sup>26</sup>
- Ensure the availability of an inventory sufficient to receive and fill orders for growth, including the opening of a new school.<sup>27</sup>

### **School District Purchase of Instructional Materials**

Each district must purchase current adopted instructional materials to provide each student with a major tool of instruction in core courses of the subject areas of mathematics, language arts, science, social studies, reading, and literature for kindergarten through grade 12.<sup>28</sup> These purchases must be made within three years after the effective date of the adoption cycle.<sup>29</sup>

By the 2015-2016 fiscal year, each district school board shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials included on the state-adopted list,<sup>30</sup> that align with state standards except that:

- Up to 50 percent of the annual allocation may be used for the purchase of instructional materials, including library and reference books and non-print materials, not included on the state-adopted list and for the repair and renovation of textbooks and library books.<sup>31</sup>
- District school boards may use 100 percent of that portion of the annual allocation designated for the purchase of instructional materials for kindergarten, and 75 percent of that portion of the annual allocation designated for the purchase of instructional materials for first grade, to purchase instructional materials not on the state-adopted list.<sup>32</sup>

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<sup>21</sup> Section 1006.38(3)(b), F.S.

<sup>22</sup> Sections 1006.38(5)-(7), F.S.

<sup>23</sup> Section 1006.38(8), F.S.

<sup>24</sup> Sections. 1006.38(11)-(13), F.S.

<sup>25</sup> Section 1006.38(12), F.S.

<sup>26</sup> Section 1006.38(13), F.S.

<sup>27</sup> *Id.*

<sup>28</sup> Sections 1006.37(1); 1006.40(2), F.S.

<sup>29</sup> Section 1006.40(2), F.S.

<sup>30</sup> Section 1006.40(3)(a), F.S.

<sup>31</sup> Section 1006.40(3)(b), F.S.

<sup>32</sup> Section 1006.40(3)(c), F.S.

The funds in which district school boards may use to purchase materials not in the state-adopted list must be used for the purchase of instructional materials or other items having intellectual content which assist in the instruction of a subject or course.<sup>33</sup> These items may be available in bound, unbound, kit, or package form and may consist of hardbacked or softbacked textbooks, electronic content, replacements for items which were part of previously purchased instructional materials, consumables, learning laboratories, manipulatives, electronic media, computer courseware or software, and other commonly accepted instructional tools as prescribed by district school board rule.<sup>34</sup>

### **School District Transition to Instructional Materials in Electronic or Digital Format**

Beginning in the 2015-2016 school year, all adopted instructional materials for students in kindergarten through grade 12 must be provided in an electronic or digital format.<sup>35</sup>

The Department is required to publish minimum and recommended technology requirements that include specifications for hardware, software, networking, security, and guidelines on the number of students per device necessary to ensure that all students can access all electronic and digital instructional materials.<sup>36</sup>

Each school district is required to allow teachers, administrators, students, and parents access to a “local instructional improvement system” that must provide access to electronic and digital instructional materials.<sup>37</sup>

A district school board may designate pilot program schools to implement the transition to instructional materials that are in an electronic or digital format.<sup>38</sup>

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<sup>33</sup> Section 1006.40(4), F.S.

<sup>34</sup> *Id.*

<sup>35</sup> Section 1006.29(3), F.S.

<sup>36</sup> Section 1006.29(4), F.S.

<sup>37</sup> Section 1006.281(2), F.S. The term “local instructional improvement system” means “a system that uses electronic and digital tools that provide teachers, administrators, students, and parents with data and resources to systematically manage continuous instructional improvement. The system supports relevant activities such as instructional planning, information gathering and analysis, rapid-time reporting, decisionmaking on appropriate instructional sequence, and evaluating the effectiveness of instruction.” Section 1006.281(1), F.S. By June 30, 2014, the system shall comply with minimum standards published by the Department of Education. Section 1006.281(3), F.S.

<sup>38</sup> Section 1006.282, F.S. The term “electronic format” means “text-based or image-based content in a form that is produced on, published by, and readable on computers or other digital devices and is an electronic version of a printed book, whether or not any printed equivalent exists. Section 1006.29(3)(a), F.S. The term “digital format” means “text-based or image-based content in a form that provides the student with various interactive functions that can be searched, tagged, distributed, and used for individualized and group learning, which includes multimedia content such as video clips, animations, and virtual reality, and that has the ability to be accessed at any time and anywhere.” Section 1006.29(3)(b), F.S. The terms “electronic format” and “digital format” do not include electronic or computer hardware, even if such hardware is bundled with software or other electronic media, nor does it include equipment or supplies. Section 1006.29(3), F.S.

### Optional School District Instructional Materials Review Program

In 2013, the Legislature authorized a school board, or consortium of school districts, to implement their own instructional materials program.<sup>39</sup> For a school district that chooses this program, the state-level program is not used.<sup>40</sup> Rather, the district school board is required to adopt rules that include:

- The review and purchase process.<sup>41</sup>
- Identification of a review cycle for instructional materials.<sup>42</sup>
- The process by which instructional materials will be purchased, including advertising, bidding, and purchasing requirements.<sup>43</sup>
- Similar requirements to the state-level process for instructional materials reviewers and publishers.<sup>44</sup>

The school board may assess and collect fees from publishers participating in the process.<sup>45</sup> The fees may not exceed the actual cost of the review process, or \$3,500 per submission, whichever is lower.<sup>46</sup> The fees are used to cover:

- The actual cost of substitute teachers for each workday that a school district's instructional staff is absent from his assigned duties for the purpose of rendering service as an instructional materials reviewer.<sup>47</sup>
- A stipend, and reimbursement for travel expenses and per diem in accordance with s. 112.061, for each reviewer for service in meetings.<sup>48</sup>

A district school board or a consortium of school districts which implements an instructional materials review program<sup>49</sup> shall use at least 50 percent of the annual allocation for the purchase of digital or electronic instructional materials that align with state standards.<sup>50</sup>

In its first year of implementation, no districts or consortiums have availed themselves to this statutorily authorized option for utilizing local control.<sup>51</sup>

<sup>39</sup> See CS/CS/SB 1388; s. 1006.283(1), F.S. The district instructional materials program includes the review, approval, adoption, and purchase of instructional materials. *Id.*

<sup>40</sup> Section 1006.283, F.S.

<sup>41</sup> Section 1006.283(2)(a), F.S.

<sup>42</sup> Section 1006.283(2)(b), F.S. The review cycle chosen by the school district might be longer or shorter than the current five-year state review cycle. Section 1006.36(1), F.S. For example, s. 1006.283(1), F.S., states that instructional materials used by the district are required to comply with current standards, and State Board of Education rule only requires the standards to be reviewed every twelve years. Rule 6A-1.09401(2), F.A.C. Otherwise, the materials purchased must be "current." See ss. 1006.37(1), 1006.40(2), F.S.

<sup>43</sup> Section 1006.283(2)(i), F.S.

<sup>44</sup> Sections. 1006.283(1)(c)-(e), (g), (h); and (4)-(6) F.S.

<sup>45</sup> Section 1006.283(3)(a), F.S.

<sup>46</sup> *Id.*

<sup>47</sup> Section 1006.283(3)(b), F.S.

<sup>48</sup> *Id.*

<sup>49</sup> Section 1006.40(3)(a), F.S. The district or consortium instructional materials review program is contained in s. 1006.283, F.S.

<sup>50</sup> Section 1006.40(3)(a), F.S. Otherwise, the school district does not have to comply with s. 1006.40, F.S. *Id.*

<sup>51</sup> Email from Florida Department of Education (March 7, 2014) (on file with the Senate Committee on Education).

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

CS/SB 864 maximizes local control by eliminating the state-level instructional materials review, selection and adoption process, and identifying parameters for district school boards to satisfy their constitutional duty and responsibility to select and provide adequate instructional materials for K-12 public school students.

#### **Local School District Responsibility for Instructional Materials**

The bill states that district school boards have the constitutional duty and responsibility to select and provide adequate instructional materials for K-12 public school students.

#### **State-Level Instructional Materials Adoption Process**

The bill eliminates the state-level review, selection and adoption process for instructional materials conducted by the Florida Department of Education.

#### **School District Instructional Materials Program**

The bill expands the optional district school board instructional materials review program into a program that is to be used for all school districts. In doing so, the bill incorporates several accountability and transparency requirements that previously existed in the state-level process, and includes new responsibilities. For example, the bill requires the district school board to adopt rules that must include the:

- Criteria for the review and recommendation of instructional materials, including a thorough review of curriculum content.
- Establishment and composition of the local instructional materials review committee.
- Identification, by subject area, of a review cycle for instructional materials.
- Process by which instructional materials are adopted by the district school board, including a process for the district school board to determine and certify the accuracy of the district adopted instructional materials. As part of the process, the district school board must:
  - Post recommended instructional materials in a read-only format on the district website for the public to review. The public may submit comments electronically for review by the district school board members and superintendent.
  - Conduct an open, noticed public hearing for the district school board to receive public comment and review the recommended instructional materials.
  - Hold an open, noticed public meeting for the district school board to approve an annual instructional materials plan, including the adoption of instructional materials.
  - Notice the public meeting and public hearing, which must specifically state which instructional materials are being reviewed and the manner in which the public can access the instructional materials for review. The public meeting must be held on a different date than the public hearing.
  - Establish a process by which the public can appeal the district school board's adoption of specific instructional materials. The district school board must convene a public hearing

and re-evaluate the challenged instructional materials to determine suitability for use in accordance with the specified evaluation criteria.<sup>52</sup>

The bill retains the ability of public inspection by requiring the school district to make sample copies of all instructional materials that have been adopted by the district school board available upon public request.

The bill gives the district school board the same duties the Commissioner of Education currently has to conduct an independent investigation to determine the accuracy of adopted instructional materials, and may remove instructional materials from the list of adopted materials if the content is in error and the publisher refuses to correct the error.

### **Instructional Materials Reviewers**

The bill requires district school boards to establish a local instructional materials review committee to review and recommend instructional materials to the district school board for final adoption. Districts may combine their committees.

Each district review committee consists of the following members:

- Each district school board member appoints one person who has subject area expertise in science, mathematics, language arts social studies or career or technical studies and who is not employed by the district;
- The superintendent appoints a number of classroom teachers equal to the number of school board members that are representative of the subject areas and grade levels of the instructional materials considered for adoption; and
- The district school board and the superintendent each appoint at least one parent of a student currently enrolled in a district public school.

The bill requires district reviewers to comply with the same duties that currently apply to state-level reviewers, including making an affidavit attesting to their independence from bias and a conflict of interest.

The bill requires DOE to publish annually a 5-year schedule of subject areas to be reviewed by the district school boards.

### **Instructional Materials Publishers**

The bill requires instructional materials publishers to comply with the same duties and requirements for the district process that currently apply to the state-level process.

The bill eliminates the requirement that district school superintendents purchase instructional materials exclusively from the publisher's book depository, and authorizes purchases from any vendor selling the instructional materials.<sup>53</sup>

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<sup>52</sup> Suitability for use includes the accuracy and appropriateness of the materials pursuant to the instructional materials review committee evaluation criteria per s. 1006.31, F.S.

<sup>53</sup> Through this elimination, district school boards may not individually retain the economy of scale that might be available via purchases through the Department of Education contracts. However, via the district school board instructional materials program, current law authorizes school districts to leverage their resources and create their own economy of scale by

In conjunction with the elimination of the state-level adoption cycle, the bill requires the publisher to maintain in the depository an inventory of instructional materials sufficient to receive and fill orders for core subject areas.

### **School District Purchase of Instructional Materials**

The bill retains the requirement for the district school board to purchase current instructional materials to provide each student in kindergarten through grade 12 with a major tool of instruction in core courses. However, since the state-level adoption process (including the adoption cycle) is being eliminated, the bill deletes the requirement that the purchase must be made within three years after the effective date of the adoption cycle.

The bill retains the requirement that the district school board use at least 50 percent of the annual allocation for the purchase of district-adopted digital (no longer electronic) instructional materials. However, this requirement must be met beginning in FY 2014-15 rather than in 2015-16. The bill deletes superfluous provisions relating to purchases of instructional materials not on the state-adopted list and the provisions relating to use of the kindergarten and first grade allocation for instructional materials not on the state-adopted list.

### **School District Transition to Instructional Materials in a Digital Format**

The bill deletes the current requirement that instructional materials be provided in an “electronic format,” but keeps the current requirement that instructional materials be provided in a “digital format.”<sup>54</sup>

The district school board must adopt rules that identify the process by which the school district will notify parents of their ability to access their children’s instructional materials through the district’s local instructional improvement system. The rules must also identify the process by which the school district will encourage parents to access the system. The notification must be displayed prominently on the district school board’s website and provided annually to all parents of enrolled students in a written format.

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

## **IV. Constitutional Issues:**

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

None.

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purchasing instructional materials through a consortium of school districts. Section 1006.283(1), F.A. Additionally, the bill authorizes school districts to purchase instructional materials from any vendor – not just the publisher’s depository. This flexibility may provide more competition, and thus better deals, for the school district.

<sup>54</sup> The bill does not substantively change the current definition of “digital format” or the Department’s requirement to publish minimum technology requirements. *See* s. 1006.29(3)(b) and (4), F.S.



**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:**

Instructional materials publishers and manufacturers have raised concerns about potential copyright or contract issues with the requirement that district school boards post instructional materials being considered for adoption in a read-only format on the district's website for public review.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 1006.28, 1006.283, 1006.30, 1006.31, 1006.32, 1006.35, 1006.37, 1006.38, 1006.40, 1006.41, 1006.282, and 1010.82.

This bill repeals the following sections of the Florida Statutes: 1006.29, 1006.33, 1006.34, and 1006.36.

**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 26, 2014:**

The CS makes the following modifications:

- Requires review committee members appointed by the district school board members to have subject area expertise.
- Resolves potential copyright concerns by revising the means by which instructional materials considered for adoption may be viewed by the public.
- Requires the instructional material reviewers to determine additional factors – that the instructional materials must be balanced, noninflammatory, and fact-based (in addition to current law of accurate, objective, current, and suited to the needs of the students).
- Eliminates potential conflict-of-interest by removing the ability for a district school board to request assistance from the publisher’s depository to recommend instructional materials for the district school board to review, approve and adopt.
- Moves up the requirement for district school board use at least 50% of the annual allocation for the purchase of digital instructional materials, from the 2015-2016 fiscal year, to the 2014-2015 fiscal year.
- Provides consistency for the various district school board adoptions by requiring the Department of Education (DOE) to annually publish a 5-year schedule of subject areas to be reviewed by the district school boards, starting July 1, 2014.
- Provides that the ability to ensure instructional materials are kept revised, free from all errors, and up-to-date is the responsibility of district school boards, except that DOE retains this responsibility for its existing contracts.

- B. **Amendments:**

None.



840528

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2014	.	
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The Committee on Governmental Oversight and Accountability  
(Hays) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Subsection (1) of section 1006.28, Florida  
Statutes, is amended to read:

1006.28 Duties of district school board, district school  
superintendent; and school principal regarding K-12  
instructional materials.—

(1) DISTRICT SCHOOL BOARD.—The district school board has



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11 the constitutional duty and responsibility to select and provide  
12 adequate instructional materials for all students in accordance  
13 with the requirements of this part. The term "adequate  
14 instructional materials" means a sufficient number of student or  
15 site licenses or sets of materials that are available in bound,  
16 unbound, kit, or package form and may consist of hardbacked or  
17 softbacked textbooks, electronic content, consumables, learning  
18 laboratories, manipulatives, and electronic media, and computer  
19 courseware, ~~or~~ software, or applications that serve as the basis  
20 for instruction for each student in the core courses of  
21 mathematics, language arts, social studies, science, reading,  
22 and literature. The district school board has the following  
23 specific duties and responsibilities:

24 (a) *Courses of study; adoption.*—Adopt courses of study for  
25 use in the schools of the district.

26 (b) *Instructional materials.*—Provide for proper  
27 requisitioning, distribution, accounting, storage, care, and use  
28 of all instructional materials and furnish such other  
29 instructional materials as may be needed. The district school  
30 board shall ensure that instructional materials used in the  
31 district are consistent with the district goals and objectives  
32 and the course descriptions established in rule of the State  
33 Board of Education, as well as with the ~~state and district~~  
34 performance standards provided for in s. 1001.03(1).

35 (c) *Other instructional materials.*—Provide such other  
36 teaching accessories and aids as are needed for the school  
37 district's educational program.

38 (d) *School library media services; establishment and*  
39 *maintenance.*—Establish and maintain a program of school library



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40 media services for all public schools in the district, including  
41 school library media centers, or school library media centers  
42 open to the public, and, in addition such traveling or  
43 circulating libraries as may be needed for the proper operation  
44 of the district school system.

45 Section 2. Subsections (1) and (2) of section 1006.283,  
46 Florida Statutes, are amended, and subsections (7), (8), and (9)  
47 are added to that section, to read:

48 1006.283 District school board instructional materials  
49 review process.—

50 (1) A district school board or consortium of school  
51 districts ~~shall may~~ implement an instructional materials program  
52 that includes the review, approval, adoption, and purchase of  
53 instructional materials. ~~Beginning in the 2013-2014 school year,~~  
54 The district school superintendent shall certify to the  
55 department by March 31 of each year that all instructional  
56 materials for core courses used by the district are aligned with  
57 applicable state standards. ~~Included in the certification shall~~  
58 ~~be~~ A list of the core instructional materials that will be used  
59 or purchased for use by the school district shall be included in  
60 the certification.

61 (2) The district school board shall adopt rules  
62 implementing the district's instructional materials program  
63 which must include, but need not be limited to:

64 (a) Criteria for the review and recommendation of  
65 instructional materials, including a thorough review of  
66 curriculum content. The district shall establish a local  
67 instructional materials review committee to review and recommend  
68 instructional materials to the district school board for final



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69 adoption. A district may enter into an agreement with other  
70 districts to combine their local instructional materials review  
71 committees into one super committee. A local instructional  
72 materials review committee shall consist of the following  
73 members, appointed as follows:

74 1. Each district school board member shall appoint one  
75 person who has subject area expertise in science, mathematics,  
76 language arts, social studies, or career or technical studies  
77 and who is not employed by the district.

78 2. The superintendent shall appoint a number of classroom  
79 teachers equal to the number of district school board members.  
80 The selection of classroom teachers shall be representative of  
81 the subject areas and grade levels of the instructional  
82 materials being considered for adoption.

83 3. The district school board and the superintendent shall  
84 each appoint at least one parent of a student who is currently  
85 enrolled in a public school in the district ~~Its review and~~  
86 ~~purchase process.~~

87 (b) Identification, by subject area, of a review cycle for  
88 instructional materials.

89 (c) The duties and qualifications of the instructional  
90 materials reviewers.

91 (d) The requirements for an affidavit made by each a  
92 district instructional materials reviewer which substantially  
93 meets ~~includes~~ the requirements of s. 1006.30.

94 (e) Compliance with s. 1006.32, relating to prohibited  
95 acts.

96 (f) A process for the district school board to determine  
97 and certify ~~that certifies~~ the accuracy of district-adopted



98 instructional materials.

99 (g) The incorporation of applicable requirements of s.  
100 1006.31, which relates to the duties of instructional materials  
101 reviewers.

102 (h) The incorporation of applicable requirements of s.  
103 1006.38, relating to the duties, responsibilities, and  
104 requirements of publishers of instructional materials.

105 (i) The process by which instructional materials are  
106 adopted by the district school board. The process must allow the  
107 public, within 15 days after district school board adoption, to  
108 appeal the district school board's adoption of specific  
109 instructional materials. Upon appeal, the district school board  
110 shall convene a public hearing to reevaluate the challenged  
111 instructional materials and determine suitability for use.  
112 Suitability includes the accuracy and appropriateness of the  
113 materials according to the evaluation criteria specified in s.  
114 1006.31. The district school board's decision to adopt  
115 instructional materials is final unless a public appeal is  
116 timely filed. If a public appeal is timely filed, the district  
117 school board's decision after convening the public hearing is  
118 final and not subject to further review.

119 1. The district school board shall establish a process to  
120 allow student editions of instructional materials considered for  
121 adoption to be accessed and viewed online by the public at least  
122 20 calendar days before the public hearing and public meeting as  
123 specified in this paragraph. This process must include  
124 reasonable safeguards against the unauthorized use,  
125 reproduction, and distribution of instructional materials  
126 considered for adoption.



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127       2. The district school board shall conduct an open, noticed  
128 district school board hearing to receive public comment on and  
129 review the recommended instructional materials.

130       3. The district school board shall hold an open, noticed  
131 public meeting to approve an annual instructional materials  
132 plan, including the adoption of instructional materials. This  
133 public meeting must be held on a different date than the public  
134 hearing.

135       4. The notices for the public hearing and the public  
136 meeting must specifically state which instructional materials  
137 are being reviewed and the manner in which the instructional  
138 materials can be accessed for public review.

139       (j)-~~i~~ The process by which instructional materials will be  
140 purchased, including advertising, bidding, and purchasing  
141 requirements.

142       (k) The process by which the school district will notify  
143 parents of their ability to access their children's textbooks  
144 and instructional materials through the district's local  
145 instructional improvement system and by which the school  
146 district will encourage parents to access the system. This  
147 notification must be displayed prominently on the district  
148 school board's website and provided annually in a written format  
149 to all parents of enrolled students.

150       (7) Beginning in the 2015-2016 academic year, all adopted  
151 instructional materials for students in kindergarten through  
152 grade 12 must be available in a digital format. As used in this  
153 subsection, the term "digital format" means text-based or image-  
154 based content in a form that provides the student with various  
155 interactive functions; that can be searched, tagged,





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156 distributed, and used for individualized and group learning;  
157 that includes multimedia content such as video clips, animation,  
158 and virtual reality; and that can be accessed at any time and  
159 anywhere. The term does not include electronic or computer  
160 hardware even if such hardware is bundled with software or other  
161 electronic media, nor does the term include equipment or  
162 supplies.

163 (8) (a) The department shall publish recommended minimum  
164 technology requirements that include guidelines on the number of  
165 students per device necessary to ensure that students can access  
166 all instructional materials in digital format and specifications  
167 for hardware, software, networking, and security.

168 (b) The department shall publish annually an official 5-  
169 year schedule of subject areas to be reviewed by local school  
170 districts for each of the succeeding 5 years, to begin July 1,  
171 2014.

172 (9) The school district shall make available upon request  
173 for public inspection sample copies of all instructional  
174 materials that have been adopted by the district school board.

175 Section 3. Section 1006.29, Florida Statutes, is repealed.

176 Section 4. Section 1006.30, Florida Statutes, is amended to  
177 read:

178 1006.30 Affidavit of district ~~state~~ instructional materials  
179 reviewers.—Before transacting any business, each district ~~state~~  
180 instructional materials reviewer shall make an affidavit, to be  
181 filed with the district school board ~~department~~, that:

182 (1) The reviewer will faithfully discharge the duties  
183 imposed upon him or her.

184 (2) The reviewer does not have an ~~has no~~ interest in any



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185 publishing or manufacturing organization that produces or sells  
186 instructional materials.

187 (3) The reviewer is not ~~in no way~~ connected with the  
188 distribution of the instructional materials.

189 (4) The reviewer does not have any direct or indirect  
190 pecuniary interest in the business or profits of any person  
191 engaged in manufacturing, publishing, or selling instructional  
192 materials designed for use in the public schools.

193 (5) The reviewer will not accept any emolument or promise  
194 of future reward of any kind from any publisher or manufacturer  
195 of instructional materials or his or her agent or anyone  
196 interested in, or intending to bias his or her judgment in any  
197 way in, the selection of any materials to be adopted.

198 (6) The reviewer understands that it is unlawful to discuss  
199 matters relating to instructional materials submitted for  
200 adoption with any agent of a publisher or manufacturer of  
201 instructional materials, either directly or indirectly, except  
202 during the period when the publisher or manufacturer is  
203 providing a presentation for the reviewer during his or her  
204 review of the instructional materials submitted for adoption.

205 Section 5. Section 1006.31, Florida Statutes, is amended to  
206 read:

207 1006.31 Duties of the ~~Department of Education and~~ school  
208 district instructional materials reviewer.—The duties of the  
209 instructional materials reviewer are:

210 (1) PROCEDURES.—To adhere to procedures prescribed by ~~the~~  
211 ~~department or~~ the district for evaluating instructional  
212 materials submitted by publishers and manufacturers in each  
213 adoption. ~~This section applies to both the state and district~~



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214 ~~approval processes.~~

215 (2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To evaluate  
216 carefully all instructional materials submitted, in order to  
217 ascertain which instructional materials, if any, submitted for  
218 consideration implement the selection criteria developed by the  
219 district department and those curricular objectives included  
220 within applicable performance standards provided for in s.  
221 1001.03(1).

222 (a) When recommending instructional materials for use in  
223 the schools, each reviewer shall include only instructional  
224 materials that accurately portray the ethnic, socioeconomic,  
225 cultural, and racial diversity of our society, including men and  
226 women in professional, career, and executive roles, and the role  
227 and contributions of the entrepreneur and labor in the total  
228 development of this state and the United States.

229 (b) When recommending instructional materials for use in  
230 the schools, each reviewer shall include only materials that  
231 accurately portray, whenever appropriate, humankind's place in  
232 ecological systems, including the necessity for the protection  
233 of our environment and conservation of our natural resources and  
234 the effects on the human system of the use of tobacco, alcohol,  
235 controlled substances, and other dangerous substances.

236 (c) When recommending instructional materials for use in  
237 the schools, each reviewer shall require such materials as he or  
238 she deems necessary and proper to encourage thrift, fire  
239 prevention, and humane treatment of people and animals.

240 (d) When recommending instructional materials for use in  
241 the schools, each reviewer shall require, when appropriate to  
242 the comprehension of students, that materials for social



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243 science, history, or civics classes contain the Declaration of  
244 Independence and the Constitution of the United States. A  
245 reviewer may not recommend any instructional materials for use  
246 in the schools which contain any matter reflecting unfairly upon  
247 persons because of their race, color, creed, national origin,  
248 ancestry, gender, or occupation.

249 (e) Any instructional materials ~~material~~ recommended by  
250 each reviewer for use in the schools must ~~shall~~ be, to the  
251 satisfaction of each reviewer, accurate, objective, balanced,  
252 noninflammatory, fact-based, and current, and suited to the  
253 needs and comprehension of students at their respective grade  
254 levels. A reviewer ~~Reviewers~~ shall consider for adoption  
255 materials developed for academically talented students such as  
256 those enrolled in advanced placement courses.

257 (f) Any instructional materials containing pornography or  
258 which are otherwise prohibited under s. 847.012 may not be used  
259 or made available within a public school. When selecting  
260 instructional materials, library media, and other reading  
261 materials used in the public school system, each reviewer shall  
262 use, at a minimum, the following standards to determine the  
263 propriety of the material:

264 1. The age of the students who normally could be expected  
265 to have access to the material.

266 2. The educational purpose to be served by the material. In  
267 considering instructional materials for classroom use, priority  
268 shall be given to the selection of materials that encompass the  
269 performance standards provided for in s. 1001.03(1) and that  
270 include the instructional objectives contained in the course  
271 description approved by rule of the State Board of Education.



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272           3. The degree to which the material would be supplemented  
273 and explained by mature classroom instruction as part of a  
274 normal classroom instructional program.

275           4. The consideration of the broad racial, ethnic,  
276 socioeconomic, and cultural diversity of the students of this  
277 state.

278           (3) REPORT OF REVIEWERS.—After a thorough study of all data  
279 submitted on each instructional material, to submit an  
280 electronic report to the district school board ~~department~~. The  
281 report shall be made public and must include responses to each  
282 section of the report format prescribed by the district school  
283 board ~~department~~.

284           Section 6. Section 1006.32, Florida Statutes, is amended to  
285 read:

286           1006.32 Prohibited acts.—

287           (1) A publisher or manufacturer of instructional material,  
288 or any representative thereof, may not offer to give any  
289 emolument, money, or other valuable thing, or any inducement, to  
290 a any district school board official or an ~~state~~ instructional  
291 materials reviewer to directly or indirectly introduce,  
292 recommend, vote for, or otherwise influence the adoption or  
293 purchase of any instructional materials.

294           (2) A district school board official or an ~~a state~~  
295 instructional materials reviewer may not solicit or accept any  
296 emolument, money, or other valuable thing, or any inducement, to  
297 directly or indirectly introduce, recommend, vote for, or  
298 otherwise influence the adoption or purchase of any  
299 instructional material.

300           (3) A district school board or publisher may not



301 participate in a pilot program of materials being considered for  
302 adoption during the 18-month period before the official adoption  
303 of the materials by the commissioner. Any pilot program during  
304 the first 2 years of the adoption period must have the prior  
305 approval of the commissioner.

306 (4) Any publisher or manufacturer of instructional  
307 materials or representative thereof or any district school board  
308 official or ~~state~~ instructional materials reviewer who violates  
309 ~~any provision of~~ this section commits a misdemeanor of the  
310 second degree, punishable as provided in s. 775.082 or s.  
311 775.083. A Any representative of a publisher or manufacturer who  
312 violates any provision of this section, in addition to any other  
313 penalty, shall be banned from practicing business in the state  
314 for a period of 1 calendar year.

315 (5) This section does not prohibit any publisher,  
316 manufacturer, or agent from supplying, for purposes of  
317 examination, necessary sample copies of instructional materials  
318 to any district school board official or ~~state~~ instructional  
319 materials reviewer.

320 (6) This section does not prohibit a district school board  
321 official or ~~state~~ instructional materials reviewer from  
322 receiving sample copies of instructional materials.

323 (7) This section does not prohibit or restrict a district  
324 school board official from receiving royalties or other  
325 compensation, other than compensation paid to him or her as  
326 commission for negotiating sales to district school boards, from  
327 the publisher or manufacturer of instructional materials  
328 written, designed, or prepared by such district school board  
329 official, and adopted by the commissioner or purchased by any



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330 district school board. A ~~No~~ district school board official may  
331 not ~~shall be allowed to~~ receive royalties on any materials not  
332 on the district-adopted ~~state-adopted~~ list purchased for use by  
333 his or her district school board.

334 (8) A district school superintendent, district school board  
335 member, teacher, or other person officially connected with the  
336 government or direction of public schools may not receive during  
337 the months actually engaged in performing duties under his or  
338 her contract any private fee, gratuity, donation, or  
339 compensation, in any manner whatsoever, for promoting the sale  
340 or exchange of any instructional material, map, or chart in any  
341 public school, or be an agent for the sale of, or the publisher  
342 of, any instructional material or reference work, or have a  
343 direct or indirect pecuniary interest in the introduction of any  
344 such instructional material, and any such agency or interest  
345 shall disqualify any person so acting or interested from holding  
346 any district school board employment whatsoever, and the person  
347 commits a misdemeanor of the second degree, punishable as  
348 provided in s. 775.082 or s. 775.083; however, this subsection  
349 does not prevent the adoption of any instructional material  
350 written in whole or in part by a Florida author.

