

CS/SB 248 by **CJ, Smith (CO-INTRODUCERS) Thompson;** (Compare to H 0581) Public Records/Audio or Video
Recording Made by a Law Enforcement Officer

252982	D	S	RS	GO, Ring	Delete everything after	03/17 11:35 AM
968344	AA	S	WD	GO, Legg	Delete L.45 - 51:	03/17 11:35 AM
328126	SD	S	RCS	GO, Ring	Delete everything after	03/17 11:35 AM
864868	ASA	S	RCS	GO, Ring	Delete L.24 - 25:	03/17 11:35 AM

SB 552 by **Hays;** (Identical to H 0535) Public Records/Homelessness Surveys and Databases

673588	A	S	RCS	GO, Hays	Delete L.30 - 70:	03/17 11:35 AM
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CS/SB 674 by **MS, Evers;** (Identical to CS/H 0185) Public Records/Military Special Operations Unit Service Members

CS/SB 778 by **CA, Hays;** (Similar to CS/CS/H 0113) Local Government Construction Preferences

847222	D	S	RCS	GO, Hays	Delete everything after	03/17 11:35 AM
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SB 1284 by **Soto;** (Similar to CS/H 0985) Administrative Procedures

797194	D	S	RCS	GO, Bullard	Delete everything after	03/17 11:35 AM
763754	AA	S	RCS	GO, Bullard	btw L.101 - 102:	03/17 11:35 AM

SB 7016 by **JU;** (Identical to H 7049) OGSR/Minor Identifying Information

SB 7032 by **HP;** Public Records/Reports of a Deceased Child

SB 7034 by **EE;** OGSR/Stalking Victims Identifying Information

530940	D	S	RCS	GO, Hays	Delete everything after	03/17 11:35 AM
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SPB 7050 by **GO;** Digital Classrooms

777752	A	S	FAV	GO, Ring	btw L.113 - 114:	03/17 11:35 AM
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The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA
GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Ring, Chair
Senator Hays, Vice Chair

MEETING DATE: Tuesday, March 17, 2015

TIME: 9:00 —10:30 a.m.

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

MEMBERS: Senator Ring, Chair; Senator Hays, Vice Chair; Senators Bullard, Latvala, and Legg

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 248 Criminal Justice / Smith (Compare H 581, S 852)	Public Records/Audio or Video Recording Made by a Law Enforcement Officer; Providing an exemption from public record requirements for an audio or video recording made by a law enforcement officer in the course of the officer performing his or her official duties and responsibilities, if the recording is taken within certain locations, shows a minor inside a school or on school property, or shows a child younger than 14 years of age at any location; authorizing the law enforcement agency with custody over the recording to disclose the recording to another law enforcement agency in furtherance of that agency's official duties and responsibilities, etc. CJ 02/16/2015 Fav/CS GO 03/10/2015 Not Considered GO 03/17/2015 Fav/CS RC	Fav/CS Yeas 4 Nays 1
2	SB 552 Hays (Identical H 535)	Public Records/Homelessness Surveys and Databases; Creating a public records exemption for individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System; providing for future review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc. CF 03/05/2015 Favorable GO 03/17/2015 Fav/CS RC	Fav/CS Yeas 5 Nays 0
3	CS/SB 674 Military and Veterans Affairs, Space, and Domestic Security / Evers (Identical CS/H 185)	Public Records/Military Special Operations Unit Service Members; Providing an exemption from public records requirements for certain personal identifying information of current or former servicemembers of a military special operations units and the spouses and children of such servicemembers; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. MS 03/04/2015 Fav/CS GO 03/17/2015 Not Considered RC	Not Considered