351 Section 7. Section 1006.33, Florida Statutes, is repealed.

352 Section 8. Section 1006.34, Florida Statutes, is repealed.

353 Section 9. Section 1006.35, Florida Statutes, is amended to  
354 read:

355 1006.35 Accuracy of instructional materials.—

356 (1) In addition to relying on statements of publishers or  
357 manufacturers of instructional materials, the district school  
358 board ~~commissioner~~ may conduct or cause to be conducted an



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359 independent investigation to determine the accuracy of district-  
360 adopted ~~state-adopted~~ instructional materials.

361 (2) When errors in district-adopted ~~state-adopted~~ materials  
362 are confirmed, the publisher of the materials shall provide to  
363 each district school board that ~~has~~ purchased the materials the  
364 corrections in a format approved by the investigating district  
365 school board ~~department~~.

366 (3) The district school board ~~commissioner~~ may remove  
367 materials from the list of district-adopted ~~state-adopted~~  
368 materials if it ~~he or she~~ finds that the content is in error and  
369 the publisher refuses to correct the error when notified by the  
370 district school board ~~department~~.

371 (4) The district school board ~~commissioner~~ may remove  
372 materials from the list of district-adopted ~~state-adopted~~  
373 materials at the request of the publisher if, in the district  
374 school board's ~~his or her~~ opinion, there is no material impact  
375 on the district's and the state's education goals.

376 Section 10. Section 1006.36, Florida Statutes, is repealed.

377 Section 11. Section 1006.37, Florida Statutes, is amended  
378 to read:

379 1006.37 Requisition of instructional materials from  
380 publisher's depository.-

381 (1) The district school superintendent may ~~shall~~  
382 requisition adopted instructional materials from the depository  
383 of the publisher with whom a contract has been made or any other  
384 vendor selling the adopted instructional materials. ~~However, the~~  
385 ~~superintendent shall requisition current instructional materials~~  
386 ~~to provide each student with a textbook or other materials as a~~  
387 ~~major tool of instruction in core courses of the subject areas~~





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388 ~~specified in s. 1006.40(2). These materials must be~~  
389 ~~requisitioned within the first 3 years of the adoption cycle,~~  
390 ~~except for instructional materials related to growth of student~~  
391 ~~membership or instructional materials maintenance needs. The~~  
392 ~~superintendent may requisition instructional materials in the~~  
393 ~~core subject areas specified in s. 1006.40(2) that are related~~  
394 ~~to growth of student membership or instructional materials~~  
395 ~~maintenance needs during the 3rd, 4th, 5th, and 6th years of the~~  
396 ~~original contract period.~~

397 (2) The district school superintendent shall verify that  
398 the requisition is complete and accurate and order the  
399 depository or vendor selling the adopted instructional materials  
400 to forward to him or her the adopted instructional materials  
401 shown by the requisition. The depository or vendor shall prepare  
402 an invoice of the materials shipped, including shipping charges,  
403 and mail it to the superintendent to whom the shipment is being  
404 made. The superintendent shall pay the depository or vendor  
405 within 60 days after receipt of the requisitioned materials from  
406 the appropriation for the purchase of adopted instructional  
407 materials.

408 (3) A district school board or a consortium of school  
409 districts may ~~which implements an instructional materials~~  
410 ~~program pursuant to s. 1006.283 is not required to requisition~~  
411 ~~instructional materials from the publisher's depository or any~~  
412 ~~other vendor selling the adopted instructional materials.~~

413 Section 12. Section 1006.38, Florida Statutes, is amended  
414 to read:

415 1006.38 Duties, responsibilities, and requirements of  
416 instructional materials publishers and manufacturers. ~~This~~



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417 ~~section applies to both the state and district approval~~  
418 ~~processes.~~ Publishers and manufacturers of instructional  
419 materials, or their representatives, shall:  
420       (1) Comply with all provisions of this part.  
421       (2) Electronically deliver fully developed sample copies of  
422 all instructional materials upon which bids are based to the  
423 district department pursuant to procedures adopted by the  
424 district school board ~~State Board of Education.~~  
425       (3) Submit, at a time designated by the district school  
426 board ~~in s. 1006.33~~, the following information:  
427       (a) Detailed specifications of the physical characteristics  
428 of the instructional materials, including any software or  
429 technological tools required for use by the district, school,  
430 teachers, or students. The publisher or manufacturer shall  
431 comply with these specifications if the instructional materials  
432 are adopted and purchased in completed form.  
433       (b) Evidence that the publisher or manufacturer has  
434 provided materials that address the performance standards  
435 provided for in s. 1001.03(1) and that can be accessed through  
436 the district's local instructional improvement system and a  
437 variety of electronic, digital, and mobile devices.  
438       (c) Evidence that the instructional materials include  
439 specific references to statewide standards in the teacher's  
440 manual and incorporate such standards into chapter tests or the  
441 assessments.  
442       (4) Make available for purchase by any district school  
443 board any diagnostic, criterion-referenced, or other tests that  
444 they may develop.  
445       (5) Furnish the instructional materials offered by them at



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446 a price in the state which, including all costs of electronic  
447 transmission, may not exceed the lowest price at which they  
448 offer such instructional materials for adoption or sale to any  
449 state or school district in the United States.

450 (6) Reduce automatically the price of the instructional  
451 materials to any district school board to the extent that  
452 reductions are made elsewhere in the United States.

453 (7) Provide any instructional materials free of charge in  
454 the state to the same extent as they are provided free of charge  
455 to any state or school district in the United States.

456 (8) Guarantee that all copies of any instructional  
457 materials sold in this state will be at least equal in quality  
458 to the copies of such instructional materials that are sold  
459 elsewhere in the United States and will be kept revised, free  
460 from all errors, and up-to-date as may be required by the  
461 department for existing contracts, or otherwise, as required by  
462 the district school board.

463 (9) Agree that any supplementary material developed at the  
464 district or state level does not violate the author's or  
465 publisher's copyright, provided such material is developed in  
466 accordance with the doctrine of fair use.

467 (10) Not in any way, directly or indirectly, become  
468 associated or connected with any combination in restraint of  
469 trade in instructional materials, nor enter into any  
470 understanding, agreement, or combination to control prices or  
471 restrict competition in the sale of instructional materials for  
472 use in the state.

473 (11) Maintain or contract with a depository in the state.

474 (12) For the core subject areas specified in s. 1006.40(2),



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475 maintain in the depository ~~for the first 3 years of the contract~~  
476 an inventory of instructional materials sufficient to receive  
477 and fill orders.

478 ~~(13) For the core subject areas specified in s. 1006.40(2),~~  
479 ~~ensure the availability of an inventory sufficient to receive~~  
480 ~~and fill orders for instructional materials for growth,~~  
481 ~~including the opening of a new school, and replacement during~~  
482 ~~the 3rd and subsequent years of the original contract period.~~

483 ~~(13)~~ ~~(14)~~ Accurately and fully disclose only the names of  
484 those persons who actually authored the instructional materials.  
485 In addition to the penalties provided in subsection ~~(15)~~ ~~(16)~~,  
486 the district school board ~~commissioner~~ may remove from the list  
487 of district-adopted ~~state-adopted~~ instructional materials those  
488 instructional materials whose publisher or manufacturer misleads  
489 the purchaser by falsely representing genuine authorship.

490 ~~(14)~~ ~~(15)~~ Grant, without prior written request, for any  
491 copyright held by the publisher or its agencies automatic  
492 permission to the district school board ~~department or its~~  
493 ~~agencies~~ for the reproduction of instructional materials and  
494 supplementary materials in Braille, large print, or other  
495 appropriate format for use by visually impaired students or  
496 other students with disabilities who ~~that~~ would benefit from use  
497 of the materials.

498 ~~(15)~~ ~~(16)~~ Upon the willful failure of the publisher or  
499 manufacturer to comply with the requirements of this section, be  
500 liable to the district school board ~~department~~ in the amount of  
501 three times the total sum which the publisher or manufacturer  
502 was paid in excess of the price required under subsections (5)  
503 and (6) and in the amount of three times the total value of the



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504 instructional materials and services which the district school  
505 board is entitled to receive free of charge under subsection  
506 (7).

507 Section 13. Subsections (2) and (3) of section 1006.40,  
508 Florida Statutes, are amended to read:

509 1006.40 Use of instructional materials allocation;  
510 instructional materials, library books, and reference books;  
511 repair of books.—

512 (2) Each district school board must purchase current  
513 instructional materials to provide each student in kindergarten  
514 through grade 12 with a major tool of instruction in core  
515 courses of the subject areas of mathematics, language arts,  
516 science, social studies, reading, and literature ~~for~~  
517 ~~kindergarten through grade 12. Such purchase must be made within~~  
518 ~~the first 3 years after the effective date of the adoption~~  
519 ~~cycle. For the 2012-2013 mathematics adoption, a district using~~  
520 ~~a comprehensive mathematics instructional materials program~~  
521 ~~adopted in the 2009-2010 adoption shall be deemed in compliance~~  
522 ~~with this subsection if it provides each student with such~~  
523 ~~additional state-adopted materials as may be necessary to align~~  
524 ~~the previously adopted comprehensive program to common core~~  
525 ~~standards and the other criteria of the 2012-2013 mathematics~~  
526 ~~adoption.~~

527 (3) ~~(a)~~ Beginning in the 2014-2015 ~~By the 2015-2016~~ fiscal  
528 year, each district school board shall use at least 50 percent  
529 of the annual allocation, and may use all of the allocation, for  
530 the purchase of digital ~~or electronic~~ instructional materials  
531 that are consistent with district goals and objectives and the  
532 course descriptions adopted in rule by the State Board of



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533 Education, that align with the performance standards provided  
534 for in s. 1001.03(1), that meet the requirements in s. 1006.31,  
535 and that are on the district-adopted list align with state  
536 standards included on the state-adopted list, except as  
537 otherwise authorized in paragraphs (b) and (c). This section  
538 does not apply to a district school board or a consortium of  
539 school districts which implements an instructional materials  
540 program pursuant to s. 1006.283, except that by the 2015-2016  
541 fiscal year, each district school board shall use at least 50  
542 percent of the annual allocation for the purchase of digital or  
543 electronic instructional materials that align with state  
544 standards.

545 ~~(b) Up to 50 percent of the annual allocation may be used~~  
546 ~~for the purchase of instructional materials, including library~~  
547 ~~and reference books and nonprint materials, not included on the~~  
548 ~~state-adopted list and for the repair and renovation of~~  
549 ~~textbooks and library books.~~

550 ~~(c) District school boards may use 100 percent of that~~  
551 ~~portion of the annual allocation designated for the purchase of~~  
552 ~~instructional materials for kindergarten, and 75 percent of that~~  
553 ~~portion of the annual allocation designated for the purchase of~~  
554 ~~instructional materials for first grade, to purchase materials~~  
555 ~~not on the state-adopted list.~~

556 Section 14. Subsection (1) of section 1006.41, Florida  
557 Statutes, is amended to read:

558 1006.41 Disposal of instructional materials.—

559 (1) Instructional materials that have become unserviceable  
560 or surplus or are no longer on the district ~~state~~ contract may  
561 be disposed of, under adopted rule of the district school board,



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562 by:

563 (a) Giving or lending the materials to other public  
564 education programs within the district or state, to the teachers  
565 to use in developing supplementary teaching materials, to  
566 students or others, or to any charitable organization,  
567 governmental agency, home education students, private school, or  
568 state.

569 (b) Selling the materials to used book dealers, recycling  
570 plants, pulp mills, or other persons, firms, or corporations  
571 upon such terms as are most economically advantageous to the  
572 district school board.

573 Section 15. Paragraph (j) of subsection (2) of section  
574 1003.621, Florida Statutes, is amended to read:

575 1003.621 Academically high-performing school districts.—It  
576 is the intent of the Legislature to recognize and reward school  
577 districts that demonstrate the ability to consistently maintain  
578 or improve their high-performing status. The purpose of this  
579 section is to provide high-performing school districts with  
580 flexibility in meeting the specific requirements in statute and  
581 rules of the State Board of Education.

582 (2) COMPLIANCE WITH STATUTES AND RULES.—Each academically  
583 high-performing school district shall comply with all of the  
584 provisions in chapters 1000-1013, and rules of the State Board  
585 of Education which implement these provisions, pertaining to the  
586 following:

587 (j) Those statutes relating to instructional materials,  
588 except that s. 1006.37, relating to the requisition of state-  
589 adopted materials from the depository under contract with the  
590 publisher, and s. 1006.40(3)~~(a)~~, relating to the use of 50



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591 percent of the instructional materials allocation, shall be  
592 eligible for exemption.

593 Section 16. Section 1006.282, Florida Statutes, is amended  
594 to read:

595 1006.282 Pilot program for the transition to ~~electronic and~~  
596 digital instructional materials.-

597 (1) A district school board may designate pilot program  
598 schools to implement the transition to instructional materials  
599 that are in ~~an electronic or~~ a digital format as defined in s.  
600 1006.283 ~~s. 1006.29(3)~~.

601 (2) A district school board may designate pilot program  
602 schools if the school district:

603 (a) Implements a local instructional improvement system  
604 pursuant to s. 1006.281 which enables district staff to plan,  
605 create, and manage professional development and to connect  
606 professional development with staff information and student  
607 performance, provides the ability to seamlessly connect the  
608 system to ~~electronic and~~ digital instructional materials and the  
609 instructional materials to student assessment data, and includes  
610 the minimum standards published by the Department of Education.

611 (b) Requests only the ~~electronic or~~ digital format of the  
612 sample copies of instructional materials submitted pursuant to  
613 s. 1006.283 ~~s. 1006.33~~.

614 (c) Uses at least 50 percent of the pilot program school's  
615 annual allocation from the district for the purchase of  
616 ~~electronic or~~ digital instructional materials included on the  
617 district-adopted ~~state-adopted~~ list.

618 (3) A school designated as a pilot program school by the  
619 school board is exempt from:





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620 (a) Section 1006.40(2), if the school provides  
621 comprehensive ~~electronic or~~ digital instructional materials to  
622 all students; and

623 (b) Section 1006.37.

624 (4) By August 1 of each year, beginning in 2011, the school  
625 board must report to the Department of Education the school or  
626 schools in its district which have been designated as pilot  
627 program schools. The department shall publish the list of pilot  
628 program schools on the department's Internet website. The report  
629 must include:

630 (a) The name of the pilot program school, the contact  
631 person and contact person information, and the grade or grades  
632 and associated course or courses included in the pilot program  
633 school.

634 (b) A description of the type of technological tool or  
635 tools that will be used to access the ~~electronic or~~ digital  
636 instructional materials included in the pilot program school,  
637 whether district-owned or student-owned.

638 (c) The projected costs and funding sources, which must  
639 include cost savings or cost avoidances, associated with the  
640 pilot program.

641 (5) By September 1 of each year, beginning in 2012, each  
642 school board that has a designated pilot program school shall  
643 provide to the Department of Education, the Executive Office of  
644 the Governor, and the chairs of the appropriations committees of  
645 the Senate and the House of Representatives a review of the  
646 pilot program schools which must include, but need not be  
647 limited to:

648 (a) Successful practices;



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649 (b) The average amount of online Internet time needed by a  
650 student to access and use the school's ~~electronic or~~ digital  
651 instructional materials;

652 (c) Lessons learned;

653 (d) The level of investment and cost-effectiveness; and

654 (e) Impacts on student performance.

655 Section 17. Section 1010.82, Florida Statutes, is amended  
656 to read:

657 1010.82 Textbook Bid Trust Fund.—Chapter 99-36, Laws of  
658 Florida, re-created the Textbook Bid Trust Fund to record the  
659 revenue and disbursements of textbook bid performance deposits  
660 submitted to the Department of Education ~~as required in s.~~  
661 ~~1006.33.~~

662 Section 18. This act shall take effect July 1, 2014.

663  
664 ===== T I T L E A M E N D M E N T =====

665 And the title is amended as follows:

666 Delete everything before the enacting clause  
667 and insert:

668 A bill to be entitled  
669 An act relating to instructional materials for K-12  
670 public education; amending s. 1006.28, F.S.; providing  
671 that the district school board has the constitutional  
672 duty and responsibility to select and provide adequate  
673 instructional materials for all students; redefining  
674 the term "adequate instructional materials"; amending  
675 s. 1006.283, F.S.; requiring a district school board  
676 or consortium of school districts to implement an  
677 instructional materials program; including criteria



678 for the review and recommendation of instructional  
679 materials, the process by which instructional  
680 materials are adopted, and the process by which a  
681 school district will notify parents of their ability  
682 to access their children's instructional materials in  
683 the list of the subjects that must be addressed by  
684 rule of the district school board; requiring adopted  
685 instructional materials to be provided in digital  
686 format; defining the term "digital format"; requiring  
687 the Department of Education to publish minimum,  
688 recommended technology requirements; requiring the  
689 Department of Education to publish annually a 5-year  
690 schedule of subject areas to be reviewed by local  
691 school districts, to begin by a specified date;  
692 requiring the district to make available, upon  
693 request, sample copies of its adopted instructional  
694 materials; repealing s. 1006.29, F.S., relating to  
695 state instructional materials reviewers; amending s.  
696 1006.30, F.S.; requiring each district instructional  
697 materials reviewer to file an affidavit with the  
698 district school board, rather than the department;  
699 amending s. 1006.31, F.S.; deleting references to the  
700 Department of Education regarding the duties of  
701 instructional materials reviewers; revising the  
702 evaluation procedure for instructional materials;  
703 amending s. 1006.32, F.S.; conforming provisions to  
704 changes made by the act; repealing s. 1006.33, F.S.,  
705 relating to bids, proposals, and advertisement  
706 regarding the adoption of instructional materials;



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707       repealing s. 1006.34, F.S., relating to powers and  
708       duties of the Commissioner of Education and the  
709       department in selecting and adopting instructional  
710       materials; amending s. 1006.35, F.S.; requiring the  
711       district school board, rather than the commissioner,  
712       to conduct an independent investigation to determine  
713       the accuracy of district-adopted instructional  
714       materials; authorizing the district school board,  
715       rather than the commissioner, to remove materials from  
716       the list of district-adopted materials under certain  
717       circumstances; repealing s. 1006.36, F.S., relating to  
718       the term of adoption for instructional materials;  
719       amending s. 1006.37, F.S.; authorizing, rather than  
720       requiring, the district school superintendent to  
721       requisition adopted instructional materials from the  
722       depository of a publisher with whom a contract has  
723       been made or any other vendor selling the adopted  
724       instructional materials; deleting provisions regarding  
725       the superintendent's requisition of instructional  
726       materials; conforming provisions to changes made by  
727       the act; authorizing a district school board or a  
728       consortium of school districts to requisition  
729       instructional materials from the publisher's  
730       depository or any other vendor selling adopted  
731       instructional materials; amending s. 1006.38, F.S.;  
732       conforming provisions to changes made by the act;  
733       revising the duties, responsibilities, and  
734       requirements of instructional materials publishers and  
735       manufacturers; amending s. 1006.40, F.S.; deleting



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736 provisions regarding the adoption of instructional  
737 materials for certain core courses in the subject area  
738 of mathematics; allowing each district school board to  
739 use all of the annual allocation for the purchase of  
740 digital, rather than electronic, instructional  
741 materials that meet certain goals, objectives, and  
742 requirements; deleting provisions regarding the use of  
743 the district's annual allocation for the purchase of  
744 instructional materials; amending s. 1006.41, F.S.;  
745 conforming provisions to changes made by the act;  
746 amending ss. 1003.621, 1006.282, and 1010.82, F.S.;  
747 conforming cross-references; providing an effective  
748 date.



809090

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2014	.	
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The Committee on Governmental Oversight and Accountability  
(Hays) recommended the following:

**Senate Amendment to Amendment (840528) (with title amendment)**

Delete lines 300 - 330  
and insert:

(3) A district school board or publisher may not participate in a pilot program of materials being considered for adoption during the 18-month period before the official adoption of the materials ~~by the commissioner. Any pilot program during the first 2 years of the adoption period must have the prior~~



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11 ~~approval of the commissioner.~~

12 (4) Any publisher or manufacturer of instructional  
13 materials or representative thereof or any district school board  
14 official or ~~state~~ instructional materials reviewer who violates  
15 ~~any provision of~~ this section commits a misdemeanor of the  
16 second degree, punishable as provided in s. 775.082 or s.  
17 775.083. A ~~Any~~ representative of a publisher or manufacturer who  
18 violates any provision of this section, in addition to any other  
19 penalty, shall be banned from practicing business in the state  
20 for a period of 1 calendar year.

21 (5) This section does not prohibit any publisher,  
22 manufacturer, or agent from supplying, for purposes of  
23 examination, necessary sample copies of instructional materials  
24 to any district school board official or ~~state~~ instructional  
25 materials reviewer.

26 (6) This section does not prohibit a district school board  
27 official or ~~state~~ instructional materials reviewer from  
28 receiving sample copies of instructional materials.

29 (7) This section does not prohibit or restrict a district  
30 school board official from receiving royalties or other  
31 compensation, other than compensation paid to him or her as  
32 commission for negotiating sales to district school boards, from  
33 the publisher or manufacturer of instructional materials  
34 written, designed, or prepared by such district school board  
35 official, and adopted ~~by the commissioner~~ or purchased by any  
36 district school board. A ~~No~~ district school board official may

37  
38 ===== T I T L E A M E N D M E N T =====

39 And the title is amended as follows:



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40           Delete line 704  
41 and insert:  
42           changes made by the act; deleting references to the  
43           Commissioner of Education regarding a pilot program  
44           and the adoption of instructional materials; repealing  
45           s. 1006.33, F.S.,



By Senator Hays

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1 A bill to be entitled  
 2 An act relating to instructional materials for K-12  
 3 public education; amending s. 1006.28, F.S.; providing  
 4 that the district school board has the constitutional  
 5 duty and responsibility to select and provide adequate  
 6 instructional materials for all students; redefining  
 7 the term "adequate instructional materials"; amending  
 8 s. 1006.283, F.S.; requiring a district school board  
 9 or consortium of school districts to implement an  
 10 instructional materials program; including criteria  
 11 for the review and recommendation of instructional  
 12 materials, the process by which instructional  
 13 materials are adopted, and the process by which a  
 14 school district will notify parents of their ability  
 15 to access their children's instructional materials in  
 16 the list of the subjects that must be addressed by  
 17 rule of the district school board; requiring adopted  
 18 instructional materials to be provided in digital  
 19 format; defining the term "digital format"; requiring  
 20 the Department of Education to publish minimum,  
 21 recommended technology requirements; requiring the  
 22 district to make available, upon request, sample  
 23 copies of its adopted instructional materials;  
 24 repealing s. 1006.29, F.S., relating to state  
 25 instructional materials reviewers; amending s.  
 26 1006.30, F.S.; requiring each district instructional  
 27 materials reviewer to file an affidavit with the  
 28 district school board, rather than the department;  
 29 amending s. 1006.31, F.S.; deleting references to the

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30 Department of Education regarding the duties of  
 31 instructional materials reviewers; revising the  
 32 evaluation procedure for instructional materials;  
 33 amending s. 1006.32, F.S.; conforming provisions to  
 34 changes made by the act; repealing s. 1006.33, F.S.,  
 35 relating to bids, proposals, and advertisement  
 36 regarding the adoption of instructional materials;  
 37 repealing s. 1006.34, F.S., relating to powers and  
 38 duties of the Commissioner of Education and the  
 39 department in selecting and adopting instructional  
 40 materials; amending s. 1006.35, F.S.; requiring the  
 41 district school board, rather than the commissioner,  
 42 to conduct an independent investigation to determine  
 43 the accuracy of district-adopted instructional  
 44 materials; authorizing the district school board,  
 45 rather than the commissioner, to remove materials from  
 46 the list of district-adopted materials under certain  
 47 circumstances; repealing s. 1006.36, F.S., relating to  
 48 the term of adoption for instructional materials;  
 49 amending s. 1006.37, F.S.; authorizing, rather than  
 50 requiring, the district school superintendent to  
 51 requisition adopted instructional materials from the  
 52 depository of a publisher with whom a contract has  
 53 been made or any other vendor selling the adopted  
 54 instructional materials; deleting provisions regarding  
 55 the superintendent's requisition of instructional  
 56 materials; conforming provisions to changes made by  
 57 the act; authorizing a district school board or a  
 58 consortium of school districts to requisition

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59 instructional materials from the publisher's  
 60 depository or any other vendor selling adopted  
 61 instructional materials and to request assistance from  
 62 the publisher's depository to recommend instructional  
 63 materials for review, approval, adoption, and  
 64 purchase; requiring the recommended materials to be  
 65 consistent with certain goals, objectives, and  
 66 requirements; requiring that personnel from the  
 67 publisher's depository sign an affidavit in order to  
 68 be considered an instructional materials reviewer;  
 69 amending s. 1006.38, F.S.; conforming provisions to  
 70 changes made by the act; revising the duties,  
 71 responsibilities, and requirements of instructional  
 72 materials publishers and manufacturers; amending s.  
 73 1006.40, F.S.; deleting provisions regarding the  
 74 adoption of instructional materials for certain core  
 75 courses in the subject area of mathematics; requiring  
 76 each district school board to use a certain percentage  
 77 of the annual allocation for the purchase of digital,  
 78 rather than electronic, instructional materials that  
 79 meet certain goals, objectives, and requirements;  
 80 deleting provisions regarding the use of the  
 81 district's annual allocation for the purchase of  
 82 instructional materials; amending s. 1006.41, F.S.;  
 83 conforming provisions to changes made by the act;  
 84 amending ss. 1006.282 and 1010.82, F.S.; conforming  
 85 cross-references; providing an effective date.  
 86  
 87 Be It Enacted by the Legislature of the State of Florida:

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88  
 89 Section 1. Subsection (1) of section 1006.28, Florida  
 90 Statutes, is amended to read:  
 91 1006.28 Duties of district school board, district school  
 92 superintendent; and school principal regarding K-12  
 93 instructional materials.—  
 94 (1) DISTRICT SCHOOL BOARD.—The district school board has  
 95 the constitutional duty and responsibility to select and provide  
 96 adequate instructional materials for all students in accordance  
 97 with the requirements of this part. The term "adequate  
 98 instructional materials" means a sufficient number of student or  
 99 site licenses or sets of materials that are available in bound,  
 100 unbound, kit, or package form and may consist of hardbacked or  
 101 softbacked textbooks, electronic content, consumables, learning  
 102 laboratories, manipulatives, and electronic media, and computer  
 103 courseware, ~~or~~ software, or applications that serve as the basis  
 104 for instruction for each student in the core courses of  
 105 mathematics, language arts, social studies, science, reading,  
 106 and literature. The district school board has the following  
 107 specific duties and responsibilities:  
 108 (a) *Courses of study; adoption.*—Adopt courses of study for  
 109 use in the schools of the district.  
 110 (b) *Instructional materials.*—Provide for proper  
 111 requisitioning, distribution, accounting, storage, care, and use  
 112 of all instructional materials and furnish such other  
 113 instructional materials as may be needed. The district school  
 114 board shall ensure that instructional materials used in the  
 115 district are consistent with the district goals and objectives  
 116 and the course descriptions established in rule of the State

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117 Board of Education, as well as with the ~~state and district~~  
118 performance standards provided for in s. 1001.03(1).

119 (c) *Other instructional materials.*—Provide such other  
120 teaching accessories and aids as are needed for the school  
121 district's educational program.

122 (d) *School library media services; establishment and*  
123 *maintenance.*—Establish and maintain a program of school library  
124 media services for all public schools in the district, including  
125 school library media centers, or school library media centers  
126 open to the public, and, in addition such traveling or  
127 circulating libraries as may be needed for the proper operation  
128 of the district school system.

129 Section 2. Subsections (1) and (2) of section 1006.283,  
130 Florida Statutes, are amended, and subsections (7), (8), and (9)  
131 are added to that section, to read:

132 1006.283 District school board instructional materials  
133 review process.—

134 (1) A district school board or consortium of school  
135 districts ~~may~~ implement an instructional materials program  
136 that includes the review, approval, adoption, and purchase of  
137 instructional materials. ~~Beginning in the 2013-2014 school year,~~  
138 The district school superintendent shall certify to the  
139 department by March 31 of each year that all instructional  
140 materials for core courses used by the district are aligned with  
141 applicable state standards. ~~Included in the certification shall~~  
142 ~~be~~ A list of the core instructional materials that will be used  
143 or purchased for use by the school district shall be included in  
144 the certification.

145 (2) The district school board shall adopt rules

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146 implementing the district's instructional materials program  
147 which must include, but need not be limited to:

148 (a) Criteria for the review and recommendation of  
149 instructional materials, including a thorough review of  
150 curriculum content. The district shall establish a local  
151 instructional materials review committee to review and recommend  
152 instructional materials to the district school board for final  
153 adoption. A district may enter into an agreement with other  
154 districts to combine their local instructional materials review  
155 committees into one super committee. A local instructional  
156 materials review committee shall consist of the following  
157 members, appointed as follows:

158 1. Each district school board member shall appoint one  
159 person who is not employed by the district.

160 2. The superintendent shall appoint a number of classroom  
161 teachers equal to the number of district school board members.  
162 The selection of classroom teachers shall be representative of  
163 the subject areas and grade levels of the instructional  
164 materials being considered for adoption.

165 3. The district school board and the superintendent shall  
166 each appoint at least one parent of a student who is currently  
167 enrolled in a public school in the district ~~its review and~~  
168 ~~purchase process.~~

169 (b) Identification, by subject area, of a review cycle for  
170 instructional materials.

171 (c) The duties and qualifications of the instructional  
172 materials reviewers.

173 (d) The requirements for an affidavit made by each a  
174 district instructional materials reviewer which substantially

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175 ~~meets~~ ~~includes~~ the requirements of s. 1006.30.

176 (e) Compliance with s. 1006.32, relating to prohibited  
177 acts.

178 (f) A process for the district school board to determine  
179 ~~and certify that certifies~~ the accuracy of district-adopted  
180 instructional materials.

181 (g) The incorporation of applicable requirements of s.  
182 1006.31, which relates to the duties of instructional materials  
183 reviewers.

184 (h) The incorporation of applicable requirements of s.  
185 1006.38, relating to the duties, responsibilities, and  
186 requirements of publishers of instructional materials.

187 (i) The process by which instructional materials are  
188 adopted by the district school board. The process must allow the  
189 public, within 10 days after district school board adoption, to  
190 appeal the district school board's adoption of specific  
191 instructional materials. Upon appeal, the district school board  
192 shall convene a public hearing to reevaluate the challenged  
193 instructional materials and determine suitability for use.  
194 Suitability includes the accuracy and appropriateness of the  
195 materials according to the evaluation criteria specified in s.  
196 1006.31. The district school board's decision to adopt  
197 instructional materials is final unless a public appeal is  
198 timely filed. If a public appeal is timely filed, the district  
199 school board's decision after convening the public hearing is  
200 final and not subject to further review.