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Tuesday, March 17, 2015, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 778 Community Affairs / Hays (Similar CS/CS/H 113)	Local Government Construction Preferences; Specifying that funds appropriated by the state for certain competitively solicited projects do not include federal aid funds; prohibiting local ordinances and regulations from restricting a certified contractor's competition for award of a contract for construction services based upon certain conditions; requiring a state college, school district, or other political subdivision to make specified disclosures in competitive solicitation documents, etc. CA 03/04/2015 Fav/CS GO 03/17/2015 Fav/CS AP	Fav/CS Yeas 3 Nays 2
5	SB 1284 Soto (Similar CS/H 985)	Administrative Procedures; Revising requirements governing the maintenance, indexing, and listing of agency final orders; requiring an agency to upload specified agency final orders to the electronic database of the Division of Administrative Hearings; providing that the agency must maintain a subject-matter index for final orders rendered before a certain date and identify the location of the index on its website, etc. GO 03/17/2015 Fav/CS AGG AP	Fav/CS Yeas 5 Nays 0
6	SB 7016 Judiciary (Identical H 7049)	OGSR/Minor Identifying Information; Amending provisions relating to an exemption from public record requirements for certain information that could identify a minor petitioning a court to waive parental notice requirements before terminating a pregnancy; saving the exemption from repeal under the Open Government Sunset Review Act, etc. GO 03/17/2015 Favorable RC	Favorable Yeas 5 Nays 0
7	SB 7032 Health Policy	Public Records/Reports of a Deceased Child; Exempting information held by the State Child Abuse Death Review Committee or a local committee that identifies a deceased child whose death is reported to the central abuse hotline but whose death is not the result of abuse or neglect and the identity of the surviving siblings, family members, or others living in the home of such a deceased child; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. GO 03/17/2015 Favorable RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
Tuesday, March 17, 2015, 9:00 —10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 7034 Ethics and Elections	OGSR/Stalking Victims Identifying Information; Amending provisions which provide a public records exemption for specified personal identifying information of stalking victims held by the Attorney General or contained in voter registration and voting records held by the supervisor of elections or the Department of State, etc. GO 03/17/2015 Fav/CS RC	Fav/CS Yeas 5 Nays 0

Consideration of proposed bill:

9	SPB 7050	Digital Classrooms; Requiring the Agency for State Technology to establish and publish information technology architecture standards for purposes of implementing digital classrooms by a specified date; requiring the agency's annual assessment of the Department of Education to review specified issues with respect to school district digital classrooms plans and to provide planning assistance to address and reduce issues identified by the assessment, etc.	Submitted as Committee Bill Yeas 5 Nays 0
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(Preliminary Draft Available - final draft will be made available at least 24 hours prior to the meeting)

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/248

INTRODUCER: Governmental Oversight and Accountability Committee; Criminal Justice Committee and Senator Smith and others

SUBJECT: Public Records/Recordings by Law Enforcement Officers

DATE: March 18, 2015 **REVISED:** _____

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

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/248 creates a public records exemption for body camera recordings made by a law enforcement officer. The portion of a body camera recording is confidential and exempt from public disclosure if the recording is taken:

- within the interior of a private residence;
- on the property of a facility that offers health care, mental health care or social services;
- at the scene of a medical emergency; or
- in a place where a person has a reasonable expectation of privacy.

Law enforcement must release a recording under the following conditions:

- in furtherance of its duties;
- to another governmental agency in the furtherance of its duties;
- pursuant to a court order;
- to the individual recorded; or
- to the personal representative if an individual who is recorded.

Law enforcement is required to maintain a recording for a minimum of 90 days.
This public records exemptions applies retroactively to all body camera recordings.

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

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

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

II. Present Situation:

Body-Worn Cameras and Public Records

Body-Worn Cameras (BWCs) or “body cameras” are currently being used or considered for use by many law enforcement agencies. “BWCs are mobile audio and video capture devices that allow officers to record what they see and hear. Devices can be attached to various body areas, including the head, by helmet, glasses or other means, or to the body by pocket, badge, or other means of attachment (such as in-car on the dash). They have the capability to record officer interactions that previously could only be captured by in-car interrogation room camera systems.”¹

The Florida Police Chiefs Association staff is aware of 13 Florida police departments that currently use BWCs² and nine Florida police departments that have implemented pilot programs to test the use of BWCs.³ The media have reported that the Flagler County Sheriff’s Office is using BWC⁴ and the Pasco County Sheriff has indicated an intent to purchase BWCs.⁵ Other Florida sheriffs’ offices may be considering whether to use BWCs.

On December 1, 2014, the White House announced that President Barack Obama was proposing “a three-year \$263 million investment package that will increase use of body-worn cameras, expand training for law enforcement agencies (LEAs), add more resources for police department reform, and multiply the number of cities where DOJ facilitates community and local LEA engagement. As part of this initiative, a new Body Worn Camera Partnership Program would provide a 50 percent match to States/localities who purchase body worn cameras and requisite

¹ Sensor, Surveillance, and Biometric Technologies Center of Excellence. September 2012. *A Primer on Body-Worn Cameras for Law Enforcement*. National Institute of Justice. The quoted text is from page 5 of the report, which is available at <https://www.justnet.org/pdf/00-Body-Worn-Cameras-508.pdf>.

² Police departments: Eustis; City of Miami; Cocoa; Daytona Beach; Daytona Beach Shores; Florida State University (motorcycle officers); Gulfport; Palm Bay (SWAT Officers); Pensacola; West Melbourne; Windermere; Miami Beach; and Rockledge.

³ Police departments: Clearwater; Ft. Myers; Marianna; Orlando (University of South Florida study); Plant City; Sarasota; St. Petersburg; Tampa; and West Palm Beach.

⁴ Metz, Claire. “Flagler County deputies fitted with new body cameras. WESH.com (Orlando). August 28, 2014. The news broadcast video is available at <http://www.wesh.com/flagler-county-deputies-fitted-with-new-body-cameras/27779830>.

⁵ Behrman, Elizabeth. “Local law enforcement split on body cameras.” *The Tampa Tribune*. December 14, 2014. The article is available at <http://tbo.com/news/crime/-20141226/>.

storage. Overall, the proposed \$75 million investment over three years could help purchase 50,000 body worn cameras.”⁶

In a recently released report on BWCs it was noted:

State public disclosure laws, often known as freedom of information laws, govern when footage from body-worn cameras is subject to public release. However, most of these laws were written long before law enforcement agencies began deploying body-worn cameras, so the laws do not necessarily account for all of the considerations that must be made when police departments undertake a body-worn camera program.

Although broad disclosure policies can promote police agency transparency and accountability, some videos—especially recordings of victims or from inside people’s homes—will raise privacy concerns if they are released to the public or the news media. When determining how to approach public disclosure issues, law enforcement agencies must balance the legitimate interest of openness with protecting privacy rights.

In most state public disclosure laws, exceptions are outlined that may exempt body-worn camera footage from public release. For example, even the broadest disclosure laws typically contain an exception for video that contains evidence or is part of an ongoing investigation. Some state disclosure laws, such as those in North Carolina, also exempt personnel records from public release. Body-worn camera videos used to monitor officer performance may fall under this type of exception.⁷

Depending upon the content recorded by a BWC, the recording or particular information in the recording may be subject to a public records exemption in current Florida law. If not subject to an exemption, the recording would be a public record. Some of the current public records exemptions that may be relevant to a BWC recording include:

- Active criminal intelligence information and active criminal investigative information (exempt);⁸
- Information revealing surveillance techniques or procedures or personnel (exempt);⁹
- Information revealing the substance of a confession of a person arrested (exempt);¹⁰
- Information revealing the identity of a confidential informant or a confidential source (exempt);¹¹
- Criminal intelligence information or criminal investigative information that reveals the identity of the victim of the crime of child abuse or any sexual offense or a videotape or

⁶ “FACT SHEET: Strengthening Community Policing,” Office of the Press Secretary, The White House. December 1, 2014. The document is available at <http://www.whitehouse.gov/the-press-office/2014/12/01/fact-sheet-strengthening-community-policing>.

⁷ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services. The quoted text is from page 17 (footnote omitted) of the report, which is available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>.

⁸ Section 119.071(2)(c),1., F.S.

⁹ Section 119.071(2)(d), F.S.

¹⁰ Section 119.071(2)(e), F.S.

¹¹ Section 119.071(2)(f), F.S.

image of any part of the body of the victim of a statutorily-specified sexual offense (confidential and exempt);¹²

- Any information in a videotaped statement of a minor who is alleged to be or who is a victim of a statutorily-specified sexual offense, which reveals that minor's identity, home, school, etc. (confidential and exempt);¹³ or
- Information revealing undercover personnel of any criminal justice agency (exempt).¹⁴

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.¹⁵ The records of the legislative, executive, and judicial branches are specifically included.¹⁶

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act¹⁷ guarantees every person's right to inspect and copy any state or local government public record¹⁸ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁹

Only the Legislature may create an exemption to public records requirements.²⁰ This exemption must be created by general law and must specifically state the public necessity justifying the exemption.²¹ There is a difference between records the Legislature designates 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.²² 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.²³ Further, the

¹² Section 119.071(2)(h), F.S.