201 1. Instructional materials considered for adoption by the  
202 district school board must be posted in a read-only format on  
203 the district website at least 20 calendar days before the public

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204 hearing and public meeting as specified in this paragraph. The  
205 district shall establish an electronic process for the public to  
206 submit, and the school board members and the superintendent to  
207 access, comments on the recommended instructional materials.

208 2. The district school board shall conduct an open, noticed  
209 district school board hearing to receive public comment on and  
210 review the recommended instructional materials.

211 3. The district school board shall hold an open, noticed  
212 public meeting to approve an annual instructional materials  
213 plan, including the adoption of instructional materials. This  
214 public meeting must be held on a different date than the public  
215 hearing.

216 4. The notices for the public hearing and the public  
217 meeting must specifically state which instructional materials  
218 are being reviewed and the manner in which the instructional  
219 materials can be accessed for public review.

220 ~~(j)~~ ~~(i)~~ The process by which instructional materials will be  
221 purchased, including advertising, bidding, and purchasing  
222 requirements.

223 (k) The process by which the school district will notify  
224 parents of their ability to access their children's textbooks  
225 and instructional materials through the district's local  
226 instructional improvement system and by which the school  
227 district will encourage parents to access the system. This  
228 notification must be displayed prominently on the district  
229 school board's website and provided annually in a written format  
230 to all parents of enrolled students.

231 (7) Beginning in the 2015-2016 academic year, all adopted  
232 instructional materials for students in kindergarten through

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 233 grade 12 must be available in a digital format. As used in this  
 234 subsection, the term "digital format" means text-based or image-  
 235 based content in a form that provides the student with various  
 236 interactive functions; that can be searched, tagged,  
 237 distributed, and used for individualized and group learning;  
 238 that includes multimedia content such as video clips, animation,  
 239 and virtual reality; and that can be accessed at anytime and  
 240 anywhere. The term does not include electronic or computer  
 241 hardware even if such hardware is bundled with software or other  
 242 electronic media, nor does the term include equipment or  
 243 supplies.

244 (8) The department shall publish recommended, minimum  
 245 technology requirements that include guidelines on the number of  
 246 students per device necessary to ensure that students can access  
 247 all instructional materials in digital format and specifications  
 248 for hardware, software, networking, and security.

249 (9) The school district shall make available upon request  
 250 for public inspection sample copies of all instructional  
 251 materials that have been adopted by the district school board.

252 Section 3. Section 1006.29, Florida Statutes, is repealed.

253 Section 4. Section 1006.30, Florida Statutes, is amended to  
 254 read:

255 1006.30 Affidavit of ~~district state~~ instructional materials  
 256 reviewers.—Before transacting any business, each ~~district state~~  
 257 instructional materials reviewer shall make an affidavit, to be  
 258 filed with the ~~district school board department~~, that:

259 (1) The reviewer will faithfully discharge the duties  
 260 imposed upon him or her.

261 (2) The reviewer does not have an ~~has no~~ interest in any

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 262 publishing or manufacturing organization that produces or sells  
 263 instructional materials.

264 (3) The reviewer is ~~not in no way~~ connected with the  
 265 distribution of the instructional materials.

266 (4) The reviewer does not have any direct or indirect  
 267 pecuniary interest in the business or profits of any person  
 268 engaged in manufacturing, publishing, or selling instructional  
 269 materials designed for use in the public schools.

270 (5) The reviewer will not accept any emolument or promise  
 271 of future reward of any kind from any publisher or manufacturer  
 272 of instructional materials or his or her agent or anyone  
 273 interested in, or intending to bias his or her judgment in any  
 274 way in, the selection of any materials to be adopted.

275 (6) The reviewer understands that it is unlawful to discuss  
 276 matters relating to instructional materials submitted for  
 277 adoption with any agent of a publisher or manufacturer of  
 278 instructional materials, either directly or indirectly, except  
 279 during the period when the publisher or manufacturer is  
 280 providing a presentation for the reviewer during his or her  
 281 review of the instructional materials submitted for adoption.

282 Section 5. Section 1006.31, Florida Statutes, is amended to  
 283 read:

284 1006.31 Duties of the ~~Department of Education and school~~  
 285 ~~district instructional materials reviewer.~~—The duties of the  
 286 instructional materials reviewer are:

287 (1) PROCEDURES.—To adhere to procedures prescribed by ~~the~~  
 288 ~~department or~~ the district for evaluating instructional  
 289 materials submitted by publishers and manufacturers in each  
 290 adoption. ~~This section applies to both the state and district~~

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291 ~~approval processes.~~

292 (2) EVALUATION OF INSTRUCTIONAL MATERIALS.—To evaluate  
 293 carefully all instructional materials submitted, in order to  
 294 ascertain which instructional materials, if any, submitted for  
 295 consideration implement the selection criteria developed by the  
 296 ~~district department~~ and those curricular objectives included  
 297 within applicable performance standards provided for in s.  
 298 1001.03(1).

299 (a) When recommending instructional materials for use in  
 300 the schools, each reviewer shall include only instructional  
 301 materials that accurately portray the ethnic, socioeconomic,  
 302 cultural, and racial diversity of our society, including men and  
 303 women in professional, career, and executive roles, and the role  
 304 and contributions of the entrepreneur and labor in the total  
 305 development of this state and the United States.

306 (b) When recommending instructional materials for use in  
 307 the schools, each reviewer shall include only materials that  
 308 accurately portray, whenever appropriate, humankind's place in  
 309 ecological systems, including the necessity for the protection  
 310 of our environment and conservation of our natural resources and  
 311 the effects on the human system of the use of tobacco, alcohol,  
 312 controlled substances, and other dangerous substances.

313 (c) When recommending instructional materials for use in  
 314 the schools, each reviewer shall require such materials as he or  
 315 she deems necessary and proper to encourage thrift, fire  
 316 prevention, and humane treatment of people and animals.

317 (d) When recommending instructional materials for use in  
 318 the schools, each reviewer shall require, when appropriate to  
 319 the comprehension of students, that materials for social

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320 science, history, or civics classes contain the Declaration of  
 321 Independence and the Constitution of the United States. A  
 322 reviewer may not recommend any instructional materials for use  
 323 in the schools which contain any matter reflecting unfairly upon  
 324 persons because of their race, color, creed, national origin,  
 325 ancestry, gender, or occupation.

326 (e) Any instructional ~~materials~~ ~~material~~ recommended by  
 327 each reviewer for use in the schools ~~must~~ shall be, to the  
 328 satisfaction of each reviewer, accurate, objective, ~~and~~ current,  
 329 and suited to the needs and comprehension of students at their  
 330 respective grade levels. ~~A reviewer~~ Reviewers shall consider for  
 331 adoption materials developed for academically talented students  
 332 such as those enrolled in advanced placement courses.

333 (f) Any instructional materials containing pornography or  
 334 which are otherwise prohibited under s. 847.012 may not be used  
 335 or made available within a public school. When selecting  
 336 instructional materials, library media, and other reading  
 337 materials used in the public school system, each reviewer shall  
 338 use, at a minimum, the following standards to determine the  
 339 propriety of the material:

340 1. The age of the students who normally could be expected  
 341 to have access to the material.

342 2. The educational purpose to be served by the material. In  
 343 considering instructional materials for classroom use, priority  
 344 shall be given to the selection of materials that encompass the  
 345 performance standards provided for in s. 1001.03(1) and that  
 346 include the instructional objectives contained in the course  
 347 description approved by rule of the State Board of Education.

348 3. The degree to which the material would be supplemented

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349 and explained by mature classroom instruction as part of a  
 350 normal classroom instructional program.

351 4. The consideration of the broad racial, ethnic,  
 352 socioeconomic, and cultural diversity of the students of this  
 353 state.

354 (3) REPORT OF REVIEWERS.—After a thorough study of all data  
 355 submitted on each instructional material, to submit an  
 356 electronic report to the district school board ~~department~~. The  
 357 report shall be made public and must include responses to each  
 358 section of the report format prescribed by the district school  
 359 board ~~department~~.

360 Section 6. Section 1006.32, Florida Statutes, is amended to  
 361 read:

362 1006.32 Prohibited acts.—

363 (1) A publisher or manufacturer of instructional material,  
 364 or any representative thereof, may not offer to give any  
 365 emolument, money, or other valuable thing, or any inducement, to  
 366 a ~~any~~ district school board official or ~~state~~ instructional  
 367 materials reviewer to directly or indirectly introduce,  
 368 recommend, vote for, or otherwise influence the adoption or  
 369 purchase of any instructional materials.

370 (2) A district school board official or an ~~a~~ ~~state~~  
 371 instructional materials reviewer may not solicit or accept any  
 372 emolument, money, or other valuable thing, or any inducement, to  
 373 directly or indirectly introduce, recommend, vote for, or  
 374 otherwise influence the adoption or purchase of any  
 375 instructional material.

376 (3) A district school board or publisher may not  
 377 participate in a pilot program of materials being considered for

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378 adoption during the 18-month period before the official adoption  
 379 of the materials by the commissioner. Any pilot program during  
 380 the first 2 years of the adoption period must have the prior  
 381 approval of the commissioner.

382 (4) Any publisher or manufacturer of instructional  
 383 materials or representative thereof or any district school board  
 384 official or ~~state~~ instructional materials reviewer who violates  
 385 ~~any provision of~~ this section commits a misdemeanor of the  
 386 second degree, punishable as provided in s. 775.082 or s.  
 387 775.083. A ~~Any~~ representative of a publisher or manufacturer who  
 388 violates any provision of this section, in addition to any other  
 389 penalty, shall be banned from practicing business in the state  
 390 for a period of 1 calendar year.

391 (5) This section does not prohibit any publisher,  
 392 manufacturer, or agent from supplying, for purposes of  
 393 examination, necessary sample copies of instructional materials  
 394 to any district school board official or ~~state~~ instructional  
 395 materials reviewer.

396 (6) This section does not prohibit a district school board  
 397 official or ~~state~~ instructional materials reviewer from  
 398 receiving sample copies of instructional materials.

399 (7) This section does not prohibit or restrict a district  
 400 school board official from receiving royalties or other  
 401 compensation, other than compensation paid to him or her as  
 402 commission for negotiating sales to district school boards, from  
 403 the publisher or manufacturer of instructional materials  
 404 written, designed, or prepared by such district school board  
 405 official, and adopted by the commissioner or purchased by any  
 406 district school board. A ~~No~~ district school board official may

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407 ~~not shall be allowed to~~ receive royalties on any materials not  
408 on the ~~district-adopted state-adopted~~ list purchased for use by  
409 his or her district school board.

410 (8) A district school superintendent, district school board  
411 member, teacher, or other person officially connected with the  
412 government or direction of public schools may not receive during  
413 the months actually engaged in performing duties under his or  
414 her contract any private fee, gratuity, donation, or  
415 compensation, in any manner whatsoever, for promoting the sale  
416 or exchange of any instructional material, map, or chart in any  
417 public school, or be an agent for the sale of, or the publisher  
418 of, any instructional material or reference work, or have a  
419 direct or indirect pecuniary interest in the introduction of any  
420 such instructional material, and any such agency or interest  
421 shall disqualify any person so acting or interested from holding  
422 any district school board employment whatsoever, and the person  
423 commits a misdemeanor of the second degree, punishable as  
424 provided in s. 775.082 or s. 775.083; however, this subsection  
425 does not prevent the adoption of any instructional material  
426 written in whole or in part by a Florida author.

427 Section 7. Section 1006.33, Florida Statutes, is repealed.

428 Section 8. Section 1006.34, Florida Statutes, is repealed.

429 Section 9. Section 1006.35, Florida Statutes, is amended to  
430 read:

431 1006.35 Accuracy of instructional materials.—

432 (1) In addition to relying on statements of publishers or  
433 manufacturers of instructional materials, the district school  
434 board commissioner may conduct or cause to be conducted an  
435 independent investigation to determine the accuracy of district-

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436 ~~adopted state-adopted~~ instructional materials.

437 (2) When errors in ~~district-adopted state-adopted~~ materials  
438 are confirmed, the publisher of the materials shall provide to  
439 each district school board that ~~has~~ purchased the materials the  
440 corrections in a format approved by the investigating district  
441 school board department.

442 (3) The district school board commissioner may remove  
443 materials from the list of ~~district-adopted state-adopted~~  
444 materials if it ~~he or she~~ finds that the content is in error and  
445 the publisher refuses to correct the error when notified by the  
446 district school board department.

447 (4) The district school board commissioner may remove  
448 materials from the list of ~~district-adopted state-adopted~~  
449 materials at the request of the publisher if, in the district  
450 school board's ~~his or her~~ opinion, there is no material impact  
451 on the district's and the state's education goals.

452 Section 10. Section 1006.36, Florida Statutes, is repealed.

453 Section 11. Section 1006.37, Florida Statutes, is amended  
454 to read:

455 1006.37 Requisition of instructional materials from  
456 publisher's depository.—

457 (1) The district school superintendent ~~may shall~~  
458 requisition adopted instructional materials from the depository  
459 of the publisher with whom a contract has been made or any other  
460 vendor selling the adopted instructional materials. ~~However, the~~  
461 ~~superintendent shall requisition current instructional materials~~  
462 ~~to provide each student with a textbook or other materials as a~~  
463 ~~major tool of instruction in core courses of the subject areas~~  
464 ~~specified in s. 1006.40(2). These materials must be~~



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465 ~~requisitioned within the first 3 years of the adoption cycle,~~  
 466 ~~except for instructional materials related to growth of student~~  
 467 ~~membership or instructional materials maintenance needs. The~~  
 468 ~~superintendent may requisition instructional materials in the~~  
 469 ~~core subject areas specified in s. 1006.40(2) that are related~~  
 470 ~~to growth of student membership or instructional materials~~  
 471 ~~maintenance needs during the 3rd, 4th, 5th, and 6th years of the~~  
 472 ~~original contract period.~~

473 (2) The district school superintendent shall verify that  
 474 the requisition is complete and accurate and order the  
 475 depository or vendor selling the adopted instructional materials  
 476 to forward to him or her the adopted instructional materials  
 477 shown by the requisition. The depository or vendor shall prepare  
 478 an invoice of the materials shipped, including shipping charges,  
 479 and mail it to the superintendent to whom the shipment is being  
 480 made. The superintendent shall pay the depository or vendor  
 481 within 60 days after receipt of the requisitioned materials from  
 482 the appropriation for the purchase of adopted instructional  
 483 materials.

484 (3) A district school board or a consortium of school  
 485 districts may which implements an instructional materials  
 486 program pursuant to s. 1006.283 is not required to requisition  
 487 instructional materials from the publisher's depository or any  
 488 other vendor selling the adopted instructional materials.

489 (4) A district school board or a consortium of school  
 490 districts may request assistance from the publisher's depository  
 491 to recommend instructional materials for review, approval,  
 492 adoption, and purchase pursuant to s. 1006.283.

493 Section 12. Section 1006.38, Florida Statutes, is amended

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494 to read:

495 1006.38 Duties, responsibilities, and requirements of  
 496 instructional materials publishers and manufacturers. ~~This~~  
 497 ~~section applies to both the state and district approval~~  
 498 ~~processes.~~ Publishers and manufacturers of instructional  
 499 materials, or their representatives, shall:

500 (1) Comply with all provisions of this part.

501 (2) Electronically deliver fully developed sample copies of  
 502 all instructional materials upon which bids are based to the  
 503 district department pursuant to procedures adopted by the  
 504 district school board State Board of Education.

505 (3) Submit, at a time designated by the district school  
 506 board in s. 1006.33, the following information:

507 (a) Detailed specifications of the physical characteristics  
 508 of the instructional materials, including any software or  
 509 technological tools required for use by the district, school,  
 510 teachers, or students. The publisher or manufacturer shall  
 511 comply with these specifications if the instructional materials  
 512 are adopted and purchased in completed form.

513 (b) Evidence that the publisher or manufacturer has  
 514 provided materials that address the performance standards  
 515 provided for in s. 1001.03(1) and that can be accessed through  
 516 the district's local instructional improvement system and a  
 517 variety of electronic, digital, and mobile devices.

518 (c) Evidence that the instructional materials include  
 519 specific references to statewide standards in the teacher's  
 520 manual and incorporate such standards into chapter tests or the  
 521 assessments.

522 (4) Make available for purchase by any district school

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523 board any diagnostic, criterion-referenced, or other tests that  
524 they may develop.

525 (5) Furnish the instructional materials offered by them at  
526 a price in the state which, including all costs of electronic  
527 transmission, may not exceed the lowest price at which they  
528 offer such instructional materials for adoption or sale to any  
529 state or school district in the United States.

530 (6) Reduce automatically the price of the instructional  
531 materials to any district school board to the extent that  
532 reductions are made elsewhere in the United States.

533 (7) Provide any instructional materials free of charge in  
534 the state to the same extent as they are provided free of charge  
535 to any state or school district in the United States.

536 (8) Guarantee that all copies of any instructional  
537 materials sold in this state will be at least equal in quality  
538 to the copies of such instructional materials that are sold  
539 elsewhere in the United States and will be kept revised, free  
540 from all errors, and up-to-date as may be required by the  
541 department.

542 (9) Agree that any supplementary material developed at the  
543 district or state level does not violate the author's or  
544 publisher's copyright, provided such material is developed in  
545 accordance with the doctrine of fair use.

546 (10) Not in any way, directly or indirectly, become  
547 associated or connected with any combination in restraint of  
548 trade in instructional materials, nor enter into any  
549 understanding, agreement, or combination to control prices or  
550 restrict competition in the sale of instructional materials for  
551 use in the state.

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552 (11) Maintain or contract with a depository in the state.

553 (12) For the core subject areas specified in s. 1006.40(2),  
554 maintain in the depository ~~for the first 3 years of the contract~~  
555 an inventory of instructional materials sufficient to receive  
556 and fill orders.

557 ~~(13) For the core subject areas specified in s. 1006.40(2),~~  
558 ~~ensure the availability of an inventory sufficient to receive~~  
559 ~~and fill orders for instructional materials for growth,~~  
560 ~~including the opening of a new school, and replacement during~~  
561 ~~the 3rd and subsequent years of the original contract period.~~

562 (13)~~(14)~~ Accurately and fully disclose only the names of  
563 those persons who actually authored the instructional materials.  
564 In addition to the penalties provided in subsection (15)  
565 ~~subsection (16)~~, the district school board ~~commissioner~~ may  
566 remove from the list of district-adopted ~~state-adopted~~  
567 instructional materials those instructional materials whose  
568 publisher or manufacturer misleads the purchaser by falsely  
569 representing genuine authorship.

570 (14)~~(15)~~ Grant, without prior written request, for any  
571 copyright held by the publisher or its agencies automatic  
572 permission to the district school board ~~department or its~~  
573 ~~agencies~~ for the reproduction of instructional materials and  
574 supplementary materials in Braille, large print, or other  
575 appropriate format for use by visually impaired students or  
576 other students with disabilities who ~~that~~ would benefit from use  
577 of the materials.

578 (15)~~(16)~~ Upon the willful failure of the publisher or  
579 manufacturer to comply with the requirements of this section, be  
580 liable to the district school board ~~department~~ in the amount of

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581 three times the total sum which the publisher or manufacturer  
582 was paid in excess of the price required under subsections (5)  
583 and (6) and in the amount of three times the total value of the  
584 instructional materials and services which the district school  
585 board is entitled to receive free of charge under subsection  
586 (7).

587 Section 13. Subsections (2) and (3) of section 1006.40,  
588 Florida Statutes, are amended to read:

589 1006.40 Use of instructional materials allocation;  
590 instructional materials, library books, and reference books;  
591 repair of books.—

592 (2) Each district school board must purchase current  
593 instructional materials to provide each student in kindergarten  
594 through grade 12 with a major tool of instruction in core  
595 courses of the subject areas of mathematics, language arts,  
596 science, social studies, reading, and literature ~~for~~  
597 ~~kindergarten through grade 12. Such purchase must be made within~~  
598 ~~the first 3 years after the effective date of the adoption~~  
599 ~~cycle. For the 2012-2013 mathematics adoption, a district using~~  
600 ~~a comprehensive mathematics instructional materials program~~  
601 ~~adopted in the 2009-2010 adoption shall be deemed in compliance~~  
602 ~~with this subsection if it provides each student with such~~  
603 ~~additional state-adopted materials as may be necessary to align~~  
604 ~~the previously adopted comprehensive program to common core~~  
605 ~~standards and the other criteria of the 2012-2013 mathematics~~  
606 ~~adoption.~~

607 (3) ~~(a)~~ By the 2015-2016 fiscal year, each district school  
608 board shall use at least 50 percent of the annual allocation for  
609 the purchase of digital ~~or electronic~~ instructional materials

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610 that are consistent with district goals and objectives and the  
611 course descriptions adopted in rule by the State Board of  
612 Education, align with the performance standards provided for in  
613 s. 1001.03(1), meet the requirements in s. 1006.31, and are on  
614 the district-adopted list ~~align with state standards included on~~  
615 ~~the state-adopted list, except as otherwise authorized in~~  
616 ~~paragraphs (b) and (c). This section does not apply to a~~  
617 ~~district school board or a consortium of school districts which~~  
618 ~~implements an instructional materials program pursuant to s.~~  
619 ~~1006.283, except that by the 2015-2016 fiscal year, each~~  
620 ~~district school board shall use at least 50 percent of the~~  
621 ~~annual allocation for the purchase of digital or electronic~~  
622 ~~instructional materials that align with state standards.~~

623 ~~(b) Up to 50 percent of the annual allocation may be used~~  
624 ~~for the purchase of instructional materials, including library~~  
625 ~~and reference books and nonprint materials, not included on the~~  
626 ~~state-adopted list and for the repair and renovation of~~  
627 ~~textbooks and library books.~~

628 ~~(c) District school boards may use 100 percent of that~~  
629 ~~portion of the annual allocation designated for the purchase of~~  
630 ~~instructional materials for kindergarten, and 75 percent of that~~  
631 ~~portion of the annual allocation designated for the purchase of~~  
632 ~~instructional materials for first grade, to purchase materials~~  
633 ~~not on the state-adopted list.~~

634 Section 14. Subsection (1) of section 1006.41, Florida  
635 Statutes, is amended to read:

636 1006.41 Disposal of instructional materials.—

637 (1) Instructional materials that have become unserviceable  
638 or surplus or are no longer on the district state contract may

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639 be disposed of, under adopted rule of the district school board,  
640 by:

641 (a) Giving or lending the materials to other public  
642 education programs within the district or state, to the teachers  
643 to use in developing supplementary teaching materials, to  
644 students or others, or to any charitable organization,  
645 governmental agency, home education students, private school, or  
646 state.

647 (b) Selling the materials to used book dealers, recycling  
648 plants, pulp mills, or other persons, firms, or corporations  
649 upon such terms as are most economically advantageous to the  
650 district school board.

651 Section 15. Section 1006.282, Florida Statutes, is amended  
652 to read:

653 1006.282 Pilot program for the transition to ~~electronic and~~  
654 digital instructional materials.-

655 (1) A district school board may designate pilot program  
656 schools to implement the transition to instructional materials  
657 that are in ~~an electronic or~~ a digital format as defined in s.  
658 1006.283 ~~s. 1006.29(3)~~.

659 (2) A district school board may designate pilot program  
660 schools if the school district:

661 (a) Implements a local instructional improvement system  
662 pursuant to s. 1006.281 which enables district staff to plan,  
663 create, and manage professional development and to connect  
664 professional development with staff information and student  
665 performance, provides the ability to seamlessly connect the  
666 system to ~~electronic and~~ digital instructional materials and the  
667 instructional materials to student assessment data, and includes

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668 the minimum standards published by the Department of Education.

669 (b) Requests only the ~~electronic or~~ digital format of the  
670 sample copies of instructional materials submitted pursuant to  
671 s. 1006.283 ~~s. 1006.33~~.

672 (c) Uses at least 50 percent of the pilot program school's  
673 annual allocation from the district for the purchase of  
674 ~~electronic or~~ digital instructional materials included on the  
675 district-adopted ~~state-adopted~~ list.

676 (3) A school designated as a pilot program school by the  
677 school board is exempt from:

678 (a) Section 1006.40(2), if the school provides  
679 comprehensive ~~electronic or~~ digital instructional materials to  
680 all students; and

681 (b) Section 1006.37.

682 (4) By August 1 of each year, beginning in 2011, the school  
683 board must report to the Department of Education the school or  
684 schools in its district which have been designated as pilot  
685 program schools. The department shall publish the list of pilot  
686 program schools on the department's Internet website. The report  
687 must include:

688 (a) The name of the pilot program school, the contact  
689 person and contact person information, and the grade or grades  
690 and associated course or courses included in the pilot program  
691 school.

692 (b) A description of the type of technological tool or  
693 tools that will be used to access the ~~electronic or~~ digital  
694 instructional materials included in the pilot program school,  
695 whether district-owned or student-owned.

696 (c) The projected costs and funding sources, which must

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697 include cost savings or cost avoidances, associated with the  
698 pilot program.

699 (5) By September 1 of each year, beginning in 2012, each  
700 school board that has a designated pilot program school shall  
701 provide to the Department of Education, the Executive Office of  
702 the Governor, and the chairs of the appropriations committees of  
703 the Senate and the House of Representatives a review of the  
704 pilot program schools which must include, but need not be  
705 limited to:

706 (a) Successful practices;

707 (b) The average amount of online Internet time needed by a  
708 student to access and use the school's ~~electronic or~~ digital  
709 instructional materials;

710 (c) Lessons learned;

711 (d) The level of investment and cost-effectiveness; and

712 (e) Impacts on student performance.

713 Section 16. Section 1010.82, Florida Statutes, is amended  
714 to read:

715 1010.82 Textbook Bid Trust Fund.—Chapter 99-36, Laws of  
716 Florida, re-created the Textbook Bid Trust Fund to record the  
717 revenue and disbursements of textbook bid performance deposits  
718 submitted to the Department of Education ~~as required in s.~~  
719 ~~1006.33.~~

720 Section 17. This act shall take effect July 1, 2014.



## 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 Committee  
CC: Joe McVaney, Staff Director  
Bethany Jones, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to agenda SB 864 – Instructional Materials for K-12 Public Education

**Date:** March 11, 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 cursive script 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](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/4

Meeting Date

Topic Instructional Materials

Bill Number

SB 864

Name Jessica Janasiewicz

Amendment Barcode

840528

(if applicable)

Job Title Consultant, Mixon & Associates

(if applicable)

Address 119 East Park Ave.

Phone

850-222-2591

Street

Tallahassee FL 32301

City

State

Zip

E-mail

jessica@mixonandassociates.com

Speaking:

For

Against

Information

Representing

Florida Association of District Instructional Materials Administrators

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)

3/26/14  
Meeting Date

Topic Instructional Materials

Bill Number 864  
(if applicable)

Name Vera Pickup-Crowford

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Legislative Liaison

Address 571 Kingsbury Terrace  
Street

Phone 561-644-2439

Wellington FL 33414  
City State Zip

E-mail vcrowford@msu.com

Speaking:  For  Against  Information

Representing Palm Beach, Charlotte Hc, Treasure Coast School District

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



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**APPEARANCE RECORD**

3-26-14

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

Meeting Date

Topic Instructional Materials for K-12 Public Education Bill Number SB 0864  
(if applicable)

Name Kathy Drumston Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Florida PTA Legislative Committee  
(if applicable)

Address 6641 S Old Floral City Rd Phone 352-341-2569  
Street

Floral City FL 34436 E-mail kthnumston@gmail.com  
City State Zip

Speaking:  For  Against  Information

Representing Florida PTA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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3/26/2014  
Meeting Date

Topic Textbook/ Instructional materials

Bill Number SB 864  
(if applicable)

Name WAYNE BLANTON

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Exec Director

Address 203 S. Monroe St.  
Street

Phone 414-2578

Tallahassee FLA 32301  
City State Zip

E-mail blanton@lbe.org

Speaking:  For  Against  Information

Representing FLA School Boards Assoc.

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)

3/26/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 864  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG      FLORIDA      33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

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

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

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

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BILL: CS/SB 1002

INTRODUCER: Banking and Insurance Committee and Senator Hays

SUBJECT: Public Records/Office of Financial Regulation

DATE: March 25, 2014      REVISED:

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	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Billmeier</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
3.	<u>                    </u>	<u>                    </u>	<u>RC</u>	<u>                    </u>

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 1002 creates a public records exemption for certain information held by the Office of Financial Regulation (OFR). The bill provides that information held by the OFR pursuant to an investigation or examination under the Consumer Collection Practices Act is confidential and exempt from disclosure. Such information may, however, be disclosed to law enforcement or other administrative agencies. This bill provides that such information is no longer confidential and exempt once the investigation or examination is complete or ceases to be active unless disclosure would jeopardize another active investigation or examination, reveal the personal identifying information of a consumer, reveal the identity of a confidential source, reveal investigative techniques or procedures, or reveal trade secrets.

This bill provides that the public records exemption is repealed on October 2, 2019, unless reenacted by the Legislature.

This bill contains a statement of public necessity required by article I, s. 24, Fla. Const.

This bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

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:

Article I, s. 24(a) of the Florida Constitution provides:

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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.

Chapter 119, Florida Statutes, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states:

Every person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.

Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined 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.<sup>1</sup>

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to perpetuate, communicate, or formalize knowledge.<sup>2</sup> All such materials are open for public inspection unless made exempt.<sup>3</sup>

There is a difference between records that the Legislature has made exempt from public inspection and those that are *confidential* and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.<sup>4</sup> If a record is simply made exempt from

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<sup>1</sup> Section 119.011(12), F.S.

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

<sup>3</sup> *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

<sup>4</sup> Florida Attorney General Opinion 85-62.

disclosure requirements, an agency is not prohibited from disclosing the record in all circumstances.<sup>5</sup>

Exemptions must be created by general law, and such law must specifically state the public necessity justifying the exemption.<sup>6</sup> The exemption must be no broader than necessary to accomplish the stated purpose of the law.<sup>7</sup> A bill enacting an exemption may not contain other substantive provisions.<sup>8</sup>

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

The Open Government Sunset Review Act<sup>9</sup> provides for the systematic review, through a five year cycle ending October 2 of the fifth year following enactment, of an exemption from the Public Records Act or the Public Meetings Law. An exemption may be created, revised, or expanded only if it serves an identifiable public purpose and if the exemption is no broader than necessary to meet the public purpose it serves.<sup>10</sup> 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.<sup>11</sup>

The Act also requires specified questions to be considered during the review process.<sup>12</sup>

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.<sup>13</sup> A public necessity statement and a two-thirds vote for passage are not required if the exemption is reenacted with grammatical or

<sup>5</sup> *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991), *review denied*, 589 So.2d 289 (Fla. 1991).