¹³ Section 119.071(2)(j)2.a, F.S.

¹⁴ Section 119.071(4)(c), F.S.

¹⁵ FLA. CONST., art. I, s. 24(a).

¹⁶ *Id.*

¹⁷ Chapter 119, F.S.

¹⁸ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records *Locke v. Hawkes*, 595 So.2d 32 (Fla.1992).

¹⁹ Section 119.071(1)(a), F.S.

²⁰ FLA. CONST., art. I, s. 24(c).

²¹ FLA. CONST., art. I, s. 24(c).

²² *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). Attorney General Opinion 85-62, (August 1, 1985).

²³ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004). *Wait v. Florida Power and Light Co.* 372 So.2d 420 (1979).

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 provisions²⁴ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.²⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.²⁶ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁷

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.²⁸ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁹
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;³⁰ or
- It protects trade or business secrets.³¹

In addition, the Legislature must find that the purpose of the exemption overrides the Florida’s public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.³² In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

²⁴ However, the bill may contain multiple exemptions that relate to one subject.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²⁷ Section 119.15(3), F.S.

²⁸ Section 119.15(6)(b), F.S.

²⁹ Section 119.15(6)(b)1., F.S.

³⁰ Section 119.15(6)(b)2., F.S.

³¹ Section 119.15(6)(b)3., F.S.

³² 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?

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.³³ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.³⁴

III. Effect of Proposed Changes:

The bill creates s. 119.071(2)(l), to exempt portions of body-worn camera recordings from public records requirements. The bill defines a “body worn camera” as “a portable electronic recording device that is worn on a law enforcement officer's person that records audio and video data of the officer's activities.” The bill also creates a definition of “personal representative” to mean the parent, guardian, or someone who holds a power of attorney of a person recorded by a body camera. If a person is deceased, a “personal representative” also means the personal representative of the estate of the deceased; the deceased’s the widow(er), parent, or adult child; or the parent or guardian of a surviving minor child of the deceased. An attorney who represent any of the aforementioned may also be a personal representative.

The bill provides that a body camera recording is confidential and exempt from public records requirements to the extent the recording is taken:

- within the interior of a private residence;
- on the property of a facility that offers health care, mental health care or social services;
- at the scene of a medical emergency; or
- in a place where a person has a reasonable expectation of privacy.

The bill also provides mandatory exceptions to the exemption. A law enforcement agency must release a recording under the following conditions:

- in furtherance of its duties;
- to another governmental agency in the furtherance of its duties;
- pursuant to a court order;³⁵
- portions of a recording that are related to an individual who is recorded by a body camera may be released to him or her; or
- portions of a recording that are related to an individual who is recorded to the personal representative of an individual who is recorded. This scenario would include a situation in which the person recorded was unable to give consent for some reason or was deceased.

The bill provides that law enforcement agencies must retain a body camera recording for a minimum of 90 days. Generally, records retained by law enforcement agencies are governed by statutes and rules promulgated by the Department of State, Division of Library Services.³⁶ Currently, public records may be destroyed in accordance with the retention schedules

³³ FLA. CONST., art. I, s. 24(c).

³⁴ Section 119.15(7), F.S.

³⁵ This language may be unnecessary because records which are held exempt or confidential and exempt are subject to disclosure by a court order.

³⁶ Section 257.36, F.S. See State of Florida General Records Schedule GS2 For Law Enforcement, Correctional Facilities, and District Medical Examiners, effective February 19, 2015. <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (last visited on March 6, 2015).

established by the Division of Library Services.³⁷ This language will require law enforcement to retain these recordings for minimum amount of time, but does not otherwise supersede the retention and destruction schedule established by the Division of Library Services.

This public records exemption has a retroactive clause, which provides that the exemption will apply to all body camera recordings that have already been taken by law enforcement before this bill goes into effect.

The bill also provides a statement of public necessity for the exemption, as required by the Florida Constitution. The public necessity states that the Legislature finds body cameras are more likely to capture sensitive, personal information than other law enforcement recordings or documents. Making body camera recordings publically available may have a chilling effect on the public. People may be unwilling to get call or cooperate with law enforcement if they are aware that they are being recorded and that the body camera recording could be publically disseminated. In addition, body camera recordings could be used for criminal purposes if they were publically available.