<sup>6</sup> See Fla. Const., art. I, s. 24(c).

<sup>7</sup> See Fla. Const., art. I, s. 24(c).

<sup>8</sup> See Fla. Const., art. I, s. 24(c).

<sup>9</sup> See section 119.15, F.S.

<sup>10</sup> See section 119.15(6)(b), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> 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?

<sup>13</sup> 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.

stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception<sup>14</sup> to the exemption is created.<sup>15</sup>

### **Regulation of Consumer Collection Agencies and Debt Collectors**

Part VI of ch. 559, F.S., regulates consumer collection agencies and protects consumers from certain debt collection practices that involve fraud, harassment, threats, and other unscrupulous activities. These collection agencies are required to comply with certain registration requirements administered by the OFR. Part VI of ch. 559, F.S., provides penalties for noncompliance with certain statutory requirements.

Under current law, the OFR has no authority to withhold from disclosure any information relating to consumer complaints, investigations, examinations, and registrations except that which is specifically provided in ch. 119, F.S. (such as social security numbers and bank account numbers).<sup>16</sup> SB 1006, the substantive bill linked to CS/SB 1002, provides the OFR with greater power to examine and investigate consumer collection agencies. SB 1006 also authorizes the OFR to conduct joint or concurrent examinations with other state or federal regulatory agencies and to share examination materials.

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

CS/SB 1002 provides that information held by the OFR pursuant to an investigation or examination of a violation of the Florida Consumer Collection Practices Act is confidential and exempt from s. 119.07(1), F.S. and article I, section 24 of the Florida Constitution. This bill provides that information made confidential and exempt may be disclosed by the office to a law enforcement agency or another administrative agency in the performance of its official duties and responsibilities.

This bill provides that such information is no longer confidential and exempt once the investigation or examination is completed or ceases to be active<sup>17</sup> unless disclosure of the information would:

- Jeopardize the integrity of another active investigation or examination.
- Reveal the personal identifying information of a consumer, unless the consumer is also the complainant. The complainant's personal identifying information is subject to disclosure

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<sup>14</sup> An example of an exception to a public records exemption would be allowing an additional agency access to confidential and exempt records.

<sup>15</sup> 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).

<sup>16</sup> Section 119.0712(3), F.S., contains an agency-specific exemption for the OFR, in which any information that the OFR receives from other state or federal regulatory, administrative, or criminal justice agencies that is confidential or exempt in accordance with the laws of the other agency.

<sup>17</sup> This bill provides that an investigation or examination is considered active if the investigation or examination is proceeding with reasonable dispatch and the OFR has a reasonable good faith belief that the investigation or examination may lead to the filing of an administrative, civil, or criminal proceeding or the denial or conditional grant of an application for registration or other approval.

after the investigation or examination is completed or ceases to be active but the complainant's personal financial and health information remains confidential and exempt.<sup>18</sup>

- Reveal the identity of a confidential source.
- Reveal investigative or examination techniques or procedures.
- Reveal trade secrets, as defined in s. 688.002, F.S.

This bill provides that it is subject to the Open Government Sunset Review Act and shall stand repealed on October 2, 2019.

This bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

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

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

None.

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

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill requires a two-thirds vote.

Article I, s. 24(c) of the Florida Constitution requires a bill creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill contains a public necessity statement.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

None.

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<sup>18</sup> This bill defines "personal financial and health information" as information relating to the existence, nature, source, or amount of a consumer's personal income, expenses, and debt, information relating to a consumer's financial transactions of any kind, information relating to the existence, identification, nature, or value of a consumer's assets, liabilities, or net worth, a consumer's personal health condition, disease, or a history of a consumer's personal medical diagnosis or treatment.



C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 559.5558 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 Banking and Insurance on March 5, 2014:**

The committee adopted an amendment to show that this bill takes effect on the same date that SB 1006 or substantially similar legislation takes effect if such legislation is adopted in the same legislative session or extended session and becomes a law.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Hays

597-02196-14

20141002c1

1 A bill to be entitled  
 2 An act relating to public records; creating s.  
 3 559.5558, F.S.; providing a public records exemption  
 4 for information held by the Office of Financial  
 5 Regulation pursuant to an investigation or examination  
 6 of consumer collection agencies; providing for future  
 7 repeal and legislative review of the exemption under  
 8 the Open Government Sunset Review Act; providing a  
 9 statement of public necessity; providing a contingent  
 10 effective date.  
 11  
 12 Be It Enacted by the Legislature of the State of Florida:  
 13  
 14 Section 1. Section 559.5558, Florida Statutes, is created  
 15 to read:  
 16 559.5558 Public records exemption.—  
 17 (1) DEFINITIONS.—As used in this section, the term  
 18 “personal financial and health information” means:  
 19 (a) Information relating to the existence, nature, source,  
 20 or amount of a consumer’s personal income, expenses, and debt;  
 21 (b) Information relating to a consumer’s financial  
 22 transactions of any kind;  
 23 (c) Information relating to the existence, identification,  
 24 nature, or value of a consumer’s assets, liabilities, or net  
 25 worth;  
 26 (d) A consumer’s personal health condition, disease, or  
 27 injury; or  
 28 (e) A history of a consumer’s personal medical diagnosis or  
 29 treatment.

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

597-02196-14

20141002c1

30 (2) INVESTIGATIONS AND EXAMINATIONS.—  
 31 (a) Except as otherwise provided in this section,  
 32 information held by the office pursuant to an investigation or  
 33 examination of a violation of this part is confidential and  
 34 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 35 Constitution. However, information made confidential and exempt  
 36 pursuant to this section may be disclosed by the office to a law  
 37 enforcement agency or another administrative agency in the  
 38 performance of its official duties and responsibilities.  
 39 (b) Such information is no longer confidential and exempt  
 40 once the investigation or examination is completed or ceases to  
 41 be active unless disclosure of the information would:  
 42 1. Jeopardize the integrity of another active investigation  
 43 or examination;  
 44 2. Reveal the personal identifying information of a  
 45 consumer, unless the consumer is also the complainant. In the  
 46 case of a complainant, the complainant’s personal identifying  
 47 information is subject to disclosure after the investigation or  
 48 examination is completed or ceases to be active; however, the  
 49 complainant’s personal financial and health information remains  
 50 confidential and exempt;  
 51 3. Reveal the identity of a confidential source;  
 52 4. Reveal investigative or examination techniques or  
 53 procedures; or  
 54 5. Reveal trade secrets, as defined in s. 688.002.  
 55 (c) For purposes of this section, an investigation or  
 56 examination shall be considered active if the investigation or  
 57 examination is proceeding with reasonable dispatch and the  
 58 office has a reasonable good faith belief that the investigation

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

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59 or examination may lead to the filing of an administrative,  
 60 civil, or criminal proceeding or the denial or conditional grant  
 61 of an application for registration or other approval required  
 62 under this part.

63 (3) REVIEW AND REPEAL.—This section is subject to the Open  
 64 Government Sunset Review Act in accordance with s. 119.15 and  
 65 shall stand repealed on October 2, 2019, unless reviewed and  
 66 saved from repeal through reenactment by the Legislature.

67 Section 2. The Legislature finds that it is a public  
 68 necessity that information held by the Office of Financial  
 69 Regulation pursuant to an investigation or examination conducted  
 70 under part VI of chapter 559, Florida Statutes, be confidential  
 71 and exempt from public records requirements for the following  
 72 reasons:

73 (1) An investigation or examination conducted by the Office  
 74 of Financial Regulation may lead to the filing of an  
 75 administrative, civil, or criminal proceeding or to the denial  
 76 or conditional granting of a registration. The premature release  
 77 of such information could frustrate or thwart the investigation  
 78 or examination and impair the ability of the office to  
 79 effectively and efficiently administer part VI of chapter 559,  
 80 Florida Statutes.

81 (2) Information held by the Office of Financial Regulation  
 82 which is provided to a law enforcement agency or another  
 83 administrative agency for further investigation or examination  
 84 needs to remain confidential and exempt until the investigation  
 85 or examination is completed or ceases to be active. Release of  
 86 this information before the completion of that investigation or  
 87 examination would jeopardize the integrity of the investigation

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88 and impair the ability of other agencies to carry out their  
 89 statutory duties.

90 (3) Investigations and examinations of consumer collection  
 91 agencies frequently involve the gathering of sensitive personal  
 92 information, including financial and health information  
 93 concerning complainants and consumers. The office may not  
 94 otherwise have access to this sensitive personal information but  
 95 for the investigation or examination. Because of the sensitive  
 96 personal nature of the information gathered, if the individuals  
 97 who are the subjects of such information are identifiable, the  
 98 disclosure of this information to the public could cause  
 99 unwarranted damage to the good names or reputations of the  
 100 individuals, especially if information associated with the  
 101 individuals is inaccurate. Furthermore, if the individuals who  
 102 are the subjects of such information are identifiable, public  
 103 access to such information could jeopardize the financial safety  
 104 of such individuals by placing them at risk of becoming the  
 105 subjects of identity theft. The Legislature further finds that  
 106 it is a public necessity that health information held by the  
 107 office be made confidential and exempt because matters of  
 108 personal health are traditionally private and confidential  
 109 concerns between the patient and the health care provider. The  
 110 private and confidential nature of personal health matters  
 111 pervades both the public and private health care sectors.  
 112 Moreover, public disclosure of health information could have a  
 113 negative effect upon a person's business and personal  
 114 relationships and could also have detrimental financial  
 115 consequences.

116 (4) Releasing information identifying a confidential source

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20141002c1

117 could jeopardize both the integrity of a current and future  
118 investigation or examination as well as the safety of the  
119 confidential source.

120 (5) Revealing investigative or examination techniques and  
121 procedures could allow a person to hide or conceal violations of  
122 law that otherwise would have been discovered during an  
123 investigation or examination. This exemption is necessary for  
124 the office, as well as law enforcement and other administrative  
125 agencies, in order for such agencies to effectively and  
126 efficiently carry out their statutory duties, which would be  
127 significantly impaired without this exemption.

128 (6) A trade secret derives independent economic value,  
129 actual or potential, from not being generally known to, and not  
130 readily ascertainable by, other persons who can obtain economic  
131 value from its disclosure or use. Without an exemption for a  
132 trade secret held by the office, that trade secret becomes a  
133 public record when received and must be divulged upon request.  
134 Divulging a trade secret under the public records law would  
135 destroy the value of that property, causing a financial loss to  
136 the person or entity submitting the trade secret. Release of  
137 that information would give business competitors an unfair  
138 advantage and weaken the position of the person or entity  
139 supplying the trade secret in the marketplace.

140 Section 3. This act shall take effect on the same date that  
141 SB 1006 or substantially similar legislation takes effect, if  
142 such legislation is adopted in the same legislative session or  
143 an extension thereof and becomes a law.



## 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 Committee  
CC: Joe McVaney, Staff Director  
Bethany Jones, Committee Administrative Assistant

**From:** Senator D. Alan Hays

**Subject:** Request to agenda SB 1002 – Public Records/Office of Financial Regulation

**Date:** March 6, 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

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**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14

Meeting Date

Topic \_\_\_\_\_

Bill Number SB1002  
*(if applicable)*

Name JO MORRIS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Legislative Affairs Director

Address 200 E. GAINES ST.  
*Street*

Phone \_\_\_\_\_

Tallahassee FL 32399  
*City State Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Office of Financial Regulation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: CS/CS/SB 1300

INTRODUCER: Governmental Oversight and Accountability Committee; Banking and Insurance Committee and Senator Simmons

SUBJECT: Public Records/Office of Insurance Regulation

DATE: March 28, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Johnson</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 1300, which is linked to CS/SB 1308, a bill relating to insurer solvency, creates a public records exemption to incorporate the confidentiality elements for the Office of Insurance Regulation (OIR) to meet the National Association of Insurance Commissioners' accreditation standards. The bill provides that proprietary business information held by the OIR in accordance with its statutory duties relating to insurer solvency is confidential and exempt from public record requirements. Proprietary business information includes information contained in specified reports, such as an actuarial opinion summary, enterprise risk reports, and principle-based valuation reports. The bill specifies circumstances under which such confidential and exempt information may be disclosed.

The effective date of the bill is October 1, 2014. The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature pursuant to the Open Government Sunset Review Act.

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.

## 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.<sup>1</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>2</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>3</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>4</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>5</sup>

Only the Legislature may create an exemption to public records requirements.<sup>6</sup> Such an exemption is created by general law and must specifically state the public necessity justifying the exemption.<sup>7</sup> 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 provisions<sup>8</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>9</sup>

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.<sup>10</sup> It

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

<sup>2</sup> *Id.*

<sup>3</sup> Chapter 119, F.S.

<sup>4</sup> 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 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)).

<sup>5</sup> Section 119.07(1)(a), F.S.

<sup>6</sup> 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).

<sup>7</sup> FLA. CONST., art. I, s. 24(c).

<sup>8</sup> The bill may, however, contain multiple exemptions that relate to one subject.

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

<sup>10</sup> 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.).



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.<sup>11</sup> 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.<sup>12</sup>

### **Office of Insurance Regulation**

The Office of Insurance Regulation (OIR) reports to the Financial Services Commission (commission), which is composed of the Governor and Cabinet members. The OIR is responsible for activities concerning insurers and other risk bearing entities, including licensing, rates, policy forms, market conduct, claims, issuance of certificates of authority, solvency, viatical settlements, premium financing, and administrative supervision, as provided under the Insurance Code or ch. 636, F.S.<sup>13</sup>

### **National Association of Insurance Commissioners**

The OIR is a member of the National Association of Insurance Commissioners (NAIC), an organization consisting of state insurance regulators. As a member of the NAIC, the OIR is required to participate in the organization's accreditation program. NAIC accreditation is a certification that a state insurance regulator is fulfilling legal, regulatory, and organizational oversight standards and practices. Once accredited, a member state is subject to a full accreditation review every five years.

### **Public Records Exemptions and the Insurance Code**

The Insurance Code currently provides a number of public records exemptions relating to insurance-related information, including trade secret documents,<sup>14</sup> risk-based capital information,<sup>15</sup> information related to orders of supervision,<sup>16</sup> and personal consumer and personal financial information.<sup>17</sup>

Section 624.319, F.S., provides that the OIR's examination and investigation reports and workpapers are confidential during the pendency of an examination or investigation. The exemption allows the OIR to share this information with other governmental entities (if disclosure is necessary for the receiving entity to perform its duties and responsibilities) and with the NAIC.

While there is no general statutory exemption for information claimed to be proprietary business information, the Legislature has created a number of exemptions from ch. 119, F.S., for proprietary business information held by certain agencies. Generally, this term is defined by the

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<sup>11</sup> Section 119.15(3), F.S.

<sup>12</sup> Section 119.15(6)(b), F.S.

<sup>13</sup> See s. 20.121(3)(a)1., F.S.

<sup>14</sup> Section 624.4213, F.S. Even in the absence of a statutory exemption for particular trade secrets, s. 815.045, F.S., "should be read to exempt from disclosure as public records *all* trade secrets [as defined in s. 812.081(1)(c), F.S.]." *Sepra Corp. v. Florida Dep't of Environmental Protection*, 911 So.2d 792 (Fla. 1st DCA 2003), *review denied sub nom.*

<sup>15</sup> Section 624.40851, F.S.

<sup>16</sup> Section 624.82, F.S.

<sup>17</sup> Section 624.23, F.S.

statute creating the exemption and frequently includes trade secrets. Currently, the Insurance Code contains a specific exemption relating to “proprietary business information” held by the OIR, but it relates only to such information provided by a title insurance agency or insurer.<sup>18</sup>

### **Insurer Solvency**

The NAIC periodically reviews its solvency standards as set forth in its model acts, and revises accreditation requirements to adapt to evolving industry standards. The OIR has identified several model act components not currently included in the Insurance Code that need to be implemented for a state regulator to maintain its accreditation. The linked bill, CS/SB 1308, implements the following NAIC models, which include confidentiality requirements:

#### ***NAIC Property and Casualty Actuarial Opinion Model Law***

Current law requires insurers (except those providing life insurance and title insurance) to provide to the OIR a statement of opinion on loss and loss adjustment expense reserves prepared by an actuary or a qualified loss reserve specialists, and supporting workpapers. Current law treats these documents as public records.<sup>19</sup> The NAIC model law provides that states must require insurers to provide actuarial opinion summaries and that the regulators must keep these summaries confidential.

#### ***Insurance Holding Company System Regulatory Model Act and the Insurance Holding Company Model Regulation***

In response to the recent financial crisis, a NAIC workgroup focused on group supervision issues in the context of large insurers and their affiliates in their respective holding companies. The workgroup noted the corresponding regulatory need to enhance insurance regulators’ ability to obtain and evaluate financial information from affiliates, especially regarding “enterprise risk.”<sup>20</sup> The NAIC model act, which is codified in CS/SB 1308, provides the OIR with access to information of an insurer and its affiliates to ascertain the financial condition of the insurer, including the enterprise risk to the insurer by the ultimate controlling party. In adopting the model act, CS/SB 1308, also makes the following changes that are relevant to the public records exemption created by this bill:

- Requires persons seeking a controlling interest in an insurer or controlling company to file an annual enterprise risk report with the OIR.
- Provides that a controlling person of a domestic insurer may divest its controlling interest by providing notice to the OIR.
- Provides for the OIR’s participation in a supervisory college, as the NAIC has also made establishment and participation in supervisory colleges an accreditation standard.

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<sup>18</sup> Section 626.94195, F.S.

<sup>19</sup> Section 624.424, F.S.

<sup>20</sup> Enterprise risk is “any activity, circumstance, event, or series of events involving one or more affiliates of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer or its insurance company as a whole, including, but not limited to, anything that would cause the insurer’s risk-based capital as set forth in [state statutory requirement] or would cause the insurer to be in a hazardous financial condition.” Section 1(F) of the NAIC Model Insurance Holding Company System Regulatory Act.

## Insurance Valuation and Reserves

The linked bill, CS/SB 1308, prescribes the adoption of the NAIC Valuation Manual as the authoritative source for determining reserves and implementing principle-based reserves for specified insurance products. Life insurance contracts, accident and health contracts, and deposit-type policies are subject to the valuation manual. Initially, principle based reserves would apply to term life insurance and universal life products with a secondary guarantee (also known as no-lapse guarantee). The bill requires the implementation of the Valuation Manual for policies issued on or after the operative date of the valuation manual. The Valuation Manual requires insurers to submit to the OIR various documents and reports, including, experience reporting, actuarial opinions, memorandums, and principle-based reports.

### III. Effect of Proposed Changes:

This bill, which is linked to CS/SB 1308, creates a public records exemption to incorporate the necessary confidentiality elements for the OIR to meet the NAIC's accreditation standards.

The bill provides that proprietary business information held by the OIR in accordance with its statutory duties relating to insurer solvency is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill defines "proprietary business information" to mean information owned or controlled by an insurer, or a person or affiliated person who seeks acquisition of controlling stock in a domestic stock insurer or controlling company, and:

- Is intended to be and is treated by the insurer or the person as private in that the disclosure of the information would cause harm to the insurer, the person, or the company's business operations and has not been disclosed unless disclosed pursuant to a statutory requirement, an order of a court or administrative body, or a private agreement that provides that the information will not be released to the public;
- Is not otherwise readily ascertainable or publicly available by proper means by other persons from another source in the same configuration as requested by the office; and includes, but is not limited to:
  - Trade secrets as defined in the Uniform Trade Secrets Act<sup>21</sup> that comply with the Insurance Code's trade secret document marking requirements.
  - Information relating to competitive interests, the disclosure of which would impair the competitive business of the provider of the information.
  - The source, nature, and amount of the consideration used or to be used in carrying out a merger or other acquisition of control in the ordinary course of business, including the identity of the lender, if the person filing a statement regarding consideration so requests.
  - Information relating to bids or other contractual data, the disclosure of which would impair the efforts of the insurer or its affiliates to contract for goods or services on favorable terms.
  - Internal auditing controls and reports of internal auditors.

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<sup>21</sup> Section 688.002(4), F.S., defines "trade secret" to mean information, including a formula, pattern, compilation, program, device, method, technique, or process that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The bill also provides that proprietary business information contained in the following items held by the OIR is confidential and exempt:

- The actuarial opinion summary required under s. 624.424(1)(b), F.S., and the documents, material, and other related information.
- A notice filed with the OIR by the person or affiliated person who seeks to divest controlling stock in an insurer.
- The insurers' annual registration statement, which is required by CS/SB 1308 and all documents, materials, and other related information.
- The enterprise risk report required by CS/SB 1308 and the documents, materials, and other information related to the enterprise risk report.
- Information provided to or obtained by the OIR pursuant to participation in a supervisory college, created by CS/SB 1308.

The bill provides that, on or after the operative date of the Valuation Manual, the following items are confidential and exempt:

- An actuarial examination conducted pursuant to s. 625.1212(5)(c), F.S., and related information;
- The annual certification submitted by the insurer pursuant to s. 625.1212(6)(b)2, F.S., and related information;
- The principle-based valuation report filed pursuant to s. 625.1212(6)(b)3, F.S., and related information; and
- Mortality, morbidity, policyholder behavior, or expense experience and other data submitted pursuant to s. 625.1212(7), F.S., which includes potentially company-identifiable or personally identifiable information.

The bill provides that information received from another governmental entity or the NAIC, which is confidential or exempt if held by that entity and is held by the OIR for the use in the OIR's performance of its official duties, is also confidential and exempt.

The bill authorizes the OIR to disclose the confidential and exempt proprietary business information in the following circumstances:

- If the insurer to which it pertains gives prior written consent;
- Pursuant to a court order;
- To the American Academy of Actuaries upon a request stating the information is for the purpose of professional disciplinary proceedings and specifying procedures satisfactory to the OIR for preserving the confidentiality of the information;
- To other states, federal and international agencies, NAIC, and state, federal, and international law enforcement authorities, including members of a supervisory college, if the recipient agrees in writing to maintain the confidential and exempt status of the document, material, or other information and has verified in writing its legal authority to maintain such confidentiality; or
- For the purpose of aggregating information on an industry wide basis and disclosing the information to the public only if the specific identities of the insurers, or persons or affiliated persons, are not revealed.

The bill provides that the public records exemption is subject to the Open Government Sunset Review Act and will repeal 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. The bill will take effect October 1, 2014, if CS/SB 1308 or similar legislation is adopted in the same legislative session or an extension thereof and becomes a law.

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

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

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

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

Section 24(c), Art. I of the Florida Constitution requires a newly created public records exemption to pass by a two-thirds vote of the members present and voting in each house of the Legislature. This bill creates a new public records exemption; therefore, it requires a two-thirds vote for final passage.

Section 24(c), Art. I of the Florida Constitution requires a law creating a new public records exemption to contain a public necessity statement justifying the exemption. This bill creates a new public records exemption; therefore, it contains a public necessity statement.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The public records exemption created by the bill may have an indeterminate positive impact on the private sector by protecting insurers' proprietary business information.

##### **C. Government Sector Impact:**

None.

#### **VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 624.4212 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 26, 2014:**

The CS/CS makes a technical change to limit the scope of records that are confidential and exempt.

**CS by Banking and Insurance on March 11, 2014:**

The CS expands the public records exemption to incorporate additional proprietary information contained in reports and documents, relating to the Standard Valuation Law provisions of the linked bill, CS/SB 1308.

**B. Amendments:**

None.



177436

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2014	.	
	.	
	.	
	.	

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

- 1       **Senate Amendment**
- 2
- 3       Delete line 37
- 4       and insert:
- 5       (c) Includes:

By the Committee on Banking and Insurance; and Senator Simmons

597-02473-14

20141300c1

1 A bill to be entitled  
 2 An act relating to public records; creating s.  
 3 624.4212, F.S.; defining the term "proprietary  
 4 business information"; creating an exemption from  
 5 public records requirements for proprietary business  
 6 information and information that is confidential when  
 7 held by another entity in this state, the Federal  
 8 Government, or another state or nation, and which is  
 9 held by the Office of Insurance Regulation; providing  
 10 exceptions; providing for future legislative review  
 11 and repeal; providing a statement of public necessity;  
 12 providing a contingent effective date.  
 13  
 14 Be It Enacted by the Legislature of the State of Florida:  
 15  
 16 Section 1. Section 624.4212, Florida Statutes, is created  
 17 to read:  
 18 624.4212 Confidentiality of proprietary business and other  
 19 information.—  
 20 (1) As used in this section, the term "proprietary business  
 21 information" means information, regardless of form or  
 22 characteristics, which is owned or controlled by an insurer, or  
 23 a person or an affiliated person who seeks acquisition of  
 24 controlling stock in a domestic stock insurer or controlling  
 25 company, and which:  
 26 (a) Is intended to be and is treated by the insurer or the  
 27 person as private in that the disclosure of the information  
 28 would cause harm to the insurer, the person, or the company's  
 29 business operations and that the information has not been

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30 disclosed unless disclosed pursuant to a statutory requirement,  
 31 an order of a court or administrative body, or a private  
 32 agreement that provides that the information will not be  
 33 released to the public;  
 34 (b) Is not otherwise readily ascertainable or publicly  
 35 available by proper means by other persons from another source  
 36 in the same configuration as requested by the office; and  
 37 (c) Includes, but is not limited to:  
 38 1. Trade secrets as defined in s. 688.002 which comply with  
 39 s. 624.4213.  
 40 2. Information relating to competitive interests, the  
 41 disclosure of which would impair the competitive business of the  
 42 provider of the information.  
 43 3. The source, nature, and amount of the consideration used  
 44 or to be used in carrying out a merger or other acquisition of  
 45 control in the ordinary course of business, including the  
 46 identity of the lender, if the person filing a statement  
 47 regarding consideration so requests.  
 48 4. Information relating to bids or other contractual data,  
 49 the disclosure of which would impair the efforts of the insurer  
 50 or its affiliates to contract for goods or services on favorable  
 51 terms.  
 52 5. Internal auditing controls and reports of internal  
 53 auditors.  
 54 (2) Proprietary business information contained in the  
 55 following items held by the office is confidential and exempt  
 56 from s. 119.07(1) and s. 24(a), Art. I of the State  
 57 Constitution:  
 58 1. The actuarial opinion summary required under ss.

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59 624.424(1)(b) and 625.121(3) and information related thereto.

60 2. A notice filed with the office by the person or  
61 affiliated person who seeks to divest controlling stock in an  
62 insurer pursuant to s. 628.461.

63 3. The filings required under s. 628.801 and information  
64 related thereto.

65 4. The enterprise risk report required under ss. 628.461(3)  
66 and 628.801 and information related thereto.

67 5. Information provided to or obtained by the office  
68 pursuant to participation in a supervisory college established  
69 under s. 628.805.

70 6. Beginning on the operative date of the valuation manual  
71 as defined in s. 625.1212(2):

72 a. An actuarial examination conducted pursuant to s.  
73 625.1212(5)(c), and information related thereto;

74 b. The annual certification submitted by the insurer  
75 pursuant to s. 625.1212(6)(b)2., and information related  
76 thereto;

77 c. The principle-based valuation report filed pursuant to  
78 s. 625.1212(6)(b)3., and information related thereto; and

79 d. Mortality, morbidity, policyholder behavior, or expense  
80 experience and other data submitted pursuant to s. 625.1212(7),  
81 which includes potentially company-identifiable or personally  
82 identifiable information.

83 (3) Information received from the NAIC or another  
84 governmental entity in this or another state, the Federal  
85 Government, or another nation which is confidential or exempt if  
86 held by that entity and which is held by the office for use in  
87 the office's performance of its duties relating to insurer

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88 valuation and solvency is confidential and exempt from s.

89 119.07(1) and s. 24(a), Art. I of the State Constitution.

90 (4) The office may disclose information made confidential  
91 and exempt under this section:

92 (a) If the insurer to which it pertains gives prior written  
93 consent;

94 (b) Pursuant to a court order;

95 (c) To the American Academy of Actuaries upon a request  
96 stating that the information is for the purpose of professional  
97 disciplinary proceedings and specifying procedures satisfactory  
98 to the office for preserving the confidentiality of the  
99 information;

100 (d) To other states, federal and international agencies,  
101 the National Association of Insurance Commissioners and its  
102 affiliates and subsidiaries, and state, federal, and  
103 international law enforcement authorities, including members of  
104 a supervisory college described in s. 628.805 if the recipient  
105 agrees in writing to maintain the confidential and exempt status  
106 of the document, material, or other information and has  
107 certified in writing its legal authority to maintain such  
108 confidentiality; or

109 (e) For the purpose of aggregating information on an  
110 industrywide basis and disclosing the information to the public  
111 only if the specific identities of the insurers, or persons or  
112 affiliated persons, are not revealed.

113 (5) This section is subject to the Open Government Sunset  
114 Review Act in accordance with s. 119.15 and is repealed on  
115 October 2, 2019, unless reviewed and saved from repeal through  
116 reenactment by the Legislature.

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117 Section 2. (1) The Legislature finds that it is a public  
 118 necessity that proprietary business information that is provided  
 119 to the Office of Insurance Regulation by an insurer or by an  
 120 acquiring party pursuant to the Florida Insurance Code or the  
 121 Holding Company System Regulatory Act of the National  
 122 Association of Insurance Commissioners in order for the office  
 123 to conduct its regulatory duties with respect to insurer  
 124 valuation and solvency, be made confidential and exempt from s.  
 125 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 126 State Constitution. The disclosure of such information could  
 127 injure an insurer in the marketplace by providing its  
 128 competitors with detailed insight into the reserve assumptions  
 129 and strategies, modeling methodologies, business plans, pricing  
 130 and marketing strategies, management systems and operational  
 131 protocols, and financial status of the insurer, thereby  
 132 diminishing the advantage that the insurer maintains over  
 133 competitors that do not possess such information. Without this  
 134 exemption, an insurer or an acquiring party might refrain from  
 135 providing accurate and unbiased data, thus impairing the  
 136 office's ability to accurately evaluate the propriety of  
 137 proposed acquisitions in the state and the financial condition  
 138 of insurers and their affiliates. Proprietary business  
 139 information derives actual or potential independent economic  
 140 value from not being generally known to, and not being readily  
 141 ascertainable by proper means by, other persons who can derive  
 142 economic value from its disclosure or use. The office, in  
 143 performing its duties and responsibilities, may need to obtain  
 144 proprietary business information from insurers and regulated  
 145 entities. Without an exemption from public records requirements

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20141300c1

146 for proprietary business information provided to the office,  
 147 such information becomes a public record when received and must  
 148 be divulged upon request. Divulgence of proprietary business  
 149 information under the public records law would destroy the value  
 150 of that property to the proprietor, causing a financial loss not  
 151 only to the proprietor but also to the residents of this state  
 152 due to the loss of reliable financial data necessary for the  
 153 accurate evaluation of proposed acquisitions. Release of  
 154 proprietary business information would give business competitors  
 155 an unfair advantage and weaken the position in the marketplace  
 156 of the proprietor who owns or controls the business information.

157 (2) The Legislature also finds that it is a public  
 158 necessity that information received by the office from the  
 159 National Association of Insurance Commissioners, or from an  
 160 agency in this or another state or nation or the Federal  
 161 Government, which is otherwise exempt or confidential pursuant  
 162 to the laws of this or another state or nation or pursuant to  
 163 federal law or which is confidential or exempt if held by that  
 164 entity, for use by the office in the performance of duties  
 165 related to insurer valuation and solvency under the Florida  
 166 Insurance Code, be made confidential and exempt from s.  
 167 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 168 State Constitution. Divulgence of such information could impede  
 169 the exchange of information and communication among regulators  
 170 across multiple agencies and jurisdictions and jeopardize the  
 171 ability of regulators to effectively supervise insurers and  
 172 groups operating in multiple jurisdictions and engaged in  
 173 significant cross-border activities.

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

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597-02473-14

20141300c1

175 SB 1308 or similar legislation is adopted in the same  
176 legislative session or an extension thereof and becomes a law.



The Florida Senate

## Committee Agenda Request

**To:** Senator Jeremy Ring, Chair  
Committee on Governmental Oversight and Accountability

**Subject:** Committee Agenda Request

**Date:** March 14, 2014

---

I respectfully request that **Senate Bill 1300**, relating to Public Records / Office of Insurance Regulation, be placed on the:

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

A handwritten signature in black ink, appearing to read "David Simmons".

---

Senator David Simmons  
Florida Senate, District 10

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 1300  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH  
*Street*

Phone 727-897-9291

SAINT PETERSBURG      FLORIDA      33705  
*City*                                      *State*                                      *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/25

Meeting Date

Topic Insurer Solvency

Bill Number 1300  
*(if applicable)*

Name Monte Stevens

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Deputy Chief of Staff

Address 200 E. Gaines St

Phone 413-5005

Street

TALL FL

City

State

Zip

E-mail Monte.Stevens@fla.senate.gov

Speaking:  For  Against  Information

Representing OIR

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)

3/26/14  
Meeting Date

Topic \_\_\_\_\_

Bill Number SB 1300  
*(if applicable)*

Name Paul Sanford

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

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

Address 106 S. Monroe St.

Phone 222-7200

*Street*

Tallahassee, FL 32304

*City*

*State*

*Zip*

E-mail \_\_\_\_\_

Speaking:  For  Against  Information

Representing Florida Blue, ACLI, FIC

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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

---

BILL: CS/SB 1396

INTRODUCER: Education Committee and Senator Montford

SUBJECT: Public Records/Public-private Partnerships/State Universities

DATE: March 25, 2014

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

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

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1396 makes confidential and exempt from disclosure, pursuant to Florida's public records law, certain unsolicited proposals, proprietary confidential business information, and board meetings at which these proposals and information will be discussed, relating to a public-private partnership filed with a state university board of trustees, and provides a statement of public necessity.

The public records and public meeting exemptions are subject to the Open Government Sunset Review Act and shall be repealed on October 2, 2019, unless action is taken by the Legislature to reenact the exemption. 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.

The bill is tied to the passage of CS/SB 900 and takes effect on the same date as CS/SB 900 or similar legislation becomes law.



## II. Present Situation:

### Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very 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, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.<sup>1</sup>

Under Florida law, “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”<sup>2</sup>

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.<sup>3</sup> Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.<sup>4</sup>

### Florida Open Meetings Requirements

The Constitution of the State of Florida provides that:

[a]ll meetings of any collegial public body ... at which official acts are to be taken or at which public business of such body is to be transacted or discussed, shall be open and noticed to the public ... except with respect to meetings exempted pursuant to this section or specifically closed by this Constitution.<sup>5</sup>

Under Florida law, “[a]ll meetings of any board ... at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal action shall be considered binding except as taken or made at such meeting.”<sup>6</sup>

However, the Legislature is authorized to exempt meetings from such laws that otherwise require accessibility.<sup>7</sup> Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.<sup>8</sup>

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<sup>1</sup> Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term “public records” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(12), F.S.

<sup>2</sup> Section 119.07(1)(a), F.S.

<sup>3</sup> Art. I, s. 24(c), Fla. Const.

<sup>4</sup> *Id.*

<sup>5</sup> Art. I, s. 24(b), Fla. Const.

<sup>6</sup> Section 286.011(2), F.S.

<sup>7</sup> Art. I, s. 24(c), Fla. Const.

<sup>8</sup> *Id.*

## Open Government Sunset Review Act

The Open Government Sunset Review Act<sup>9</sup> provides that an exemption must serve an “identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves.”<sup>10</sup> The exemption must meet one of the following identifiable public purposes:<sup>11</sup>

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; 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 information would injure the affected entity in the marketplace.

A new public records or open meeting exemption shall be repealed on October 2nd of the fifth year after enactment, unless the Legislature reenacts the exemption.<sup>12</sup>

## Senate Bill 900 (2014)

CS/SB 1396 is the public records exemption bill for CS/SB 900. CS/SB 900 creates a public-private partnership process for state universities. CS/SB 900 authorizes state university boards of trustees (board) to enter into public-private partnerships (P3s) for specified qualifying projects if the board determines the project is in the public’s best interest.

The board may receive unsolicited proposals or may solicit proposals for qualifying projects and may, thereafter, enter into an agreement with a private entity for the building, upgrading, operation, ownership, or financing of facilities.<sup>13</sup>

If the board receives an unsolicited proposal and intends to enter into a P3 agreement for the project, the board must publish a notice in a newspaper of general circulation at least once a week for two weeks stating that the board has received a proposal and will accept other proposals. The board may not accept any proposals after 120 days after the initial publication.

After the notification period has expired, the board must rank the proposals received in order of preference. If negotiations with the first ranked firm are unsuccessful, the board may begin

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<sup>9</sup> Section 119.15, F.S.

<sup>10</sup> Section 119.15(6)(b), F.S.

<sup>11</sup> *Id.*

<sup>12</sup> Sections 119.15(3), 286.0111, F.S.,

<sup>13</sup> Section 1007.07(a), F.S., authorizes university boards of trustees to acquire real and personal property as well as engage in contracts.

negotiations with the second ranked firm. The board may reject all proposals at any point in the process.

### **Public Record and Public Meeting Exemptions**

Current law does not provide a public record exemption for unsolicited proposals. However, sealed bids, proposals, or replies received by an agency pursuant to a competitive solicitation are exempt<sup>14</sup> from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever is earlier.<sup>15</sup> If an agency rejects all bids, proposals, or replies submitted in response to a competitive solicitation and the agency concurrently provides notice of its intent to reissue the competitive solicitation, the rejected bids, proposals, or replies remain exempt until the agency provides notice of its intended decision or withdraws the reissued competitive solicitation. A bid, proposal, or reply is not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, or replies.<sup>16</sup>

Current law does not provide a public meeting exemption for meetings during which an unsolicited proposal is discussed. However, public meetings in which a negotiation with a vendor is conducted pursuant to a competitive solicitation, at which a vendor makes an oral presentation as part of a competitive solicitation, or at which a vendor answers questions as part of a competitive solicitation are exempt from public meeting requirements.<sup>17</sup> A complete recording of the closed meeting must be made; no portion of the exempt meeting may be held off the record.<sup>18</sup>

The recording of, and any records presented at, the exempt meeting are exempt from public record requirements until such time as the agency provides notice of an intended decision or until 30 days after opening the bids, proposals, or final replies, whichever occurs earlier.<sup>19</sup> If the agency rejects all bids, proposals, or replies and concurrently provides notice of its intent to reissue a competitive solicitation, the recording and any records presented at the exempt meeting remain exempt from public record requirements until such time as the agency provides notice of an intended decision concerning the reissued competitive solicitation or until the agency withdraws the reissued competitive solicitation.<sup>20</sup> A recording and any records presented at an exempt meeting are not exempt for longer than 12 months after the initial agency notice rejecting all bids, proposals, and replies.<sup>21</sup>

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<sup>14</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems 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, 53 (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 1994); *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).

<sup>15</sup> Section 119.071(1)(b), F.S.

<sup>16</sup> *Id.*

<sup>17</sup> Section 286.0113(2)(b), F.S.

<sup>18</sup> Section 286.0113(2)(c), F.S.

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

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

### III. Effect of Proposed Changes:

#### Unsolicited Proposals

CS/SB 1396 provides that unsolicited proposals received by the board are confidential and exempt<sup>22</sup> from disclosure until the board ranks the unsolicited proposals and provides notice of its intended decision.

CS/SB 1396 also provides that unsolicited proposals are confidential and exempt until 90 days after the board rejects all unsolicited proposals, or 90 days after the board decides not to enter into an agreement. Proprietary confidential business records continue to be confidential and exempt from public disclosure even after the rest of the unsolicited proposal is made public.

#### Proprietary Confidential Business Information

CS/SB 1396 defines “proprietary confidential business information” as information provided by a private entity to a state university board that:

- Has been designated by a private entity as information that is owned or controlled by the private entity;
- Is intended to be and is treated by the private entity as private and the disclosure of which would harm the business operations of the private entity;
- Has not otherwise been intentionally disclosed by the private entity; and
- Is information concerning:
  - Trade secrets as defined in s. 688.002, F.S.;
  - Financial statements or financing terms;
  - Patent-pending or copyrighted designs;
  - Leasing or real property acquisition plans; or
  - Marketing studies.

#### Board Meetings

This bill provides that portions of a board meeting at which unsolicited proposals are discussed are exempt from Florida’s open meetings laws.<sup>23</sup> The exempt portion of the meeting must be recorded and transcribed, including the times of commencement and termination of the meeting, all discussions and proceedings, the names of all persons present at any time, and the names of all persons speaking. The exempt portion of the meeting may not be off the record. Transcripts containing confidential business records are confidential and exempt.

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<sup>22</sup> 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).

<sup>23</sup> Section 286.011, F.S., and Art. I, s. 24(b), Fla. Const.

### Statement of Public Necessity

The bill provides a statement of public necessity for the exemption,<sup>24</sup> which states that:

- If unsolicited proposals are publicly available before the board makes a decision, competitors could determine the creative financing used to fund the projects.
- If proprietary confidential business information is not made confidential and exempt, it may discourage a private entity from providing an unsolicited proposal to a board in order to avoid having proprietary confidential business information made public.
- Board review of unsolicited proposals or proprietary confidential business information needs to be made confidential and exempt in order to maintain the confidential and exempt status of this information.
- Unsolicited proposals may contain proprietary business information and trade secrets, such as patent-pending designs and financing terms.
- The harm that may result from the release of such information outweighs any public benefit that may be derived from disclosure of the information.

The public records and open meetings exemption provisions are subject to the Open Government Sunset Review Act and shall be repealed on October 2, 2019, unless action is taken by the Legislature to reenact the exemption.

#### IV. Constitutional Issues:

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

None.

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

###### Vote Requirement

Article I, s. 24(c) of the State Constitution, requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill creates new public record exemptions and, therefore, requires a two-thirds vote for final passage.

###### Public Necessity Statement

Article I, s. 24(c) of the State Constitution, requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates new public record and new public meetings exemptions and, therefore, includes a public necessity statement for both.

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<sup>24</sup> The bill does not exempt solicited proposals from disclosure pursuant to a public records request. The same public purpose for exempting a solicited proposal may also exist for solicited proposals. *Compare*, Section 119.071(1)(b), F.S. (which creates a public records exemption for all sealed bids, proposals or replies in response to a competitive solicitation pursuant to s. 287.057, F.S.).

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. **Technical Deficiencies:**

This bill does not state that confidential business records continue to be confidential and exempt after a board has ranked the unsolicited proposals it has received and provided notice of its intended decision.

This bill makes proprietary confidential business information and transcripts of the board discussion confidential and exempt from public disclosure, but does not provide any conditions for those records to be released or reviewed.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill creates section 1013.505(14) of the Florida Statutes, which will be created should CS/SB 900, or a substantially similar bill, become law.

IX. **Additional Information:**

A. **Committee Substitute – Statement of Substantial Changes:**

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

**CS by Education on March 11, 2014:**

The committee substitute differs from SB 1396 in the following ways:

- Creates and defines the term “proprietary confidential business information”; to provide that trade-secret, proprietary, and financial-type information contained within the initial proposal is confidential and exempt from Florida’s public records law; makes the entire initial proposal confidential and exempt for a specified period of time; reduces the time period that an unsolicited proposal is confidential and exempt,

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when all proposals are rejected, from 12 months to 90 days; and includes provisions authorizing the state university board hold confidential and exempt “shade” meetings to discuss unsolicited proposals and proprietary confidential business information.

- Updates the public necessity statement to address the new provisions.

B. Amendments:

None.

By the Committee on Education; and Senator Montford

581-02476-14

20141396c1

1 A bill to be entitled  
 2 An act relating to public records and meetings;  
 3 amending s. 1013.505, F.S., relating to public-private  
 4 projects for the upgrade of state university  
 5 facilities and infrastructure; defining the term  
 6 "proprietary confidential business information";  
 7 creating an exemption from public records requirements  
 8 for unsolicited proposals held by a state university  
 9 board of trustees for a specified period; providing  
 10 that proprietary confidential business information  
 11 remains confidential and exempt from public records  
 12 requirements; creating an exemption from public  
 13 meetings requirements for portions of meetings of a  
 14 state university board of trustees at which  
 15 confidential and exempt information is discussed;  
 16 providing for future review and repeal of the  
 17 exemptions under the Open Government Sunset Review  
 18 Act; providing statements of public necessity;  
 19 providing a contingent effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Subsection (14) is added to section 1013.505,  
 24 Florida Statutes, as created by SB 900, 2014 Regular Session, to  
 25 read:

26 1013.505 Public-private partnerships; state universities  
 27 and private entities.—

28 (14) PUBLIC RECORDS AND PUBLIC MEETINGS EXEMPTIONS.—

29 (a) As used in this subsection, the term "proprietary

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30 confidential business information" means information that has  
 31 been designated by a private entity when provided to a state  
 32 university board of trustees as information that is owned or  
 33 controlled by the private entity, is intended to be and is  
 34 treated by the private entity as private and the disclosure of  
 35 which would harm the business operations of the private entity,  
 36 has not otherwise been intentionally disclosed by the private  
 37 entity, and is information concerning:  
 38 1. Trade secrets as defined in s. 688.002;  
 39 2. Financial statements or financing terms;  
 40 3. Patent-pending or copyrighted designs;  
 41 4. Leasing or real property acquisition plans; or  
 42 5. Marketing studies.  
 43 (b)1. If a board receives an unsolicited proposal under  
 44 this section, the proposal is confidential and exempt from s.  
 45 119.07(1) and s. 24(a), Art. I of the State Constitution until  
 46 such time that the board receives and ranks the proposals as  
 47 described in subsection (5) and provides notice of its intended  
 48 decision.  
 49 2. An unsolicited proposal is not confidential and exempt  
 50 for more than 90 days after the date the board rejects all  
 51 proposals received for the project described in the unsolicited  
 52 proposal or, if the board does not intend to enter into an  
 53 agreement for the project, the date the unsolicited proposal is  
 54 received. However, even if the board rejects all proposals or  
 55 decides not to enter into an agreement for the project described  
 56 in the unsolicited proposal, any proprietary confidential  
 57 business information contained in the unsolicited proposal shall  
 58 remain confidential and exempt from s. 119.07(1) and s. 24(a),



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59 Art. I of the State Constitution.

60 (c)1. A portion of a meeting of a state university board of  
 61 trustees at which information that is confidential and exempt  
 62 under paragraph (b) is discussed, is exempt from s. 286.011 and  
 63 s. 24(b), Art. I of the State Constitution.

64 2. An exempt portion of a meeting shall be recorded and  
 65 transcribed. The board shall record the times of commencement  
 66 and termination of the meeting, all discussions and proceedings,  
 67 the names of all persons present at any time, and the names of  
 68 all persons speaking. An exempt portion of a meeting may not be  
 69 off the record.

70 3. A portion of the transcript of a meeting which reveals  
 71 proprietary confidential business information is confidential  
 72 and exempt from s. 119.07(1) and s. 24(a), Art. II of the State  
 73 Constitution.

74 (d) This subsection is subject to the Open Government  
 75 Sunset Review Act in accordance with s. 119.15 and shall stand  
 76 repealed on October 2, 2019, unless reviewed and saved from  
 77 repeal through reenactment by the Legislature.

78 Section 2. (1) The Legislature finds that it is a public  
 79 necessity that an unsolicited proposal held by a state  
 80 university board of trustees pursuant to s. 1013.505, Florida  
 81 Statutes, be confidential and exempt from public records  
 82 requirements until the board provides notification of its  
 83 decision or its intent to make a decision after ranking  
 84 proposals under s. 1013.505(5)(c), Florida Statutes. The  
 85 protection of information contained in unsolicited proposals  
 86 serves a public need by encouraging private investment in state  
 87 university facilities and further promotes timely and cost-

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

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88 effective acquisition, design, construction, improvement,  
 89 renovation, expansion, equipping, maintenance, operation,  
 90 implementation, or installation of projects that will be  
 91 principally used by a state university in serving the  
 92 university's core mission that may not be satisfied by existing  
 93 procurement methods. These unsolicited proposals may contain  
 94 proprietary confidential business information, and, if such  
 95 information is made publicly available before a state university  
 96 board of trustees makes a decision regarding a proposal,  
 97 competitors could determine the creative financing used to fund  
 98 these projects. If such information is not protected, it may  
 99 discourage a private entity from providing an unsolicited  
 100 proposal to a board in order to avoid having proprietary  
 101 confidential business information and other business information  
 102 made public. This exemption is narrowly drawn in that an  
 103 unsolicited proposal is not confidential and exempt for more  
 104 than 90 days after the date the board rejects all proposals  
 105 received for the project described in the unsolicited proposal  
 106 or, if the board does not intend to enter into an agreement for  
 107 the project, the date the unsolicited proposal is received. An  
 108 unsolicited proposal may remain confidential and exempt from  
 109 public records requirements beyond that period only if it  
 110 contains proprietary confidential business information.

111 (2) The Legislature further finds that it is a public  
 112 necessity that a portion of a meeting of a state university  
 113 board of trustees at which information made confidential and  
 114 exempt from public records requirements under this act is  
 115 discussed be exempt from public meetings requirements in order  
 116 to maintain the confidential and exempt status of this

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117 information. Public oversight is preserved by requiring a  
118 transcript of any portion of such closed meetings of the board.  
119 Section 3. This act shall take effect on the same date that  
120 SB 900 or similar legislation takes effect, if such legislation  
121 is adopted in the same legislative session or an extension  
122 thereof and becomes law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/14  
Meeting Date

Topic Public Records

Bill Number SB 1396  
(if applicable)

Name Richard Watson

Amendment Barcode \_\_\_\_\_  
(if applicable)

Job Title Legislative Counsel

Address P.O. Box 10038

Phone 850 222-0000

Tallahassee FL 32302  
City State Zip

E-mail rick@watsonand  
associates.com

Speaking:  For  Against  Information

Representing Associated Builders and Contractors of FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: SPB 7116

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Administrative Procedures

DATE: March 25, 2014

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

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

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**I. Summary:**

Under current law, agencies must review their existing rules to identify and correct deficiencies, improve efficiencies, reduce paperwork and costs, clarify and simplify text, and revise or delete rules that become obsolete, unnecessary, or are redundant of statute. Biennially, each agency head is required to file a report with the Speaker of the House of Representatives, President of the Senate, and the Legislature's Joint Administrative Procedures Committee (JAPC) summarizing the results of this review and revision, suggesting certain legislative changes, and addressing the economic impact of the rules on small business. In 2011, the Legislature suspended biennial reporting for that year and required all agencies to review and report on the economic effect of all then-existing rules by the end of 2013. In the same act, the Legislature required each agency to file a separate annual "regulatory plan" outlining all rulemaking the agency intended to implement in the next fiscal year, except emergency rulemaking. The act also provided some limited protection to encourage members of the public to respond to an online survey about the effect of state agency rules.

Also, under current law, when a newly-enacted law requires an agency to adopt new or amend current administrative rules for proper implementation, the agency charged with enforcing that law is required to formally propose such rules within 180 days of the effective date of the law.

SPB 7116 replaces the biennial summary reporting requirement with an expanded, annual regulatory plan. It requires each agency to determine whether each new law creating or affecting the agency's authority will require new or amended rules. If so, the agency must initiate rulemaking by a specific time. If not, the agency must state concisely why the law may be implemented without additional rulemaking. The regulatory plan also must state each existing law on which the agency will initiate rulemaking in the current fiscal year. The agency head and general counsel must certify that they have reviewed the plan and that the agency conducts a review of its rulemaking authority. The existing 180-day requirement is revised to coincide with the specific publishing requirements.

The bill compels adherence with the new reporting requirements and action deadlines by suspending the rulemaking authority of a non-compliant agency until that agency completes the required action or the end of the next regular legislative session, whichever is earlier. The bill repeals the retrospective economic review of existing rules and repeals the law pertaining to the online survey.

The bill has an effective date of July 1, 2014, except as otherwise provided.

## II. Present Situation:

### Introduction

A rule is an agency statement of general applicability which interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>1</sup> The effect of an agency statement determines whether it meets the statutory definition of a rule, regardless of how the agency characterizes the statement.<sup>2</sup> If an agency statement generally requires compliance, creates certain rights while adversely affecting others, or otherwise has the direct and consistent effect of law, it is a rule.<sup>3</sup>

Rulemaking authority is delegated by the Legislature<sup>4</sup> by law authorizing an agency to “adopt, develop, establish, or otherwise create”<sup>5</sup> a rule. Agencies do not have discretion whether to engage in rulemaking.<sup>6</sup> To adopt a rule an agency must have an express grant of authority to implement a specific law by rulemaking.<sup>7</sup> The grant of rulemaking authority itself need not be detailed.<sup>8</sup> The particular statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>9</sup> A delegation of authority to an administrative agency by a law that is vague, uncertain, or so broad as to give no notice of what actions would violate the law, may unconstitutionally allow the agency to make the law.<sup>10</sup>

Because of this constitutional limitation on delegated rulemaking, the Legislature must provide minimal standards and guidelines in the law creating a program to provide for its proper

<sup>1</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>2</sup> *Dept. of Administration v. Harvey*, 356 So. 2d 323, 325 (Fla. 1<sup>st</sup> DCA 1977)

<sup>3</sup> *McDonald v. Dep't of Banking & Fin.*, 346 So.2d 569, 581 (Fla. 1st DCA 1977), articulated this principle subsequently cited in numerous cases. See, *State of Florida, Dept. of Administration v. Stevens*, 344 So. 2d 290 (Fla. 1<sup>st</sup> DCA 1977); *Dept. of Administration v. Harvey*, 356 So. 2d 323 (Fla. 1<sup>st</sup> DCA 1977); *Balsam v. Department of Health and Rehabilitative Services*, 452 So.2d 976, 977–978 (Fla. 1st DCA 1984); *Department of Transp. v. Blackhawk Quarry Co.*, 528 So.2d 447, 450 (Fla. 5th DCA 1988), rev. den. 536 So.2d 243 (Fla.1988); *Dept. of Natural Resources v. Wingfield*, 581 So. 2d 193, 196 (Fla. 1st DCA 1991); *Dept. of Revenue v. Vanjaria Enterprises, Inc.*, 675 So. 2d 252, 255 (Fla. 5<sup>th</sup> DCA 1996); *Volusia County School Board v. Volusia Homes Builders Association, Inc.*, 946 So. 2d 1084 (Fla. 5<sup>th</sup> DCA 2007); *Florida Dept. of Financial Services v. Capital Collateral Regional Counsel*, 969 So. 2d 527 (Fla. 1<sup>st</sup> DCA 2007); *Coventry First, LLC v. State of Florida, Office of Insurance Regulation*, 38 So. 3d 200 (Fla. 1<sup>st</sup> DCA 2010).

<sup>4</sup> *Southwest Florida Water Management District v. Save the Manatee Club, Inc.*, 773 So. 2d 594 (Fla. 1<sup>st</sup> DCA 2000).

<sup>5</sup> Section 120.52(17), F.S.

<sup>6</sup> Section 120.54(1)(a), F.S.

<sup>7</sup> Sections 120.52(8) & 120.536(1), F.S.

<sup>8</sup> *Save the Manatee Club, Inc.*, supra at 599.

<sup>9</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29–30 (Fla. 1<sup>st</sup> DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1<sup>st</sup> DCA 2001).

<sup>10</sup> *Conner v. Joe Hatton, Inc.*, 216 So.2d 209 (Fla.1968).

administration by the assigned executive agency. The Legislature may delegate rulemaking authority to agencies but not the authority to determine what should be the law.<sup>11</sup>

In 1996 the Legislature extensively revised<sup>12</sup> agency rulemaking under the Administrative Procedure Act (APA)<sup>13</sup> to require both an express grant of rulemaking authority and a specific law to be implemented by the rule.

### **Section 120.54(1)(b), F.S.: The “180 Day” Requirement**

An agency may not delay implementation of a statute pending adoption of specific rules unless there is an express provision prohibiting application of the statute before implementing rules are adopted.<sup>14</sup> If a law is enacted that requires agency rules for its proper implementation, “such rules shall be drafted and formally proposed as provided in (s. 120.54, F.S.) within 180 days after the effective date of the act, unless the act provides otherwise.”<sup>15</sup> This “180 day requirement” predates the 1996 revisions.<sup>16</sup>

The statute does not require complete adoption of rules within 180 days. An agency may comply with the statute merely by publishing a notice of proposed rule.<sup>17</sup> Proposed rules can be repeatedly, substantially revised based on public input and they may also be withdrawn. Consequently, the 180 day requirement does not ensure prompt rulemaking.

### ***JAPC Monitoring and Agency Compliance***

JAPC monitors agency compliance with the 180 day requirement in furtherance of its rulemaking oversight duties.<sup>18</sup> JAPC staff review legislation enacted each session to identify new or changed laws that appear to require the adoption of new rules or the amendment or repeal of existing rules for proper implementation. Where the law appears to mandate new rulemaking (for example, using terms such as “shall adopt rules,” or provides that the agency “shall establish” some standard or “must” make some policy), or restates an existing “mandate” for rulemaking, JAPC sends a letter reminding the agency of the 180 day requirement. If the text of proposed rules is not published, at least as part of a notice of rule development, within the 180 days, JAPC will follow with an inquiry as to when the agency will initiate public rulemaking on that issue.

Agencies generally comply with the 180 day requirement as a matter of maintaining an effective working relationship between the executive and legislative offices even though JAPC has no power to compel compliance. For the period 2007 – 2011, JAPC identified several agencies that had not proposed rules within 180 days of the enactment of laws appearing to mandate new rulemaking. At its meeting of February 18, 2013, JAPC heard presentations from 13 different agencies on whether rulemaking actually was necessary to implement particular laws and, if so,

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<sup>11</sup> *Sarasota County. v. Barg*, 302 So.2d 737 (Fla. 1974).

<sup>12</sup> Ch. 96-159, LOF.

<sup>13</sup> Chapter 120, F.S.

<sup>14</sup> Section 120.54(1)(c), F.S.

<sup>15</sup> Section 120.54(1)(b), F.S.

<sup>16</sup> The 180 requirement was enacted as Ch. 85-104, s. 7, LOF.

<sup>17</sup> Section 120.54(3)(a), F.S. This is the common interpretation of the 180 day requirement. An alternative interpretation would be that a notice of rule development published under s. 120.54(2), F.S., including a *preliminary* draft of proposed rules, may be sufficient to comply.

<sup>18</sup> Joint Rule 4.6.

explanations for the lack of progress. Some members of the committee asked whether these agencies treated the statute as a “suggestion” instead of a mandatory rulemaking requirement.

### **“Directive” vs. “Mandate”**

Courts generally interpret words in statute such as “shall” or “must” as mandating a particular action where the alternative to the action is a possible deprivation of some right. However, use of such otherwise-mandatory terms where there is no effective consequence for the failure to act renders them *directory*, not compulsory.<sup>19</sup> A person regulated by an agency or having a substantial interest in an agency rule may petition that agency to adopt, amend, or repeal a rule,<sup>20</sup> including where the agency does not act within the 180 day requirement. The APA provides no other process to enforce the 180 day requirement, nor the authority for any specific entity to compel compliance.

## **Section 120.74, F.S.: Biennial Reporting**

### ***1996 Reporting Requirement***

As part of the comprehensive revision of rulemaking in 1996, agencies were required to review all rules adopted before October 1, 1996, identify those exceeding the rulemaking authority permitted under the revised APA, and report the results to JAPC. JAPC would prepare and submit a combined report of all agency reviews to the President of the Senate and Speaker of the House for legislative consideration.<sup>21</sup>

Another 1996 law added a requirement for ongoing rulemaking review, revision and reporting.<sup>22</sup> Under that law as presently amended, each agency reviews its rules every two years and amends or repeals rules as necessary to comply with specific requirements.<sup>23</sup> The agency head must report the results and other required information to the President, Speaker, JAPC, and “each appropriate standing committee of the Legislature” biennially on Oct. 1.<sup>24</sup>

### ***Limited Utility of s. 120.74 Reports***

Agencies as defined in the APA,<sup>25</sup> including school districts, comply with the requirements of s. 120.74, F.S., typically by filing summary reports that simply verify the agency performed the required reviews, list rules identified in the review for amendment or repeal, and finding no undue economic impact on small businesses (a required subject of the report). For example, one

<sup>19</sup> *S.R. v. State*, 346 So.2d 1018, 1019 (Fla.1977); *Reid v. Southern Development Co.*, 42 So. 206, 208, 52 Fla. 595, 603 (1906); *Ellsworth v. State*, 89 So.3d 1076, 1079 (Fla. 2d DCA 2012); *Kinder v. State*, 779 So. 2d 512, 514 (Fla. 2d DCA 2000).

<sup>20</sup> Section 120.54(7), F.S. If the agency denies the petition the requesting party may seek judicial review of that decision. Sections 120.52(2) and 120.68, F.S.

<sup>21</sup> Ch. 96-159, s. 9(2), LOF.

<sup>22</sup> Ch. 96-399, s. 46, LOF, codified as s. 120.74, F.S. In both 2006 and 2008, the Legislature added substantive provisions to this section. Ch.'s 2006-82, s. 9, and 2008-179, s. 8, LOF.

<sup>23</sup> Identify and correct deficiencies; clarification and simplification; delete rules that are obsolete, unnecessary, or merely repeat statutory language; improve efficiency, reduce paperwork, decrease costs to private sector and government; coordinate rules with agencies having concurrent or overlapping jurisdiction. Section 120.74(1), F.S. (Supp. 1996).

<sup>24</sup> Section 120.74(2), F.S.

<sup>25</sup> Section 120.52(1), F.S.

2009 report from a school district identified the following changes to the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school. The majority of the recommended changes for 2008-09 are minor revisions in punctuation, spelling, language, or order of paragraphs.<sup>26</sup>

The 2013 report for the same school district states the following as "what & why the policy changed" for the student code of conduct:

The Code of Student Conduct is reviewed and revised annually and serves as the School Board's policies and procedures for governing student behavior on school grounds, at school activities, and while being transported to and from school.<sup>27</sup>

A different school district submitted substantially the same reports for 2009 and 2013, commenting only on that district's review and management of forms. That district's reports included no information on whether any rules were identified as requiring revision or repeal due to changes in law.<sup>28</sup>

Reports by state agencies have reflected inconsistent application of the requirement for the report to "specify any changes made to (the agency's) rules as a result of the review..."<sup>29</sup> One agency's 2009 report identified each rule requiring repeal or amendment and new rules required by program changes, including a brief explanation of the reason for the amendment or adoption.<sup>30</sup> A different agency simply identified obsolete rules for repeal (without stating why these were obsolete) and listed a rule for amendment to update documents incorporated by reference (without identifying the documents so referenced.)<sup>31</sup> Some agencies provided lengthy lists of rules identified for amendment or repeal with little explanation other than repeating the terms of the review statute as to the reason for such proposed action.<sup>32</sup>

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<sup>26</sup> School Board of Manatee County, "Section 120.74 Report" (Sept. 29, 2009), received by JAPC on Nov. 3, 2009. On file with Subcommittee staff.

<sup>27</sup> School Board of Manatee County, "Section 120.74 Report" (Sept. 24, 2013), received by the House on Oct. 3, 2013. On file with Subcommittee staff.

<sup>28</sup> School Board of Santa Rosa County, 2009 Report received by JAPC on Sept. 30, 2009, and 2013 Report received by the House on Aug. 26, 2013, both on file with Subcommittee Staff.

<sup>29</sup> Section 120.74(2), F.S.

<sup>30</sup> Dept. of Children and Families, "Biennial rule review report required by section 120.74, Florida Statutes" (Oct. 1, 2009), received by JAPC on Oct. 7, 2009.

<sup>31</sup> Dept. of Agriculture and Consumer Services, "August 20, 2009 Memorandum regarding §120.74, Florida Statutes, Rule Review" (Oct. 1, 2009), received by JAPC on Oct. 1, 2009.

<sup>32</sup> Dept. of Business & Professional Regulation, "Section 120.74, Florida Statutes Biennial Report to the Legislature" (Oct. 1, 2009), received by JAPC on Oct. 5, 2009; Dept. of Environmental Protection, 2009 Report received by JAPC on Oct. 2, 2009.



### ***Regulatory Plans***

In 2011 the statute was amended to require each agency to file an annual regulatory plan in addition to the biennial reports.<sup>33</sup> The regulatory plan identifies those rules the agency intends to adopt, amend, or repeal during the next fiscal year. Effective in 2012, these reports have not proven any more substantive than the biennial reports described above.

### **Section 120.745, F.S. - Retrospective Economic Review of Rules**

In November 2010 the Legislature enacted a new limitation on agency rulemaking: any rule adopted after the date of the act, whether a new or amended rule, that may likely have a significant economic impact, could not go into effect unless first ratified by the Legislature.<sup>34</sup> The law requires an agency to prepare a full Statement of Estimated Regulatory Costs (SERC) if the proposed rule either will have an adverse impact on small businesses or if the rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate in the first year after the rule is implemented.<sup>35</sup> Additionally, the SERC must include an economic analysis addressing whether the rule is likely to have one of three specific impacts, directly or indirectly, in excess of \$1 million in the aggregate within five years of going into effect.<sup>36</sup>

The requirements applied only to rules which had not become effective as of November 17, 2010, or were proposed for adoption after that date. Existing rules were not subject to the ratification requirement. In 2011, the Legislature enacted s. 120.745, F.S., to require a retrospective economic analysis of those existing rules. All agencies required to publish their rules in the Florida Administrative Code (F.A.C.)<sup>37</sup> were required to review their rules, identify those potentially having one of the impacts described in s. 120.541(2)(a), F.S., over a five year period, complete a full comprehensive economic review of such rules, and publicly publish the results and certify their compliance with the statute to JAPC. In 2011, all agencies were to publish the results of their initial reviews and identification of existing rules likely to have the significant economic impacts.<sup>38</sup> At the agency's discretion, the full Compliance Economic Reviews for one portion of these rules (Group 1) were to be published by December 1, 2012; the remaining reviews (Group 2) were to be published by December 1, 2013.<sup>39</sup>

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<sup>33</sup> Ch. 2011-225, s. 4, LOF. The bill also suspended reporting in 2011 and 2013 under s. 120.74(1) and (2) to avoid duplication with the economic reviews and reports under s. 120.745, F.S.

<sup>34</sup> Section 120.541(3), F.S.

<sup>35</sup> Sections 120.54(3)(b)1. & 120.541(1)(b), F.S.

<sup>36</sup> Section 120.541(2)(a), F.S. The three impacts are whether the rule will have 1) an adverse impact on economic growth, private sector job creation or employment, or private sector employment; 2) an adverse impact on business competitiveness, including competition with interstate firms, productivity, or innovation; or 3) an increase in regulatory costs, including transactional costs as defined by s. 120.541(2)(d), F.S.

<sup>37</sup> A provision in the act designed specifically to *de facto* exclude educational units (defined in s. 120.52(6), F.S.) which do not publish their rules in the F.A.C. pursuant to s. 120.55(1)(a)2., F.S. Certain other publication requirements also do not apply to educational units; s. 120.81(1), F.S.

<sup>38</sup> Section 120.745(2), F.S. The statute required each agency to publish the number of its rules implementing or affecting state revenues (revenue rules), requiring submission of information or data by third parties (data collection rules), rules to be repealed, rules to be amended to reduce economic impacts, and those rules that would be reported in Groups 1 or 2.

<sup>39</sup> Section 120.745(5), F.S.

The Governor directed a review of all existing agency rules through the newly-created Office of Fiscal Accountability and Regulatory Reform (OFARR).<sup>40</sup> Because most agencies participated in this review, and many of the elements were similar to the retrospective economic reviews contemplated by the Legislature, the law exempted those agencies participating in the Governor's review from most of the new law's requirements. These "exempt" agencies were required to publish their initial determination of those rules requiring full Compliance Economic Reviews in 2011<sup>41</sup> and all final reviews by December 31, 2013.<sup>42</sup>

All agencies complied with the required retrospective review and publication of reports. Of those agencies not participating in the OFARR review process, only five<sup>43</sup> identified rules requiring Compliance Economic Reviews.<sup>44</sup> Of the 161 Compliance Economic Reviews published by these five agencies in 2012, only 72 reviews showed the subject rule as having a specific impact exceeding \$1 million over the five year period from July 1, 2011 to July 1, 2016.

### **Section 120.7455, F.S. - Your Voice Survey**

As part of the increased oversight of agency rulemaking enacted in 2011, the Legislature sought public participation and input about the effect of agency rules through use of an online survey. Those wanting to comment on any rule could log in to the survey form,<sup>45</sup> respond to a series of questions intended to identify the particular rule and the context of the comment, and provide as much information as the participant thought necessary. Access to the online form was directed primarily through the website of the Florida House of Representatives and was known as the "Your Voice Survey."

To encourage public participation and obtain as wide a variety of comments as possible during the period July 1, 2011 – July 1, 2014, section 120.7455, F.S.,<sup>46</sup> was enacted to provide certain limited protections from enforcement actions based on any response to the survey. One reporting or providing information solicited by the Legislature in conformity with s. 120.7455 was immune from any enforcement action or prosecution based on the fact of such reporting (or non-reporting) or using information provided in response to the survey.<sup>47</sup> If a person subject to a penalty in excess of the minimum provided by law or rule proved the enforcement action was in retaliation for providing or withholding any information in response to the survey, the penalty would be limited to the minimum provided for each separate violation.<sup>48</sup>

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<sup>40</sup> Executive Order 11-01, subsequently revised by EO 11-72 and replaced by EO 11-211.

<sup>41</sup> As required by the statute, exempt agencies published the number of identified revenue rules (2,078), data collection rules (3,529), rules to be repealed (1,852), rules to be amended to reduce economic impacts (1,441), and rules requiring Compliance Economic Reviews (3,056). At <https://www.myfloridalicense.com/rulereview/Rule-Review-Reports.html> (accessed Oct. 22, 2013).

<sup>42</sup> Section 120.745(9), F.S.

<sup>43</sup> Dept. of Agriculture and Consumer Services, Dept. of Citrus, Dept. of Financial Services, Office of Financial Regulation, and Public Service Commission.

<sup>44</sup> As required by the statute, "non-exempt" agencies published the number of identified revenue rules (508), data collection rules (1,169), rules to be repealed (482), rules to be amended to reduce economic impacts (189), and rules requiring Compliance Economic Reviews to be reported in Group 1 (161) and Group 2 (182).

<sup>45</sup> At <http://www.surveymonkey.com/s/FloridaRegReformSurvey> (accessed Oct. 22, 2013).

<sup>46</sup> Ch. 2011-225, s. 6, LOF.

<sup>47</sup> Section 120.7455(3), F.S.

<sup>48</sup> Section 120.7455(4), F.S.

The survey was initiated in October 2011 and received 2,723 responses through October 22, 2013. No response appeared to place the participant in jeopardy of prosecution or administrative enforcement. The survey responses were of limited value. Many voiced support or disapproval for issues outside the scope of the survey, such as federal laws, regulations or policies, unrelated state statutes, or local ordinances. Fewer than 200 directly addressed a particular agency rule and of those no more than 40 provided information about the economic or policy impacts of the rule. Because the limited protection in the statute proved to be unnecessary, no apparent purpose is served by continuing the statute.

### III. Effect of Proposed Changes:

Section 1 amends s. 120.54, F.S., to eliminate the current 180 day time period granted to agencies to draft and formally propose rules necessary to implement legislation. The new time frames for agencies to begin rulemaking will be no later than November 1 for the notice of rule development and April 1 for the notice of proposed rule.

Section 2 amends s. 120.74, F.S., to replace the current biennial reports with an annual regulatory plan, establish deadlines for specific actions in the rulemaking process and suspend agency rulemaking if an agency fails to comply with certain requirements.

The bill requires each agency to submit a regulatory plan by October 1 of each year. The regulatory plan must include:

- A listing of each law enacted or amended during the previous 12 months that modifies the duties and authority of the agency. For each law listed, the agency must determine whether:
  - The agency must adopt rules to implement the law;
  - If rulemaking is necessary to implement the law; and
  - If rulemaking is not necessary, the reasons that the law may be implemented without rulemaking.
- A listing of any other laws the agency expects to implement by rulemaking before the following June 30. For each law listed, the agency must state the purpose of the rulemaking.

The regulatory plan must also include information relating to any law identified in a previous year's regulatory plan as requiring rulemaking for implementation for which no notice of proposed rule has been published. The plan must include a certification by the agency head and general counsel that those individuals have reviewed the plan and that the agency regularly reviews all of its agency rules to determine whether the rules remain consistent with the agency's rulemaking authority and legal authority. If the law is enacted between the date the regulatory plan is submitted and the commencement of the next Regular Session of the Legislature, an agency must supplement its regulatory plan to account for any actions that must be taken to implement that law.

The bill requires the agency to publish by October 1 of each year the annual regulatory plan on the agency website or other state website established for such publication. The agency must provide a copy of the certification signed by the agency head and general counsel to JAPC and include the certification in the agency's legislative budget request. The agency must publish a notice in the Florida Administrative Register of the date of publication of the regulatory plan, including a hyperlink or website address for the regulatory plan.

The bill establishes a new deadline for rule development. Rather than 180 days after the effective date of the legislation, the agency must publish a notice of rule development by November 1 after enactment or by the date the agency identified in the regulatory plan. The agency must then publish a notice of proposed rule by the following April 1. The agency may extend this deadline until the following October 1 if the agency publishes a notice of extension in the FAR. The deadline for the notice of proposed rule can be further extended by the agency in the subsequent regulatory plan.

If the law is enacted during the period between the date the regulatory plan is submitted and the commencement of the next Regular Session of the Legislature, the notice of rule development must be published by November 1 or 60 days after the effective date of the law, whichever occurs last. The notice of proposed rule must be published by April 1 or 120 days after the effective date of the law, whichever occurs last.

Each time an agency files a notice of rule development, a notice for a deadline extension, a plan correction, the agency must file a certification with JAPC noting the action taken. The certification may apply to more than a single action taken.

If an agency fails to:

- publish and provide its completed regulatory plan by October 1;
- publish a notice of proposed rule by April 1; or
- publish a notice of extension by April 1

the agency's entire rulemaking authority shall be suspended automatically as of the due date of the required action. Such suspension will continue until the date the agency completes the required action or until the end of the next regular session of the Legislature, whichever occurs first. This suspension does not apply to the adoption of emergency rules or rulemaking necessary to comply with federal law.

The bill also requires that regulatory plans, including those filed under the law that has been in effect since 2011, must be made available to the public online for ten years. This will assist elected officials and the general public in reviewing agency implementation of laws through rulemaking.

This section does not apply to educational units, including school districts.

Section 3 repeals s. 120.745, F.S., relating to legislative review of agency rules in effect on or before a specified date and s. 120.7455, F.S., relating to an Internet-based public survey of regulatory impacts. The suspension of rulemaking authority under these sections is rescinded.

This section is effective upon the bill becoming a law.

Section 4 provides an effective date of July 1, 2014, except as otherwise provided in the bill.

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

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill requires agencies to publish additional information in the FAR; publication in the FAR has an associated cost. Such additional publication requirements will have an indeterminate, but minimal fiscal impact on agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 120.54 and 120.74 of the Florida Statutes.

This bill repeals sections 120.745 and 120.7455 of the Florida Statutes.

**IX. Additional Information:**

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

None.

- B. **Amendments:**

None.

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

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FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-00975A-14

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1 A bill to be entitled  
 2 An act relating to administrative procedures; amending  
 3 s. 120.54, F.S.; revising the deadline to propose  
 4 rules implementing new laws; amending s. 120.74, F.S.;  
 5 revising requirements for the periodic review of  
 6 agency rules; requiring agencies to annually review  
 7 rulemaking and prepare and publish regulatory plans;  
 8 specifying requirements for such plans; requiring an  
 9 agency to include a certification of the regulatory  
 10 plan in a legislative budget request; requiring  
 11 specified agencies to review the regulatory plans of  
 12 certain boards; requiring publication by specified  
 13 dates of notices of rule development and of proposed  
 14 rules necessary to implement new laws; requiring an  
 15 agency to file a certification with the Administrative  
 16 Procedures Committee; requiring an agency to complete  
 17 a supplement to the regulatory plan under certain  
 18 circumstances; establishing requirements for the  
 19 supplement; providing for suspension of an agency's  
 20 rulemaking authority for failure to comply with  
 21 specified provisions; providing for applicability;  
 22 repealing ss. 120.745 and 120.7455, F.S., relating to  
 23 legislative review of agency rules in effect on or  
 24 before a specified date and an Internet-based public  
 25 survey of regulatory impacts, respectively; providing  
 26 for rescission of the suspension of rulemaking  
 27 authority under such repealed provisions; providing  
 28 effective dates.  
 29

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30 Be It Enacted by the Legislature of the State of Florida:  
 31  
 32 Section 1. Paragraph (b) of subsection (1) of section  
 33 120.54, Florida Statutes, is amended to read:  
 34 120.54 Rulemaking.—  
 35 (1) GENERAL PROVISIONS APPLICABLE TO ALL RULES OTHER THAN  
 36 EMERGENCY RULES.—  
 37 (b) Whenever an act of the Legislature is enacted which  
 38 requires implementation of the act by rules of an agency within  
 39 the executive branch of state government, such rules shall be  
 40 drafted and formally proposed as provided in this section within  
 41 the times provided in s. 120.74(5) and (6) 180 days after the  
 42 effective date of the act, unless the act provides otherwise.  
 43 Section 2. Section 120.74, Florida Statutes, is amended to  
 44 read:  
 45 (Substantial rewording of section. See  
 46 s. 120.74, F.S., for present text.)  
 47 120.74 Agency annual rulemaking and regulatory plan;  
 48 reports.—  
 49 (1) RULEMAKING AND REGULATORY PLAN.—By October 1 of each  
 50 year, each agency shall prepare an implementation and rulemaking  
 51 plan.  
 52 (a) The plan shall include a listing of each law enacted or  
 53 amended during the previous 12 months which created or modified  
 54 the duties or authority of the agency. The plan may exclude any  
 55 law affecting all or most state agencies, if the law is  
 56 identified as such by letter to the committee from the Governor  
 57 or the Attorney General. For each law listed in the agency's  
 58 plan, the plan must state:

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- 59 1. Whether the agency must adopt rules to implement the  
 60 law.
- 61 2. If rulemaking is necessary to implement the law:
- 62 a. Whether a notice of rule development has been published,  
 63 and if so, the citation for such notice in the Florida  
 64 Administrative Register; and
- 65 b. The date by which the agency expects to publish the  
 66 notice of proposed rule under s. 120.54(3)(a).
- 67 3. If rulemaking is not necessary to implement the law, a  
 68 concise written explanation of the reasons that the law may be  
 69 implemented without rulemaking.
- 70 (b) The plan shall include a listing of every other law  
 71 that the agency expects to implement by rulemaking, excluding  
 72 emergency rulemaking, before the following June 30. For each law  
 73 listed pursuant to this paragraph, the plan must state whether  
 74 the rulemaking is intended to simplify, clarify, increase  
 75 efficiency, improve coordination with other agencies, reduce  
 76 regulatory costs, or delete obsolete, unnecessary, or redundant  
 77 rules.
- 78 (c) The plan shall include any desired update to the  
 79 previous year's regulatory plan or supplement published pursuant  
 80 to subsection (8). If a law was identified under this paragraph  
 81 or under subparagraph (a)1. in a previous year's regulatory plan  
 82 or supplement as a law requiring rulemaking for implementation  
 83 but a notice of proposed rule has not been published:
- 84 1. The agency may identify and relist such law noting the  
 85 applicable notice of rule development by citation to the Florida  
 86 Administrative Register, or
- 87 2. If the agency has subsequently determined that

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- 88 rulemaking is not necessary to implement the law, the agency may  
 89 identify such law, reference the citation of the applicable  
 90 notice of rule development in the Florida Administrative  
 91 Register, and state a concise written explanation of the reasons  
 92 that the law may be implemented without rulemaking.
- 93 (d) The plan shall include the following certification  
 94 executed on behalf of the agency by both the agency head, or if  
 95 the agency head is a collegial body, the chair or equivalent  
 96 presiding officer, and the agency general counsel, or if the  
 97 agency does not have a general counsel, the individual acting as  
 98 the principal legal advisor to the agency head:
- 99 1. Verifying that the persons authorized to certify have  
 100 reviewed the plan.
- 101 2. Verifying that the agency regularly reviews all of its  
 102 rules and identifying the period during which all rules have  
 103 most recently been reviewed to determine if they remain  
 104 consistent with the agency's rulemaking authority and the law  
 105 implemented.
- 106 (2) PUBLICATION AND DELIVERY OF PLAN.—
- 107 (a) By October 1 of each year, each agency shall:
- 108 1. Publish its regulatory plan on its website or another  
 109 state website established for publication of administrative law  
 110 records. A clearly labeled hyperlink to the plan must be  
 111 included on the agency's primary website homepage.
- 112 2. Deliver by electronic means to the committee a copy of  
 113 the certification required in paragraph (1)(d).
- 114 3. Publish in the Florida Administrative Register a notice  
 115 of the date of publication of the agency's regulatory plan,  
 116 which notice must include a hyperlink or website address

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117 providing direct access to the published plan.

118 (b) To satisfy the requirements of paragraph (a), each  
 119 board established under s. 20.165(4), and any other board or  
 120 commission receiving administrative support from the Department  
 121 of Business and Professional Regulation, may coordinate with the  
 122 department, and each board established under s. 20.43(3) may  
 123 coordinate with the Department of Health, for inclusion of the  
 124 board's or commission's plan and notice of publication in the  
 125 coordinating department's plan and notice and delivery of the  
 126 required documentation to the committee.

127 (c) A regulatory plan published pursuant to former s.  
 128 120.74(3), Florida Statutes 2011, shall be maintained at an  
 129 active website address for 10 years from the date of initial  
 130 publication.

131 (3) INCLUSION IN LEGISLATIVE BUDGET REQUEST.—In addition to  
 132 the requirements of s. 216.023, and pursuant to s. 216.351, a  
 133 copy of the most recent certification executed under paragraph  
 134 (1) (d), clearly designated as such, shall be included as part of  
 135 the agency's legislative budget request.

136 (4) DEPARTMENT REVIEW OF BOARD PLAN.—By October 15 of each  
 137 year:

138 (a) For each board established under s. 20.165(4), and each  
 139 other board or commission receiving administrative support from  
 140 the Department of Business and Professional Regulation, the  
 141 department shall file with the committee a certification that  
 142 the department has reviewed the board's regulatory plan. A  
 143 certification may apply to more than one board.

144 (b) For each board established under s. 20.43(3), the  
 145 Department of Health shall file with the committee a

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146 certification that the department has reviewed the board's  
 147 regulatory plan. A certification may apply to more than one  
 148 board.

149 (5) DEADLINE FOR RULE DEVELOPMENT.—By November 1 of each  
 150 year, each agency shall publish a notice of rule development  
 151 under s. 120.54(2) for each law identified in the agency's plan  
 152 pursuant to subparagraph (1) (a)1. for which rulemaking is  
 153 necessary for implementation but for which the agency did not  
 154 report the publication of a notice of rule development under  
 155 subparagraph (1) (a)2.

156 (6) DEADLINE TO PUBLISH PROPOSED RULE.—For each law for  
 157 which rulemaking is necessary for implementation, as identified  
 158 in the agency's plan pursuant to subparagraph (1) (a)1. or  
 159 subparagraph (1) (c)1., the agency shall publish a notice of  
 160 proposed rule pursuant to s. 120.54(3) (a) by April 1 of the year  
 161 after the deadline for the plan. The April 1 deadline may be  
 162 extended if the agency publishes a notice of extension in the  
 163 Florida Administrative Register identifying such rulemaking  
 164 proceeding for which an extension is being noticed by citation  
 165 to the applicable notice of rule development as published in the  
 166 Florida Administrative Register. Such an extension shall expire  
 167 on the October 1 following the April 1 deadline, provided that  
 168 the regulatory plan due on October 1 may further extend the  
 169 rulemaking proceeding by identification pursuant to subparagraph  
 170 (1) (c)1. or conclude the rulemaking proceeding by identification  
 171 pursuant to subparagraph (1) (c)2. A published regulatory plan  
 172 may be corrected at any time to accomplish the purpose of  
 173 extending or concluding an affected rulemaking proceeding and  
 174 shall be deemed corrected as of the October 1 due date. Upon

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175 publication of any such correction, the agency shall publish a  
 176 notice in the Florida Administrative Register stating the date  
 177 of the correction and shall identify any affected rulemaking  
 178 proceeding by applicable citation to the Florida Administrative  
 179 Register.

180 (7) CERTIFICATION.—Each agency shall file a certification  
 181 with the committee upon compliance with subsection (5), upon  
 182 filing a notice for a deadline extension or a plan correction  
 183 under subsection (6), and upon completion of any act that  
 184 terminates a suspension under subsection (9). A certification  
 185 may apply to more than one notice or contemporaneous act. The  
 186 certification shall note the date or dates of compliance.

187 (8) SUPPLEMENTING THE REGULATORY PLAN.—After preparation of  
 188 the regulatory plan, the agency shall supplement the plan within  
 189 30 days after enactment of a law enacted before the next regular  
 190 session of the Legislature if such law substantively modifies  
 191 legal duties specifically delegated to the agency, unless the  
 192 law affects all or most state agencies as identified by letter  
 193 to the committee from the Governor or the Attorney General. The  
 194 supplement shall include information required under paragraph  
 195 (1) (a) and shall be published as required under subsection (2).  
 196 An agency is not required to have the supplement delivered to or  
 197 certified by the committee. The agency shall publish a notice of  
 198 publication of the supplement, including a hyperlink or Internet  
 199 address for direct access to the published supplement, in the  
 200 Florida Administrative Register. If rulemaking is necessary for  
 201 implementing a law reported in a supplement, the agency shall  
 202 publish a notice of rule development as provided in subsection  
 203 (5) or 60 days after the effective date of the law, whichever

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204 occurs last. The agency shall publish a notice of proposed rule  
 205 as provided in subsection (6) or 120 days after the effective  
 206 date of the law, whichever occurs last. The deadline for  
 207 publishing a notice of proposed rule may be extended to the  
 208 following October 1 if notice is provided in accordance with  
 209 subsection (6). If such proposed rule has not been filed by  
 210 October 1, a law included in a supplement shall also be included  
 211 in the next annual regulatory plan issued pursuant to subsection  
 212 (1).

213 (9) FAILURE TO COMPLY.—If an agency fails to comply with a  
 214 requirement in paragraph (2) (a) or subsection (6), the entire  
 215 rulemaking authority delegated to the agency by the Legislature  
 216 under any statute or law shall be suspended automatically as of  
 217 the due date of the required action and shall remain suspended  
 218 until the date the agency completes the required action or until  
 219 the end of the next regular session of the Legislature,  
 220 whichever occurs first.

221 (a) During a period of suspension pursuant to this  
 222 subsection, the agency has no authority to file rules for  
 223 adoption under s. 120.54, but may complete any action required  
 224 by this section and may conduct any public hearings that were  
 225 noticed before the period of suspension began.

226 (b) A suspension under this subsection does not authorize  
 227 an agency to promulgate or apply a statement defined as a rule  
 228 under s. 120.52(16), unless the statement was filed for adoption  
 229 under s. 120.54(3) before the period of suspension began.

230 (c) A suspension under this subsection shall toll the time  
 231 requirements under s. 120.54 for filing any rule for adoption in  
 232 a rulemaking proceeding initiated by the agency before the date

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233 of suspension, which time requirements shall resume on the date  
234 the suspension ends.

235 (d) This subsection does not suspend the adoption of  
236 emergency rules under s. 120.54(4) or rulemaking necessary to  
237 ensure state compliance with federal law.

238 (10) EXCLUSION OF EDUCATIONAL UNITS.—This section does not  
239 apply to educational units.

240 Section 3. Effective upon this act becoming a law:

241 (1) Sections 120.745 and 120.7455, Florida Statutes, are  
242 repealed.

243 (2) Any suspension of rulemaking authority under s.  
244 120.745, Florida Statutes, or s. 120.7455, Florida Statutes, is  
245 rescinded. This subsection does not affect any restriction,  
246 suspension, or prohibition of rulemaking authority under any  
247 other provision of law.

248 (3) This section serves no other purpose and shall not be  
249 codified in the Florida Statutes.

250 Section 4. Except as otherwise expressly provided in this  
251 act and except for this section, which shall take effect upon  
252 this act becoming a law, this act shall take effect July 1,  
253 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/2014

Meeting Date

Topic \_\_\_\_\_

Bill Number 7116  
*(if applicable)*

Name BRIAN PITTS

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title TRUSTEE

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City

State

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Speaking:     For     Against     Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair:     Yes     No

Lobbyist registered with Legislature:     Yes     No

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

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

S-001 (10/20/11)

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

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

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

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BILL: SPB 7118

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Administrative Procedures

DATE: March 25, 2014

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

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

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**I. Summary:**

SPB 7118 amends the rulemaking procedures of the Administrative Procedure Act to improve public notices and the preparation of statements of estimated regulatory costs (SERC) beginning in the period of rule development. The SPB also revises the requirements for preparing a SERC to improve and standardize guidance for administrative agencies in preparing information necessary for decision makers and affected constituencies to understand the economic and policy impacts of proposed rules.

The SPB amends the statutory rulemaking process by:

- Making the information required in notices of rule development consistent with information required for notices of proposed rules.
- Requiring published notices of proposed rules to state whether the agency conducted a rule development workshop.
- Requiring agencies to make certain documents available by hyperlink from published notices to the agency website.
- Amending the requirements for rule development to include in workshops and other public hearings the development of information beneficial to the preparation of a SERC.
- Requiring agencies to ensure the availability of personnel responsible for preparing a SERC at rule development workshops, hearings, and public hearings on proposed rules.
- Creating 6 new factors agencies must consider when evaluating the impact of proposed rules on small businesses, presuming each of these factors to be adverse to small business.
- Clarifying present statutes on hearings, agency responses to submitted lower cost regulatory alternatives, and conforms other provisions to these changes.

The statutory requirements for preparing a SERC are revised by:

- Authorizing agencies to respond to a lower cost regulatory alternative by modifying a proposed rule to substantially reduce estimated regulatory costs, and, if so, requiring the agency to revise its SERC and include a summary of the revised SERC in subsequent rulemaking notices.

- Requiring agencies to provide the rules ombudsman with any revised SERC.
- Requiring the publication of the SERC to be a mandatory element of the preparation of a SERC.
- Revising the impacts and costs agencies must evaluate when preparing a SERC and providing specific guidance on discrete types of costs and economic impacts necessary for more thorough and useful information on the impact of a proposed rule.

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

## II. Present Situation:

### Agency Rulemaking

One important aspect of the Administrative Procedure Act (APA)<sup>1</sup> is the emphasis on public notice and opportunity for participation in agency rulemaking. A rule is an agency statement of general applicability interpreting, implementing, or prescribing law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>2</sup> The APA provides specific requirements agencies must follow in order to adopt rules.<sup>3</sup>

With some exceptions,<sup>4</sup> required rulemaking begins with an agency publishing a notice of rule development in the Florida Administrative Register (F.A.R.).<sup>5</sup> If the agency conducts public rule development workshops,<sup>6</sup> the persons responsible for preparing the draft rule under consideration must be available to explain the proposal and respond to public questions or comments.<sup>7</sup>

Once the final form of the proposed rule is developed (whether the proposal creates a new rule or amends or repeals an existing rule), the agency must publish a notice of the proposed rule before it may be adopted.<sup>8</sup> The publication of this notice triggers certain deadlines for the rulemaking process.<sup>9</sup>

Each notice must include the full text of the proposed rule and other additional information, such as a summary of the agency's statement of estimated regulatory costs (SERC) and the opportunity for anyone to provide the agency with information pertaining to the SERC or to

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<sup>1</sup> Ch. 120, F.S.

<sup>2</sup> Section 120.52(16), F.S.; *Florida Department of Financial Services v. Capital Collateral Regional Counsel-Middle Region*, 969 So. 2d 527, 530 (Fla. 1<sup>st</sup> DCA 2007).

<sup>3</sup> Section 120.54, F.S.

<sup>4</sup> Rule repeals do not require initial rule development. Section 120.54(2)(a), F.S. Emergency rulemaking proceeds separately under s. 120.54(4), F.S.

<sup>5</sup> Section 120.54(2)(a), F.S. The APA is silent on the initial, internal process an agency follows prior to initiating public rule development. *Adam Smith Enterprises, Inc. v. Dept. of Environmental Regulation*, 553 So. 2d 1260, 1265, n. 4 (Fla. 1<sup>st</sup> DCA 1990).

<sup>6</sup> An agency must conduct public workshops if so requested in writing by any affected person unless the agency head explains in writing why a workshop is not necessary. Section 120.52(c), F.S.

<sup>7</sup> Section 120.52(c), F.S.

<sup>8</sup> Section 120.54(3)(a)1., F.S.

<sup>9</sup> Persons affected by the proposed rule have 21 days from the date of publication to request a hearing on the proposed rule. Section 120.54(3)(c), F.S. Those wanting to submit a lower cost regulatory alternative to the proposed rule have the same 21 day time limit. Sections 120.54(3)(a)1., 120.541(1)(a), F.S. The agency must wait at least 28 days from the date of publication before filing the proposed rule for final adoption. Section 120.54(3)(a)2., (3)(e)1., F.S.

propose a lower cost regulatory alternative to the proposed rule. The notice must also state the procedure to request a hearing on the proposed rule.<sup>10</sup>

At a public rulemaking hearing agency staff must be available to explain the proposed rule and respond to public questions or comments. Material pertaining to the proposed rulemaking submitted to the agency between the date of publishing the notice of proposed rule and the end of the final public hearing must be considered by the agency and made a part of the rulemaking record.<sup>11</sup> If a person substantially affected by the proposed rule shows the proceeding does not provide adequate opportunity to protect those interests, and the agency concurs, the agency must suspend the rulemaking proceeding and convene a separate, more formal proceeding, including referring the matter to the Division of Administrative Hearings (DOAH). Once the separate proceeding concludes the rulemaking proceeding resumes.<sup>12</sup>

Subsequent to the final rulemaking hearing, if the agency makes any substantial change to the proposed rule the agency must provide additional notice and publish a notice of change in the F.A.R. at least 21 days before the rule may be filed for adoption.<sup>13</sup> If the change increases the regulatory costs of the rule the agency must revise its SERC.<sup>14</sup>

### **Statement of Estimated Regulatory Costs (SERC)**

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.<sup>15</sup> Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule,<sup>16</sup> but are required to prepare a SERC if:

- The proposed rule will have an adverse impact on small businesses;<sup>17</sup>
- The proposed rule is likely to directly or indirectly increase aggregate regulatory costs by more than \$200,000 in the first year after the rule is implemented;<sup>18</sup> or
- A substantially affected person submits a proposal for a lower cost regulatory alternative to the proposed rule. The proposal must substantially accomplish the same objectives in the law being implemented by the agency.<sup>19</sup>

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<sup>10</sup> Section 120.54(3)(a)1., F.S.

<sup>11</sup> Section 120.54(3)(c)1., F.S.

<sup>12</sup> Section 120.54(3)(c)2., F.S.

<sup>13</sup> Section 120.54(3)(d)1., F.S.

<sup>14</sup> Section 120.541(1)(c), F.S.

<sup>15</sup> Section 120.541(2), F.S. Beginning in 1975, the APA required agencies to estimate the economic impact of proposed rules or explain why such an estimate could not be prepared. Ch. 75-191, s. 3, LOF, codified at 120.54(1), Fla. Stat. (1975).

<sup>16</sup> Section 120.54(3)(b)1., F.S.

<sup>17</sup> Sections 120.54(3)(b)1.a. & 120.541(1)(b), F.S.

<sup>18</sup> Sections 120.54(3)(b)1.b. & 120.541(1)(b), F.S.

<sup>19</sup> Section 120.541(1)(a), F.S. Upon the submission of the lower cost regulatory alternative, the agency must revise its initial SERC, or prepare one if not done previously, and either adopt the proposed alternative or state its reasons for rejecting the proposal.

Each SERC, at a minimum, must contain the following elements:

- An economic analysis of the proposed rule’s potential direct or indirect impacts,<sup>20</sup> including whether any of the following exceed an aggregate of \$1,000,000 in the first five years after implementing the rule:
  - Any adverse impact on economic growth, private sector job creation or employment, or private sector investment;<sup>21</sup>
  - Any adverse impact on business competitiveness (including the ability to compete with businesses in other states or markets), productivity, or innovation;<sup>22</sup> or
  - Any likely increase in regulatory costs (including transactional costs).<sup>23</sup>
- A good faith estimate of the number and a general description of the individuals and entities required to comply with the rule.<sup>24</sup>
- A good faith estimate of the cost of implementing the rule to the agency and any other state or local governmental entities, including any anticipated impacts on state or local revenues.<sup>25</sup>
- A good faith estimate of the transactional costs members of the public and local governmental entities are likely to incur to comply with the rule.<sup>26</sup>
- An analysis of the impact of the rule on small businesses, including the agency’s explanation for not implementing alternatives which could reduce adverse impacts, and of the impact on small counties and small cities.<sup>27</sup>
- A description of each lower cost regulatory alternative submitted to the agency with a statement adopting the alternative or explaining the reasons for rejection.<sup>28</sup>

Additional information may be included if the agency determines such would be useful.<sup>29</sup> The agency’s failure to prepare a SERC when required or failure to respond to a written proposed lower cost regulatory alternative<sup>30</sup> is a material failure to follow the APA rulemaking

<sup>20</sup> Section 120.541(2)(a), F.S.

<sup>21</sup> Section 120.541(2)(a)1., F.S.

<sup>22</sup> Section 120.541(2)(a)2., F.S.

<sup>23</sup> Section 120.541(2)(a)3., F.S.

<sup>24</sup> Section 120.541(2)(b), F.S.

<sup>25</sup> Section 120.541(2)(c), F.S.

<sup>26</sup> Section 120.541(2)(d), F.S. The definition of “transactional costs” is discussed later in this analysis.

<sup>27</sup> Section 120.541(2)(e), F.S. This statute incorporates the definitions of “small city” and “small county” in ss. 120.52(18) & 120.52(19), F.S., respectively. The statute also incorporates the definition of “small business” in s. 288.703, F.S. *Compare*, s. 120.54(3)(b)2., F.S., which uses similar language requiring agencies to consider the impact of every proposed rule, amendment, or repeal on small businesses, small cities, and small counties but also permits agencies to rely on expanded versions of these definitions if necessary to more adapt the rule for more specific needs or problems. Section 120.54(3)(b)2.a., F.S., specifies five methods agencies must consider to reduce the rule’s impact on small businesses, cities, and counties. If the agency determines the rule will affect defined small businesses, notice of the rule must be sent to the rules ombudsman in the Executive Office of the Governor. Section 120.54(3)(b)2.b.(I), F.S. The agency must adopt regulatory alternatives reducing impacts on small businesses timely offered by the rules ombudsman or provide JAPC a written explanation for failing to do so. Section 120.54(3)(b)2.b.(II), (III), F.S.

<sup>28</sup> Section 120.541(2)(g), F.S.

<sup>29</sup> Section 120.541(2)(f), F.S.

<sup>30</sup> The party submitting a proposal to the agency must designate it as a lower cost regulatory alternative or at a minimum discuss cost issues with the proposed rule in order to inform the agency of the purpose of the submittal. A party challenging the validity of a school board rule argued the board failed to prepare a SERC after receiving a lower cost regulatory alternative. The administrative law judge (ALJ) found the proposal submitted to the board neither referenced s. 120.541, F.S., nor asserted it would result in lower costs. The ALJ ruled the failure to demonstrate the proposal presented a lower cost alternative meant the agency was not informed of the purpose of the submission and thus had a duty to prepare a SERC or



requirements.<sup>31</sup> Consequently, if challenged the rule could be found to be an invalid exercise of delegated legislative authority.<sup>32</sup> Even when the agency properly prepares a SERC and responds to all proposed lower cost regulatory alternatives, the resulting rule could be challenged as an invalid exercise of delegated legislative authority if the rule imposes regulatory costs greater than a proposed alternative which substantially accomplishes the same result.<sup>33</sup>

The specific requirements of s. 120.541, F.S., were adopted in 1996 as part of the comprehensive revision of the APA.<sup>34</sup> The revisions resulted from the Final Report of the Commission appointed by the Governor to study and recommend improvements to the APA, particularly in rulemaking and making agencies more accountable to the Legislature and the public.<sup>35</sup> The Commission found the purpose for economic impact statements was to assist both the government and the public to understand the potential financial impacts of a rule before adoption but “(t)he quality of economic analyses ... prepared by state agencies is inadequate, and existing law requirements ... are ineffective.”<sup>36</sup> Although the Commission recommended a number of revisions to improve the evaluation of costs, which serve as the basis for the present statute, these recommendations provided little guidance on the actual cost components relevant to evaluating the potential impact of a proposed rule.<sup>37</sup>

For example, neither a definition nor examples of “regulatory costs” are found in the APA although the concept is important to an agency’s economic analysis. “Transactional costs” are defined as direct costs of compliance, readily ascertainable based on standard business practices, including:

- Filing fees;
- Costs to obtain a license;
- Costs of equipment installed or used for rule compliance;
- Costs of procedures required for compliance;
- Additional operating costs;
- Costs for monitoring and reporting; and
- Any other necessary costs of compliance.<sup>38</sup>

The statute does not provide guidance or reference on how agencies are to identify and apply standard business practices in the development of required SERCs. As a result, some agencies with access to, and familiarity with, cost impact data from entities affected by specific rules

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respond to a lower cost regulatory alternative. *RHC and Associates, Inc. v. Hillsborough County School Board*, Final Order, DOAH Case no. 02-3138RP at <http://www.doah.state.fl.us/ALJ/searchDOAH/> (accessed Jan.28, 2014).

<sup>31</sup> Section 120.541(1)(e), F.S. Unlike other failures to follow the APA rulemaking requirements, this provision prevents the challenged agency from rebutting the presumed material failure by proving the substantial interests of the petitioner and the fairness of the proceedings were not impaired. Section 120.56(1)(c), F.S. This limitation applies only if the challenge is brought by a substantially affected person within one year from the rule going into effect. Section 120.541(1)(f), F.S.

<sup>32</sup> Section 120.52(8)(a), F.S.

<sup>33</sup> Section 120.52(8)(f), F.S. This type of challenge must be to the agency’s rejection of a lower cost regulatory alternative and brought by a substantially affected person within a year of the rule going into effect. Section 120.541(1)(g), F.S.

<sup>34</sup> Ch.96-159, s. 11, LOF.

<sup>35</sup> *Final Report of the Governor’s Administrative Procedure Act Review Commission*, 1 (Feb. 20, 1996), at <http://japc.state.fl.us/research.cfm> (accessed 1/29/2014).

<sup>36</sup> *Final Report of the Governor’s APA Review Commission*, supra at 31.

<sup>37</sup> *Final Report of the Governor’s APA Review Commission*, supra at 32.

<sup>38</sup> Section 120.541(2)(d), F.S.

provide comprehensive analyses of such impacts in SERCs. Other agencies, less familiar with costs to individuals and entities to conduct the regulated activities and comply with specific rules, prepare SERCs which do not reflect the full impact of particular rules.

### III. Effect of Proposed Changes:

SPB 7118 amends the rulemaking procedures of the APA to improve public notices and the preparation of SERCs, beginning in the period of rule development. Agencies are provided specific factors to consider when evaluating the overall impact on small businesses of a proposed rule, amendment, or repeal. The requirement for an agency conducting a public workshop or hearing to make available certain personnel is expanded to include those responsible for preparing the SERC and responding to lower cost regulatory alternatives. The statute controlling the actual preparation of SERCs is revised to clarify agency responsibilities for public notice and responding to lower cost regulatory alternatives. A new subsection provides agencies flexibility for obtaining necessary data and increases legislative guidance for evaluating cost impacts by identifying specific cost and economic factors all agencies must consider when preparing a SERC.

#### Revisions to Rulemaking Requirements

##### *Section 120.54(2): Rule Development*

The SPB conforms the requirement for information in a notice of rule development<sup>39</sup> with that required for a notice of proposed rule.<sup>40</sup> In notices of rule development, agencies will be required to provide:

- Citations to the grant of rulemaking authority and the specific law(s) being implemented under which the proposed rule will be developed;
- Information on how the public may comment on the proposed rule development and provide the agency with information on regulatory costs which may result from a proposed rule; and
- How the public may access online a draft of the rule being developed (when available).

Agencies conducting public rule development workshops<sup>41</sup> will be required to ensure the attendance at such workshops not only of the people responsible for preparing the proposed rule but also those responsible for preparing the SERC to receive public input, explain the agency's proposal, and respond to public questions or comments. The SPB deletes a sentence stating an agency's failure to provide the agency head's written explanation as to why a requested workshop was not necessary "may be a material error" in the rulemaking procedure because the statement is redundant of s. 120.56(1)(c), F.S.

The SPB makes other technical revisions conforming the rule development statute to these changes.

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<sup>39</sup> Section 120.54(2)(a), F.S.

<sup>40</sup> Section 120.54(3)(a)1., F.S.

<sup>41</sup> Section 120.54(2)(c), F.S.

***Section 120.54(3): Rule Adoption***

The SPB makes several changes to the requirement for notices of proposed rules:<sup>42</sup>

- Additional information must be included in the published notice of proposed rule:<sup>43</sup>
  - The notice must state whether the agency held a public workshop for rule development. If not, whether the agency received a written request to conduct a workshop.
  - If the agency received a written request but did not conduct a workshop, whether the agency head provided a written explanation as to why the workshop was unnecessary.
  - The required summary of the SERC (if one is prepared) must include a hyperlink to a copy of the SERC on the agency's website.
- When an agency must deliver additional copies of the published notice of proposed rule to those who requested advance notice of the agency's proceedings,<sup>44</sup> agencies will have the option of providing such copies by mail or electronic delivery.
- In lieu of filing physical copies of a required statement or copy of additional material incorporated by reference in the proposed rule,<sup>45</sup> the agency may provide the Joint Administrative Procedures Committee (JAPC)<sup>46</sup> access to a copy of these materials by hyperlink to a webpage on the agency's website.

The guidance and direction for agencies to consider the impact on small businesses of proposed rules<sup>47</sup> is revised. A rule will be presumed to have an adverse impact, and a SERC will be required, if for any small business:

- The owner or other specified person must complete any education, training or testing, is likely to expend 10 or more hours, or must hire professional services, in order to understand and comply with the rule in the first year.
- Taxes or fees assessed on transactions are likely to increase by at least \$500 in the aggregate in one year due to the rule.
- Prices charged for goods and services are restricted or likely to increase due to the rule.
- Compliance with the rule will require specially trained, licensed, or tested employees.
- Operating costs are expected to increase by \$100,000 annually because of the rule.
- Capital expenditures of at least \$1,000 are necessary to comply with the rule.

Consistent with the revised requirements for rule development workshops, agencies will be required to ensure the availability at hearings on proposed rules both of those responsible for preparing the proposed rule and those responsible for preparing the SERC. Those made available must be able to explain the proposed rule and the SERC and respond to public questions or comments about the proposed rule, SERC, and the agency's decision whether to adopt offered lower cost regulatory alternatives.

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<sup>42</sup> Section 120.54(3)(a), F.S.

<sup>43</sup> Section 120.54(3)(a)1., F.S.

<sup>44</sup> Section 120.54(3)(a)3., F.S.

<sup>45</sup> Section 120.54(1)(i)1., 2., 3., F.S.

<sup>46</sup> Section 120.54(3)(a)4., F.S.

<sup>47</sup> Section 120.54(3)(b)2.a., F.S. The SPB inserts the new provisions as a revised 120.54(3)(b)2.a. , renumbering existing (3)(b)2.a. as (3)(b)2.b.

An agency deciding to commence a requested separate, more formal proceeding<sup>48</sup> will be required to publish notice of that proceeding in the Florida Administrative Register. The SPB expressly tolls all timelines under the standard rulemaking procedures during the suspension of the rulemaking proceeding until the date following the conclusion of the separate proceeding.

An agency publishing a notice of change to a proposed rule will be required to include one of the following:

- A summary of the SERC prepared as a consequence of the change to the proposed rule; or
- A summary of the revision to the SERC required by s. 120.541(1)(c), F.S.; or
- A statement the proposed rule as changed does not require preparation of a SERC.

In addition to technical changes conforming other statutory provisions to these changes, the SPB requires agencies to make a SERC available to the public at a readily accessible page on the agency's website.<sup>49</sup>

### ***Section 120.541: Statements of Estimated Regulatory Costs***

The SPB expressly provides for the submission of lower cost regulatory alternatives in response to any non-technical noticed change to the proposed rule. Submissions of lower cost regulatory alternatives responding to notices of change will only be in good faith if the person submitting the alternative notes the reason for believing the change creates increased regulatory costs or an adverse effect on small businesses that was not created by the original proposed rule.

An agency receiving a proposed lower cost regulatory alternative will now have the choice of modifying the proposed rule to substantially reduce regulatory costs in addition to either adopting the proposal or stating its reasons for rejecting the alternative in favor of the proposed rule. If so, the agency also must revise the SERC. When a SERC is revised because a change to a proposed rule increases the projected regulatory costs or the agency modified the rule in response to a lower cost regulatory alternative, a summary of the revised SERC must be included in subsequent published rulemaking notices. Under the SPB, the revised SERC must be served on the rules ombudsman<sup>50</sup>, in addition to the party submitting the lower cost regulatory alternative and JAPC, and must be published in the same manner as the original SERC.

The SPB significantly revises the guidance on which agencies must rely when preparing SERCs. The definition and use of "transactional" costs is replaced with more specific terms.

- The required economic analysis must still analyze the proposed rule's impact on regulatory costs, which will include all costs and impacts estimated in the SERC.
- The agency must estimate the number of small businesses and other entities required to comply with the proposed rule, in addition to individuals.
- The SERC must estimate the costs of compliance by individuals and entities.
- The SPB requires agencies to estimate all impacts and costs for the first five years after full implementation of all provisions of the rule, not simply from the effective date of the proposed rule.

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<sup>48</sup> Section 120.54(3)(c)2., F.S.

<sup>49</sup> Section 120.54(3)(e)2., F.S.

<sup>50</sup> The rule ombudsman is appointed by the Governor and located in the Executive Office of the Governor. Section 288.7015, F.S.

- The SPB requires estimates of economic, market and small business impacts likely to result from compliance with the proposed rule and provides specific guidance for agencies to consider elements such as:
  - Increased consumer prices;
  - Decreased market value of goods and services produced, provided or sold;
  - Increased costs due to obtaining substitute or alternative products or services;
  - The value of time expended by business owners and other business personnel to comply with the proposed rule; and
  - Capital costs incurred to comply with the proposed rule.
- The SPB provides agencies with specific guidance and flexibility for obtaining information and data necessary to prepare economic analyses.
- The SPB directs agencies to consider all direct and indirect costs of rule compliance and provides 18 specific types of costs as examples, including:
  - Filing fees;
  - Costs of obtaining a license;
  - Costs to obtain, install, and maintain equipment necessary for compliance;
  - Costs related to accounting, financial, information, and management systems;
  - Labor costs;
  - Costs of education, training, and testing necessary for compliance; and
  - Allocation of administrative and other overhead.

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

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

The bill does not appear to require counties or municipalities to take any action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

None.

##### **C. Trust Funds Restrictions:**

None.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The bill is expected to provide better estimation of economic impacts of agency rules, better opportunity for local government and private entities to participate in rulemaking

and in estimating regulatory costs with the clear intent to better facilitate the selection of lower cost alternatives. In addition, more complete estimates of regulatory costs and economic impacts may bring more agency rules under the scrutiny of legislative ratification prior to those rules becoming effective.

**C. Government Sector Impact:**

State agencies currently are required to comply with notice, publication, and hearing requirements for rulemaking and with the requirements for preparing SERCs. The bill marginally adds to these requirements but specifically provides for electronic and internet provision of many documents that may currently be delivered in paper form.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 120.54 and 120.541 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 administrative procedures; amending  
 3 s. 120.54, F.S.; revising requirements for the content  
 4 of notices of rule development; revising the scope of  
 5 public workshops to include information gathering for  
 6 the preparation of statements of estimated regulatory  
 7 costs; revising requirements for notices of proposed  
 8 rules; authorizing electronic delivery of notices to  
 9 persons who have requested advance notice of agency  
 10 rulemaking proceedings; revising requirements for an  
 11 agency's filing of specified information with the  
 12 Administrative Procedures Committee; creating a  
 13 presumption of adverse impact on small business in  
 14 specified circumstances; requiring certain agency  
 15 personnel to attend public hearings on proposed rules;  
 16 requiring an agency to publish a notice of convening a  
 17 separate proceeding in certain circumstances; tolling  
 18 rulemaking deadlines during such separate proceedings;  
 19 revising requirements for the contents of a notice of  
 20 change; amending s. 120.541, F.S.; revising  
 21 requirements for substantially affected persons to  
 22 submit proposals for lower cost regulatory  
 23 alternatives to a proposed rule following a notice of  
 24 change; revising requirements for an agency's  
 25 consideration of such lower cost regulatory  
 26 alternatives; providing for an agency's revision and  
 27 publication of a revised statement of estimated  
 28 regulatory costs in response to such lower cost  
 29 regulatory alternatives; deleting the definition of

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30 the term "transactional costs"; providing additional  
 31 requirements for the calculation of estimated  
 32 regulatory costs; providing an effective date.  
 33  
 34 Be It Enacted by the Legislature of the State of Florida:  
 35  
 36 Section 1. Subsections (2) and (3) of section 120.54,  
 37 Florida Statutes, are amended to read:  
 38 120.54 Rulemaking.—  
 39 (2) RULE DEVELOPMENT; WORKSHOPS; NEGOTIATED RULEMAKING.—  
 40 (a) Except when the intended action is the repeal of a  
 41 rule, agencies shall provide notice of the development of  
 42 proposed rules by publication of a notice of rule development in  
 43 the Florida Administrative Register before providing notice of a  
 44 proposed rule as required by paragraph (3)(a). The notice of  
 45 rule development shall indicate the subject area to be addressed  
 46 by rule development, provide a short, plain explanation of the  
 47 purpose and effect of the proposed rule, cite the grant of  
 48 rulemaking authority pursuant to which the rule is proposed and  
 49 the section or subsection of the Florida Statutes or the Laws of  
 50 Florida being implemented or interpreted by the proposed rule  
 51 ~~specific legal authority for the proposed rule~~, and include the  
 52 preliminary text of the proposed rules, if available, or a  
 53 statement of how a person may submit comments on the proposal,  
 54 provide the agency with information regarding the potential  
 55 regulatory costs, or promptly obtain, without cost, or access  
 56 online, a copy of any preliminary draft, ~~when~~ if available.  
 57 (b) All rules should be drafted in readable language. The  
 58 language is readable if:

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59 1. It avoids the use of obscure words and unnecessarily  
60 long or complicated constructions; and

61 2. It avoids the use of unnecessary technical or  
62 specialized language that is understood only by members of  
63 particular trades or professions.

64 (c) An agency may hold public workshops for purposes of  
65 rule development and information gathering for the preparation  
66 of the statement of estimated regulatory costs. If requested in  
67 writing by an affected person, an agency must hold public  
68 workshops, including workshops in various regions of the state  
69 or the agency's service area, for purposes of rule development  
70 and information gathering for the preparation of the statement  
71 of estimated regulatory cost if requested in writing by any  
72 affected person, unless the agency head explains in writing why  
73 a workshop is unnecessary. The explanation is not final agency  
74 action subject to review pursuant to ss. 120.569 and 120.57. ~~The~~  
75 ~~failure to provide the explanation when required may be a~~  
76 ~~material error in procedure pursuant to s. 120.56(1)(c).~~ When a  
77 workshop or public hearing is held, the agency must ensure that  
78 the persons responsible for preparing the proposed rule and the  
79 statement of estimated regulatory costs are available to receive  
80 public input, to explain the agency's proposal, and to respond  
81 to questions or comments regarding the rule being developed and  
82 the statement of estimated regulatory costs. The workshop may be  
83 facilitated or mediated by a neutral third person, or the agency  
84 may employ other types of dispute resolution alternatives for  
85 the workshop that are appropriate for rule development,  
86 including the preparation of any statement of estimated  
87 regulatory costs. Notice of a rule development workshop shall be

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88 by publication in the Florida Administrative Register not less  
89 than 14 days ~~before~~ ~~prior to~~ the date on which the workshop is  
90 scheduled to be held and shall indicate the subject area which  
91 will be addressed; the agency contact person; and the place,  
92 date, and time of the workshop.

93 (d)1. An agency may use negotiated rulemaking in developing  
94 and adopting rules. The agency should consider the use of  
95 negotiated rulemaking when complex rules are being drafted or  
96 strong opposition to the rules is anticipated. The agency should  
97 consider, but is not limited to considering, whether a balanced  
98 committee of interested persons who will negotiate in good faith  
99 can be assembled, whether the agency is willing to support the  
100 work of the negotiating committee, and whether the agency can  
101 use the group consensus as the basis for its proposed rule.  
102 Negotiated rulemaking uses a committee of designated  
103 representatives to draft a mutually acceptable proposed rule and  
104 to develop information necessary to prepare a statement of  
105 estimated regulatory costs, when applicable.

106 2. An agency that chooses to use the negotiated rulemaking  
107 process described in this paragraph shall publish in the Florida  
108 Administrative Register a notice of negotiated rulemaking that  
109 includes a listing of the representative groups that will be  
110 invited to participate in the negotiated rulemaking process. Any  
111 person who believes that his or her interest is not adequately  
112 represented may apply to participate within 30 days after  
113 publication of the notice. All meetings of the negotiating  
114 committee shall be noticed and open to the public pursuant to  
115 the provisions of this chapter. The negotiating committee shall  
116 be chaired by a neutral facilitator or mediator.

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117 3. The agency's decision to use negotiated rulemaking, its  
 118 selection of the representative groups, and approval or denial  
 119 of an application to participate in the negotiated rulemaking  
 120 process are not agency action. Nothing in this subparagraph is  
 121 intended to affect the rights of a substantially ~~an~~ affected  
 122 person to challenge a proposed rule developed under this  
 123 paragraph in accordance with s. 120.56(2).

## (3) ADOPTION PROCEDURES.—

## (a) Notices.—

126 1. ~~Before~~ ~~Prior~~ ~~to~~ the adoption, amendment, or repeal of  
 127 any rule other than an emergency rule, an agency, upon approval  
 128 of the agency head, shall give notice of its intended action,  
 129 setting forth a short, plain explanation of the purpose and  
 130 effect of the proposed action; the full text of the proposed  
 131 rule or amendment and a summary thereof; a reference to the  
 132 grant of rulemaking authority pursuant to which the rule is  
 133 adopted; and a reference to the section or subsection of the  
 134 Florida Statutes or the Laws of Florida being implemented or  
 135 interpreted. The notice must include a statement as to whether  
 136 the agency held a public workshop for the purpose of development  
 137 of the proposed rule, and if not, whether a workshop was  
 138 requested in writing. If a rule development workshop was not  
 139 held, the notice must include a copy of the written explanation  
 140 from the agency head as to why a workshop was unnecessary. The  
 141 notice must include a summary of the agency's statement of the  
 142 estimated regulatory costs, including an electronic hyperlink to  
 143 a copy of the statement of estimated regulatory costs on the  
 144 agency's website, if a statement ~~one~~ has been prepared, based on  
 145 the factors set forth in s. 120.541(2); a statement that any

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146 person who wishes to provide the agency with information  
 147 regarding the statement of estimated regulatory costs, or to  
 148 provide a proposal for a lower cost regulatory alternative as  
 149 provided by s. 120.541(1), must do so in writing within 21 days  
 150 after publication of the notice; and a statement as to whether,  
 151 based on the statement of the estimated regulatory costs or  
 152 other information expressly relied upon and described by the  
 153 agency if no statement of regulatory costs is required, the  
 154 proposed rule is expected to require legislative ratification  
 155 pursuant to s. 120.541(3). The notice must state the procedure  
 156 for requesting a public hearing on the proposed rule. Except  
 157 when the intended action is the repeal of a rule, the notice  
 158 must include a reference both to the date on which and to the  
 159 place where the notice of rule development that is required by  
 160 subsection (2) appeared.

161 2. The notice shall be published in the Florida  
 162 Administrative Register at least not less than 28 days before  
 163 ~~prior to~~ the intended action. The proposed rule shall be  
 164 available for inspection and copying by the public at the time  
 165 of the publication of notice.

166 3. The notice shall be mailed to all persons named in the  
 167 proposed rule and mailed or delivered electronically to all  
 168 persons who, at least 14 days ~~before~~ ~~prior to~~ such mailing, have  
 169 made requests of the agency for advance notice of its  
 170 proceedings. The agency shall also give such notice as is  
 171 prescribed by rule to those particular classes of persons to  
 172 whom the intended action is directed.

173 4. The adopting agency shall file with the committee, at  
 174 least 21 days before ~~prior to~~ the proposed adoption date, a copy

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175 of each rule it proposes to adopt; a copy of any material  
 176 incorporated by reference in the rule; a detailed written  
 177 statement of the facts and circumstances justifying the proposed  
 178 rule; a copy of any statement of estimated regulatory costs that  
 179 has been prepared pursuant to s. 120.541; a statement of the  
 180 extent to which the proposed rule relates to federal standards  
 181 or rules on the same subject; and the notice required by  
 182 subparagraph 1. In lieu of filing a required statement or copy  
 183 with the committee for each such rule, the agency may file with  
 184 the committee information providing an electronic hyperlink to a  
 185 readily accessible copy of the required statement or copy.

186 (b) *Special matters to be considered in rule adoption.*—

187 1. Statement of estimated regulatory costs.—Before an  
 188 adoption, amendment, or repeal of any rule other than an  
 189 emergency rule, an agency is encouraged to prepare a statement  
 190 of estimated regulatory costs of the proposed rule, as provided  
 191 by s. 120.541. However, an agency must prepare a statement of  
 192 estimated regulatory costs of the proposed rule, as provided by  
 193 s. 120.541, if:

194 a. The proposed rule will have an adverse impact on small  
 195 business; or

196 b. The proposed rule is likely to directly or indirectly  
 197 increase regulatory costs in excess of \$200,000 in the aggregate  
 198 in this state within 1 year after the implementation of the  
 199 rule.

200 2. Small businesses, small counties, and small cities.—

201 a. For purposes of this subsection and s. 120.541(2), an  
 202 adverse impact on small business is presumed if, for any small  
 203 business:

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204 (I) An owner, officer, operator, or manager must complete  
 205 any education, training, or testing to comply, or is likely to  
 206 either expend 10 hours or purchase professional advice to  
 207 understand and comply with the rule in the first year;

208 (II) Taxes or fees assessed on transactions are likely to  
 209 increase by \$500 or more in the aggregate in 1 year;

210 (III) Prices charged for goods and services are restricted  
 211 or are likely to increase because of the rule;

212 (IV) Specially trained, licensed, or tested employees will  
 213 be required;

214 (V) Operating costs are expected to increase by at least  
 215 \$1,000 annually; or

216 (VI) Capital expenditures in excess of \$1,000 are necessary  
 217 to comply with the rule.

218 b. Each agency, before the adoption, amendment, or repeal  
 219 of a rule, shall consider the impact of the rule on small  
 220 businesses as defined by s. 288.703 and the impact of the rule  
 221 on small counties or small cities as defined by s. 120.52.  
 222 Whenever practicable, an agency shall tier its rules to reduce  
 223 disproportionate impacts on small businesses, small counties, or  
 224 small cities to avoid regulating small businesses, small  
 225 counties, or small cities that do not contribute significantly  
 226 to the problem the rule is designed to address. An agency may  
 227 define "small business" to include businesses employing more  
 228 than 200 persons, may define "small county" to include those  
 229 with populations of more than 75,000, and may define "small  
 230 city" to include those with populations of more than 10,000, if  
 231 it finds that such a definition is necessary to adapt a rule to  
 232 the needs and problems of small businesses, small counties, or

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233 small cities. The agency shall consider each of the following  
 234 methods for reducing the impact of the proposed rule on small  
 235 businesses, small counties, and small cities, or any combination  
 236 of these entities:

237 (I) Establishing less stringent compliance or reporting  
 238 requirements in the rule.

239 (II) Establishing less stringent schedules or deadlines in  
 240 the rule for compliance or reporting requirements.

241 (III) Consolidating or simplifying the rule's compliance or  
 242 reporting requirements.

243 (IV) Establishing performance standards or best management  
 244 practices to replace design or operational standards in the  
 245 rule.

246 (V) Exempting small businesses, small counties, or small  
 247 cities from any or all requirements of the rule.

248 ~~c. b.~~(I) If the agency determines that the proposed action  
 249 will affect small businesses as defined by the agency as  
 250 provided in sub-subparagraph ~~b. a.~~, the agency shall send  
 251 written notice of the rule to the rules ombudsman in the  
 252 Executive Office of the Governor at least 28 days before the  
 253 intended action.

254 (II) Each agency shall adopt those regulatory alternatives  
 255 offered by the rules ombudsman in the Executive Office of the  
 256 Governor and provided to the agency no later than 21 days after  
 257 the rules ombudsman's receipt of the written notice of the rule  
 258 which it finds are feasible and consistent with the stated  
 259 objectives of the proposed rule and which would reduce the  
 260 impact on small businesses. When regulatory alternatives are  
 261 offered by the rules ombudsman in the Executive Office of the

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262 Governor, the 90-day period for filing the rule in subparagraph  
 263 (e)2. is extended for a period of 21 days.

264 (III) If an agency does not adopt all alternatives offered  
 265 pursuant to this sub-subparagraph, it shall, before rule  
 266 adoption or amendment and pursuant to subparagraph (d)1., file a  
 267 detailed written statement with the committee explaining the  
 268 reasons for failure to adopt such alternatives. Within 3 working  
 269 days after the filing of such notice, the agency shall send a  
 270 copy of such notice to the rules ombudsman in the Executive  
 271 Office of the Governor.

272 (c) *Hearings.*—

273 1. If the intended action concerns any rule other than one  
 274 relating exclusively to procedure or practice, the agency shall,  
 275 on the request of any affected person received within 21 days  
 276 after the date of publication of the notice of intended agency  
 277 action, give affected persons an opportunity to present evidence  
 278 and argument on all issues under consideration. The agency may  
 279 schedule a public hearing on the proposed rule and, if requested  
 280 by any affected person, shall schedule a public hearing on the  
 281 proposed rule. When a public hearing is held, the agency must  
 282 ensure that the persons responsible for preparing the proposed  
 283 rule and the statement of estimated regulatory costs ~~staff~~ are  
 284 available to explain the agency's proposal and to respond to  
 285 questions or comments regarding the proposed rule, the statement  
 286 of estimated regulatory costs, and the agency's decision whether  
 287 to adopt a lower cost regulatory alternative submitted pursuant  
 288 to s. 120.541(1)(a). If the agency head is a board or other  
 289 collegial body created under s. 20.165(4) or s. 20.43(3)(g), and  
 290 one or more requested public hearings is scheduled, the board or

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291 other collegial body shall conduct at least one of the public  
 292 hearings itself and may not delegate this responsibility without  
 293 the consent of those persons requesting the public hearing. Any  
 294 material pertinent to the issues under consideration submitted  
 295 to the agency within 21 days after the date of publication of  
 296 the notice or submitted to the agency between the date of  
 297 publication of the notice and the end of the final public  
 298 hearing shall be considered by the agency and made a part of the  
 299 record of the rulemaking proceeding.

300 2. Rulemaking proceedings shall be governed solely by the  
 301 provisions of this section unless a person timely asserts that  
 302 the person's substantial interests will be affected in the  
 303 proceeding and affirmatively demonstrates to the agency that the  
 304 proceeding does not provide adequate opportunity to protect  
 305 those interests. If the agency determines that the rulemaking  
 306 proceeding is not adequate to protect the person's interests, it  
 307 shall suspend the rulemaking proceeding and convene a separate  
 308 proceeding under ~~the provisions of~~ ss. 120.569 and 120.57. The  
 309 agency shall publish notice of convening a separate proceeding  
 310 in the Florida Administrative Register. Similarly situated  
 311 persons may be requested to join and participate in the separate  
 312 proceeding. Upon conclusion of the separate proceeding, the  
 313 rulemaking proceeding shall be resumed. All timelines in this  
 314 section are tolled during any suspension of the rulemaking  
 315 proceeding under this subparagraph, beginning on the date that  
 316 the notice of convening a separate proceeding is published and  
 317 resuming on the day immediately after conclusion of the separate  
 318 proceeding.

319 (d) *Modification or withdrawal of proposed rules.-*

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320 1. After the final public hearing on the proposed rule, or  
 321 after the time for requesting a hearing has expired, if the  
 322 proposed rule has not been changed from the proposed rule as  
 323 previously filed with the committee, or contains only technical  
 324 changes that do not affect the substance of the rule, the  
 325 adopting agency shall file a notice to that effect with the  
 326 committee at least 7 days ~~before~~ ~~prior to~~ filing the proposed  
 327 rule for adoption. Any change, other than a technical change  
 328 ~~that does not affect the substance of the rule~~, must be  
 329 supported by the record of public hearings held on the proposed  
 330 rule, must be in response to written material submitted to the  
 331 agency within 21 days after the date of publication of the  
 332 notice of intended agency action or submitted to the agency  
 333 between the date of publication of the notice and the end of the  
 334 final public hearing, or must be in response to a proposed  
 335 objection by the committee. In addition, when any change is made  
 336 in a proposed rule, other than a technical change, the adopting  
 337 agency shall provide a copy of a notice of change by certified  
 338 mail or actual delivery to any person who requests it in writing  
 339 no later than 21 days after the notice required in paragraph  
 340 (a). The agency shall file the notice of change with the  
 341 committee, along with the reasons for the change, and provide  
 342 the notice of change to persons requesting it, at least 21 days  
 343 ~~before~~ ~~prior to~~ filing the proposed rule for adoption. The  
 344 notice of change shall be published in the Florida  
 345 Administrative Register at least 21 days ~~before~~ ~~prior to~~ filing  
 346 the rule for adoption. The notice of change must include either  
 347 a summary of any statement of estimated regulatory costs  
 348 prepared as a consequence of the change, a summary of any

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349 revision of the statement of estimated regulatory costs required  
 350 by s. 120.541(1)(c), or a statement that the proposed rule as  
 351 changed does not require preparation of a statement of estimated  
 352 regulatory costs under paragraph (b) and s. 120.541(1)(b). This  
 353 subparagraph does not apply to emergency rules adopted pursuant  
 354 to subsection (4).

355 2. After the notice required by paragraph (a) and before  
 356 ~~prior to~~ adoption, the agency may withdraw the proposed rule in  
 357 whole or in part.

358 3. After adoption and before the rule becomes effective, a  
 359 rule may be modified or withdrawn only in the following  
 360 circumstances:

361 a. When the committee objects to the rule;

362 b. When a final order, which is not subject to further  
 363 appeal, is entered in a rule challenge brought pursuant to s.  
 364 120.56 after the date of adoption but before the rule becomes  
 365 effective pursuant to subparagraph (e)6.;

366 c. If the rule requires ratification, when more than 90  
 367 days have passed since the rule was filed for adoption without  
 368 the Legislature ratifying the rule, in which case the rule may  
 369 be withdrawn but may not be modified; or

370 d. When the committee notifies the agency that an objection  
 371 to the rule is being considered, in which case the rule may be  
 372 modified to extend the effective date by not more than 60 days.

373 4. The agency shall give notice of its decision to withdraw  
 374 or modify a rule in the first available issue of the publication  
 375 in which the original notice of rulemaking was published, shall  
 376 notify those persons described in subparagraph (a)3. in  
 377 accordance with the requirements of that subparagraph, and shall

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378 notify the Department of State if the rule is required to be  
 379 filed with the Department of State.

380 5. After a rule has become effective, it may be repealed or  
 381 amended only through the rulemaking procedures specified in this  
 382 chapter.

383 (e) *Filing for final adoption; effective date.*—

384 1. If the adopting agency is required to publish its rules  
 385 in the Florida Administrative Code, the agency, upon approval of  
 386 the agency head, shall file with the Department of State three  
 387 certified copies of the rule it proposes to adopt; one copy of  
 388 any material incorporated by reference in the rule, certified by  
 389 the agency; a summary of the rule; a summary of any hearings  
 390 held on the rule; and a detailed written statement of the facts  
 391 and circumstances justifying the rule. Agencies not required to  
 392 publish their rules in the Florida Administrative Code shall  
 393 file one certified copy of the proposed rule, and the other  
 394 material required by this subparagraph, in the office of the  
 395 agency head, and such rules shall be open to the public.

396 2. A rule may not be filed for adoption less than 28 days  
 397 or more than 90 days after the notice required by paragraph (a),  
 398 until 21 days after the notice of change required by paragraph  
 399 (d), until 14 days after the final public hearing, until 21 days  
 400 after a statement of estimated regulatory costs required under  
 401 s. 120.541 has been provided to all persons who submitted a  
 402 lower cost regulatory alternative and made available to the  
 403 public at a readily accessible page on the agency's website, or  
 404 until the administrative law judge has rendered a decision under  
 405 s. 120.56(2), whichever applies. When a required notice of  
 406 change is published ~~before prior to~~ the expiration of the time

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407 to file the rule for adoption, the period during which a rule  
 408 must be filed for adoption is extended to 45 days after the date  
 409 of publication. If notice of a public hearing is published  
 410 ~~before~~ prior to the expiration of the time to file the rule for  
 411 adoption, the period during which a rule must be filed for  
 412 adoption is extended to 45 days after adjournment of the final  
 413 hearing on the rule, 21 days after receipt of all material  
 414 authorized to be submitted at the hearing, or 21 days after  
 415 receipt of the transcript, if one is made, whichever is latest.  
 416 The term "public hearing" includes any public meeting held by  
 417 any agency at which the rule is considered. If a petition for an  
 418 administrative determination under s. 120.56(2) is filed, the  
 419 period during which a rule must be filed for adoption is  
 420 extended to 60 days after the administrative law judge files the  
 421 final order with the clerk or until 60 days after subsequent  
 422 judicial review is complete.

423 3. At the time a rule is filed, the agency shall certify  
 424 that the time limitations prescribed by this paragraph have been  
 425 complied with, that all statutory rulemaking requirements have  
 426 been met, and that there is no administrative determination  
 427 pending on the rule.

428 4. At the time a rule is filed, the committee shall certify  
 429 whether the agency has responded in writing to all material and  
 430 timely written comments or written inquiries made on behalf of  
 431 the committee. The Department of State shall reject any rule  
 432 that is not filed within the prescribed time limits; that does  
 433 not comply with all statutory rulemaking requirements and rules  
 434 of the Department of State; upon which an agency has not  
 435 responded in writing to all material and timely written

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436 inquiries or written comments; upon which an administrative  
 437 determination is pending; or which does not include a statement  
 438 of estimated regulatory costs, if required.

439 5. If a rule has not been adopted within the time limits  
 440 imposed by this paragraph or has not been adopted in compliance  
 441 with all statutory rulemaking requirements, the agency proposing  
 442 the rule shall withdraw the proposed rule and give notice of its  
 443 action in the next available issue of the Florida Administrative  
 444 Register.

445 6. The proposed rule shall be adopted on being filed with  
 446 the Department of State and become effective 20 days after being  
 447 filed, on a later date specified in the notice required by  
 448 subparagraph (a)1., on a date required by statute, or upon  
 449 ratification by the Legislature pursuant to s. 120.541(3). Rules  
 450 not required to be filed with the Department of State shall  
 451 become effective when adopted by the agency head, on a later  
 452 date specified by rule or statute, or upon ratification by the  
 453 Legislature pursuant to s. 120.541(3). If the committee notifies  
 454 an agency that an objection to a rule is being considered, the  
 455 agency may postpone the adoption of the rule to accommodate  
 456 review of the rule by the committee. When an agency postpones  
 457 adoption of a rule to accommodate review by the committee, the  
 458 90-day period for filing the rule is tolled until the committee  
 459 notifies the agency that it has completed its review of the  
 460 rule.

461  
 462 For the purposes of this paragraph, the term "administrative  
 463 determination" does not include subsequent judicial review.

464 Section 2. Section 120.541, Florida Statutes, is amended to

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465 read:

466 120.541 Statement of estimated regulatory costs.—

467 (1) (a) Within 21 days after publication of the notice of  
 468 proposed rule required under s. 120.54(3) (a), or of a notice of  
 469 change under s. 120.54(3) (d)1., a substantially affected person  
 470 may submit to an agency a good faith written proposal for a  
 471 lower cost regulatory alternative to a proposed rule which  
 472 substantially accomplishes the objectives of the law being  
 473 implemented. The proposal may include the alternative of not  
 474 adopting any rule if the proposal explains how the lower costs  
 475 and objectives of the law will be achieved by not adopting any  
 476 rule. If submitted after a notice of change, a proposal is  
 477 deemed to be made in good faith only if the person reasonably  
 478 believes and the proposal states the person's reasons for  
 479 believing that the proposed rule as changed by the notice of  
 480 change increases the regulatory costs or creates an adverse  
 481 impact on small business that was not created by the previous  
 482 proposal. If such a proposal is submitted, the 90-day period for  
 483 filing the rule is extended 21 days. Upon the submission of the  
 484 lower cost regulatory alternative, the agency shall prepare a  
 485 statement of estimated regulatory costs as provided in  
 486 subsection (2), or shall revise its prior statement of estimated  
 487 regulatory costs, and either adopt the alternative, modify the  
 488 proposed rule to substantially reduce the regulatory costs, or  
 489 provide a statement of the reasons for rejecting the alternative  
 490 in favor of the proposed rule.

491 (b) If a proposed rule will have an adverse impact on small  
 492 business as set forth in s. 120.54(3) (b) or if the proposed rule  
 493 is likely to directly or indirectly increase regulatory costs in

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494 excess of \$200,000 in the aggregate within 1 year after the  
 495 implementation of the rule, the agency shall prepare a statement  
 496 of estimated regulatory costs as required by s. 120.54(3) (b).

497 (c) The agency shall revise a statement of estimated  
 498 regulatory costs if any change to the rule made under s.  
 499 120.54(3) (d) increases the regulatory costs of the rule or if  
 500 the rule is modified in response to the submission of a lower  
 501 cost regulatory alternative. A summary of the revised statement  
 502 must be included with any subsequent notice published under s.  
 503 120.54(3).

504 (d) At least 21 days before filing the proposed rule for  
 505 adoption, an agency that is required to revise a statement of  
 506 estimated regulatory costs shall provide the statement to the  
 507 person who submitted the lower cost regulatory alternative, to  
 508 the rules ombudsman in the Executive Office of the Governor, and  
 509 to the committee. The revised statement shall be published and  
 510 made available in the same manner as the original statement of  
 511 estimated regulatory costs and shall provide notice on the  
 512 agency's website that it is available to the public.

513 (e) Notwithstanding s. 120.56(1) (c), the failure of the  
 514 agency to prepare and publish a statement of estimated  
 515 regulatory costs or to respond to a written lower cost  
 516 regulatory alternative as provided in this subsection is a  
 517 material failure to follow the applicable rulemaking procedures  
 518 or requirements set forth in this chapter.

519 (f) An agency's failure to prepare and publish a statement  
 520 of estimated regulatory costs or to respond to a written lower  
 521 cost regulatory alternative may not be raised in a proceeding  
 522 challenging the validity of a rule pursuant to s. 120.52(8) (a)

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523 unless:

524 1. Raised in a petition filed no later than 1 year after  
525 the effective date of the rule; and

526 2. Raised by a person whose substantial interests are  
527 affected by the rule's regulatory costs.

528 (g) A rule that is challenged pursuant to s. 120.52(8) (f)  
529 may not be declared invalid unless:

530 1. The issue is raised in an administrative proceeding  
531 within 1 year after the effective date of the rule;

532 2. The challenge is to the agency's rejection of a lower  
533 cost regulatory alternative offered under paragraph (a) or s.  
534 120.54(3)(b)2.c. ~~s. 120.54(3)(b)2.b.~~; and

535 3. The substantial interests of the person challenging the  
536 rule are materially affected by the rejection.

537 (2) A statement of estimated regulatory costs shall  
538 include:

539 (a) An economic analysis showing whether the rule directly  
540 or indirectly:

541 1. Is likely to have an adverse impact on economic growth,  
542 private sector job creation or employment, or private sector  
543 investment in excess of \$1 million in the aggregate within 5  
544 years after the implementation of the rule;

545 2. Is likely to have an adverse impact on business  
546 competitiveness, including the ability of persons doing business  
547 in the state to compete with persons doing business in other  
548 states or domestic markets, productivity, or innovation in  
549 excess of \$1 million in the aggregate within 5 years after the  
550 implementation of the rule; or

551 3. Is likely to increase regulatory costs, including all

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552 ~~any transactional costs and impacts estimated in the statement,~~  
553 in excess of \$1 million in the aggregate within 5 years after  
554 the implementation of the rule.

555 (b) A good faith estimate of the number of individuals,  
556 small businesses, and other entities likely to be required to  
557 comply with the rule, together with a general description of the  
558 types of individuals likely to be affected by the rule.

559 (c) A good faith estimate of the cost to the agency, and to  
560 any other state and local government entities, of implementing  
561 and enforcing the proposed rule, and any anticipated effect on  
562 state or local revenues.

563 (d) A good faith estimate of the compliance transactional  
564 costs likely to be incurred by individuals and entities,  
565 including local government entities, required to comply with the  
566 requirements of the rule. ~~As used in this section,~~  
567 ~~"transactional costs" are direct costs that are readily~~  
568 ~~ascertainable based upon standard business practices, and~~  
569 ~~include filing fees, the cost of obtaining a license, the cost~~  
570 ~~of equipment required to be installed or used or procedures~~  
571 ~~required to be employed in complying with the rule, additional~~  
572 ~~operating costs incurred, the cost of monitoring and reporting,~~  
573 ~~and any other costs necessary to comply with the rule.~~

574 (e) An analysis of the impact on small businesses as  
575 defined by s. 288.703, and an analysis of the impact on small  
576 counties and small cities as defined in s. 120.52. The impact  
577 analysis for small businesses must include the basis for the  
578 agency's decision not to implement alternatives that would  
579 reduce adverse impacts on small businesses.

580 (f) Any additional information that the agency determines



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581 may be useful.

582 (g) ~~In the statement or revised statement, whichever~~

583 ~~applies,~~ A description of any regulatory alternatives submitted

584 under paragraph (1) (a) and a statement adopting the alternative

585 or a statement of the reasons for rejecting the alternative in

586 favor of the proposed rule.

587 (3) If the adverse impact or regulatory costs of the rule

588 exceed any of the criteria established in paragraph (2) (a), the

589 rule shall be submitted to the President of the Senate and

590 Speaker of the House of Representatives no later than 30 days

591 ~~before~~ ~~prior to~~ the next regular legislative session, and the

592 rule may not take effect until it is ratified by the

593 Legislature.

594 (4) Subsection (3) does not apply to the adoption of:

595 (a) Federal standards pursuant to s. 120.54(6).

596 (b) Triennial updates of and amendments to the Florida

597 Building Code which are expressly authorized by s. 553.73.

598 (c) Triennial updates of and amendments to the Florida Fire

599 Prevention Code which are expressly authorized by s. 633.202.

600 (5) (a) For purposes of subsections (2) and (3), impacts and

601 costs incurred within 5 years after implementation of the rule

602 shall include the applicable costs and impacts estimated to be

603 incurred within the first 5 years after the effective date of

604 the rule. However, if any provisions of the rule are not fully

605 implemented and enforceable upon the effective date of the rule,

606 the impacts and costs must be adjusted to include any additional

607 costs and impacts estimated to be incurred within 5 years after

608 the implementation and enforcement of the provisions of the rule

609 that were not fully implemented upon the effective date of the

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610 rule.

611 (b) In evaluating the impacts described in paragraphs

612 (2) (a) and (2) (e), an agency shall include good faith estimates

613 of market impacts likely to result from compliance with the

614 rule, including:

615 1. Increased customer charges for goods and services.

616 2. Decreased market value of goods and services produced,

617 provided, or sold.

618 3. Increased costs resulting from the purchase of

619 substitute or alternative products or services.

620 4. The reasonable value of time to be expended by owners,

621 officers, operators, and managers to understand and comply,

622 including, but not limited to, time expended to complete

623 required education, training, or testing.

624 5. Capital costs.

625 6. Any other impacts suggested by the rules ombudsman, the

626 agency head's appointing authority, or interested persons.

627 (c) In estimating the information required in paragraphs

628 (2) (b)-(e), the agency may use reasonably applicable surveys of

629 individuals, businesses, business organizations and

630 representatives, cities, and counties to collect data helpful to

631 estimate the costs and impacts. The agency shall also solicit

632 helpful information in each notice related to the proposed rule.

633 The rules ombudsman and the committee may recommend survey

634 instruments and methods to assist agencies in administering this

635 section. Such recommendations and agency decisions regarding

636 surveys and methods do not constitute rules or agency actions

637 under this chapter.

638 (d) In estimating compliance costs under paragraph (2) (d),

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639 the agency shall consider, among other matters, all direct and  
640 indirect costs necessary to comply with the rule that are  
641 readily ascertainable based upon standard business practices,  
642 including, but not limited to, costs related to:

643 1. Filing fees.  
644 2. Obtaining a license.  
645 3. Necessary equipment.  
646 4. Installation, utilities, and maintenance of necessary  
647 equipment.  
648 5. Necessary operations and procedures.  
649 6. Accounting, financial, information and management  
650 systems, and other administrative processes.  
651 7. Other processes.  
652 8. Labor based on relevant rates of wages, salaries and  
653 benefits.  
654 9. Materials and supplies.  
655 10. Capital expenditures including financing costs.  
656 11. Professional and technical services, including  
657 contracted services necessary to implement and maintain  
658 compliance.  
659 12. Monitoring and reporting.  
660 13. Qualifying and recurring education, training, and  
661 testing.  
662 14. Travel.  
663 15. Insurance and surety requirements.  
664 16. A fair and reasonable allocation of administrative  
665 costs and other overhead.  
666 17. Reduced sales or other revenues.  
667 18. Other items suggested by the rules ombudsman, the

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668 committee, or any interested person, business organization, or  
669 business representative.  
670 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

3/26/14

Meeting Date

Topic Administrative PROCEDURES

Bill Number SB 7118  
*(if applicable)*

Name FRENCH BROWN

Amendment Barcode \_\_\_\_\_  
*(if applicable)*

Job Title Attorney

Address 119 S. MONROE ST # 300

Phone 800-222-7500

Street

Tallahassee FL 32301

City

State

Zip

E-mail FRENCHB@hgsLaw.com

Speaking:  For  Against  Information

Representing FLORIDA CHAMBER OF COMMERCE

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.**

# CourtSmart Tag Report

**Room:** KN 412  
**Caption:** Governmental Oversight and Accountability Committee

**Case:**

**Type:**  
**Judge:**

**Started:** 3/26/2014 1:33:51 PM

**Ends:** 3/26/2014 3:07:23 PM

**Length:** 01:33:33

1:33:55 PM Meeting called to Order - Roll Call  
1:34:07 PM TAB 3 – CS/SB 810 by Sen. Galvano- Pugilistic Exhibitions  
1:34:52 PM CS/SB 810 reported favorably  
1:36:09 PM TAB 4 - CS/SB 808 by Sen. Galvano- Public Records/Florida Boxing Commission  
1:36:31 PM Late-filed amendment 586338  
1:36:53 PM Roll Call  
1:37:08 PM CS/CS/SB 808 reported favorably  
1:37:20 PM TAB 2 – CS/SB 1278 by Sen. Richter- Public Records/Office of Financial Regulation  
1:37:55 PM Barcode 673018  
1:38:38 PM Roll Call  
1:38:39 PM CS/CS/SB 1278 reported favorably  
1:39:16 PM TAB 14 – CS/SB 1396 by Sen. Montford- Public Records and Meetings/Public-private Partnerships/State Universities  
1:40:02 PM Roll Call  
1:40:21 PM CS/SB 1396 reported favorably  
1:40:48 PM TAB 5 – SB 280 by Sen. Garcia- Public Records/Participants in Treatment-based Drug Court Programs  
1:41:16 PM Late-filed Amendment barcode 296184  
1:41:50 PM Brian Pitts, Justice-2-Jesus, speaks on bill  
1:45:34 PM Roll Call  
1:45:48 PM CS/SB 280 reported favorably  
1:46:02 PM Senator Montford moves to be shown favorable for 810  
1:46:05 PM TAB 6 – SB 1020 by Sen. Soto- Inspectors General  
1:47:22 PM David Cruz, Florida League of Cities, speaks against bill  
1:47:39 PM Senator Ring asks a question  
1:47:46 PM Mr. Cruz responds  
1:48:38 PM Roll Call  
1:48:52 PM SB 1020 reported favorably  
1:49:15 PM TAB 7 – SB 1262 by Sen. Brandes- Public Records and Meetings/Insurance Flood Loss Model  
1:49:47 PM Brian Pitts, Justice-2-Jesus, speaks on bill  
1:52:39 PM Roll Call  
1:52:56 PM SB 1262 reported favorably  
1:53:09 PM TAB 9 – SB 1108 by Community Affairs- OGSR/Children of Agency Officers and Employees/Identifying Information  
1:53:10 PM Senator Simpson's aide presents the bill  
1:53:46 PM Roll Call  
1:53:58 PM SB 1108 reported favorably  
1:54:26 PM TAB 10 – CS/SB 608 by Sen. Hukill- Monuments on the Capitol Complex  
1:54:56 PM Senator Simmons motions to vote after on missed bills  
1:55:08 PM Senator Benacquisto motions to be vote after on missed bills  
1:55:43 PM Sen. Smith with a question  
1:55:57 PM Senator Hukill answers  
1:56:49 PM David Murrell, Florida PBA, Tallahassee, FL  
2:02:13 PM Sen. Hukill responds  
2:03:51 PM Sen. Bradley asks a question  
2:04:32 PM Sen. Hukill responds  
2:04:39 PM Sen. Bradley  
2:05:59 PM Roll Call  
2:06:11 PM CS/SB 608 reported favorably  
2:06:58 PM TAB 8 – SB 1640 by Commerce and Tourism- Entertainment Industry  
2:08:15 PM Senator Detert present the bill  
2:13:02 PM Amendment barcode 783608  
2:13:14 PM Senator Detert responds

2:14:25 PM Chair Ring comments  
2:14:46 PM Individuals waive in support  
2:23:23 PM Brian Pitts, Justice-2-Jesus, speaks on the bill  
2:27:55 PM Senator Detert closes on the bill SB 1640  
2:30:19 PM Roll Call  
2:30:47 PM CS/SB 1640 reported favorably  
2:31:48 PM TAB 11 – SB 864 by Sen. Hays- Instructional Materials for K-12  
2:32:11 PM Strike-All Amendment barcode 840528  
2:35:46 PM Amendment to Amendment barcode 809090  
2:36:01 PM Jessica Janasiewicz, Florida Assn of District Instructional Materials Administrators, speaks against the amendment  
2:37:19 PM Wayne Blanton, Florida School Board Association, Tallahassee, FL  
2:38:56 PM Sen. Bradley with a question  
2:39:10 PM Mr. Blanton answers  
2:39:46 PM Sen. Bradley  
2:39:56 PM Mr. Blanton  
2:40:22 PM Kathy Thrumstoon, Florida PTA, Floral City, FL  
2:42:33 PM Vern Pickup-Crawford, Palm Beach, Charlotte, Coast School Dist., Wellington, FL  
2:47:05 PM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL  
2:50:27 PM Sen. Bradley in debate  
2:51:57 PM Sen. Smith with a question  
2:52:26 PM Sen. Hays responds and closes on bill  
2:55:12 PM Roll Call  
2:55:37 PM CS/SB 864 reported favorably  
2:55:50 PM TAB 12 – CS/SB 1002 by Sen. Hays- Public Records/Office of Financial Regulation  
2:56:47 PM Roll Call  
2:57:05 PM CS/SB 1002 reported favorably  
2:57:12 PM TAB 13 – CS/SB 1300 by Sen. Simmons- Public Records/Office of Insurance Regulation  
2:57:16 PM Senator Montford moves to be shown voting after on missed votes  
2:57:32 PM Amendment barcode 177436  
2:58:35 PM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL  
3:00:49 PM Roll Call  
3:01:13 PM CS/CS/SB 1300 reported favorably  
3:01:25 PM Senator Hays takes the Chair  
3:01:30 PM TAB 15 – SPB 7116 by GO- Administrative Procedures  
3:01:53 PM Senator Ring presents the SPB  
3:02:39 PM Brian Pitts, Justice-2-Jesus, St. Petersburg, FL  
3:04:32 PM Roll Call  
3:04:59 PM SPB 7116 is reported favorably to submit as a committee bill  
3:05:07 PM TAB 16 – SPB 7118 by GO- Administrative Procedures  
3:05:46 PM Senator Ring presents the SPB  
3:05:52 PM Roll Call  
3:06:55 PM SPB 7118 reported favorably to submit as a committee bill  
3:07:10 PM Meeting adjourned