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

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

³⁷ Section 257.36(6), F.S.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts body camera recordings in limited circumstances insofar as it is possible to define what constitutes the interior of a residence; the property of a health care, mental health care, or social services facility; and a medical emergency. The bill may be overly-broad in that it also makes confidential and exempt any place where there is ‘a reasonable expectation of privacy’ because this phrase is not defined.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill, in part, exempts from public disclosure a recording made by a law enforcement officer at a place where a person recorded or depicted in the recording has *a reasonable expectation of privacy*.³⁸

Article I, Section 23 of the Florida Constitution provides:

Every natural person has the right to be let alone and free from governmental intrusion into the person’s private life except as otherwise provided herein. This section shall not be construed to limit the public’s right of access to public records and meetings as provide by law.

The Florida Supreme Court has stated that the right of privacy includes a right to “be free from uninvited observation or of interference in those aspect of [Floridians’] lives that fall within the ambit of this zone of privacy unless the intrusion is warranted by the necessity of a compelling state interest.”³⁹ Referring to a case which predated Article I, Section 23 of the Florida Constitution, the Florida Supreme Court opined that the people have a fundamental right to control what they reveal about themselves and to whom they chose to reveal themselves, and noted “this power is exercised in varying degrees by differing individuals, the parameters of an individuals’ privacy can be dictated only by that individual.”⁴⁰

The Florida Supreme Court found that before the right of privacy attaches “a reasonable expectation of privacy must exist.”⁴¹ The test for making that determination is “whether the law recognizes an individual’s legitimate expectation of privacy” in a certain type of record.⁴² The Florida Supreme Court also recognizes that the right to be free of observation and interference in aspects of life that fall within a “zone of privacy.”⁴³ In determining whether an individual has a legitimate expectation of privacy in any give

³⁹ *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1998).

³⁹ *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1998).

⁴⁰ *Id.* at 151.

⁴¹ *Winfield v. Division of Pari-Mutual Wagering, Department of Business Regulation*, 477 So.2d 544, 547 (Fla. 1985).

⁴² *Id.* 547.

⁴³ *Shaktman*, 553 So.2d at 150.

case must be made by considering all the circumstances, especially objective manifestations of that expectation.⁴⁴

Courts have used public records exemptions guideposts of when a privacy interest exists. The Florida Fourth District Court of Appeal relied on the Florida Supreme Court's finding that financial records were private, but also observed that there was a statutory public records exemption for financial information held by a state agency, and noted that "the legislature has recognized the confidential nature of the exact type of information at issue."⁴⁵ Likewise, the Second District Court of Appeal of Florida found that people have an expectation of privacy in their social security numbers, and as authority, noted that social security numbers were protected from disclosure by both federal and state law and by various rules of procedure.⁴⁶

The public records exception for recordings taken in a place where a person has a reasonable expectation of privacy may also be impermissibly broad under Article II section 3 of the Florida Constitution, which provides:

The powers of the state government shall be divided into legislative, executive and judicial branches. No person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein.

The Florida Supreme Court found that a public records exemption unconstitutional because the Legislature had delegated too much discretion to the state agency about when records could be released.⁴⁷ The Court stated that:

statutes granting power to administrative agencies must clearly announce adequate standards to guide the agencies in the execution of the powers delegated. The statute must so clearly define the power delegated that the administrative agency is precluded from acting through whim, showing favoritism or exercising unbridled discretion.⁴⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

⁴⁴ *Shaktman*, 533 So.2d at 153. In his concurring opinion, the Chief Justice Ehrlich opined that "the zone of privacy covered by article I, section 23, can be determined only by reference to the expectations of each individual, and those expectations are protected provided they are not spurious or false. A determination of whether an individual has a legitimate expectation of privacy in any given case must be made by considering all the circumstances, especially objective manifestations of that expectation; for example, in cases where disclosure of purportedly private information is sought, circumstances, such as the kind of information, where it is kept, who has access to it and under what circumstances." Id.

⁴⁵ *Berkley v. Eisen* 699 So.2d 789, 791 (Fla. 4th DCA 1997).

⁴⁶ *Thomas v. Smith*, 882 So.2d 1037, 1045 (Fla. 2d DCA 2004),

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The definition of a “personal representative” provides that a parent of a person recorded is permitted to get a copy of a body camera recording. This would permit the parent of an adult with full legal capacity to have his or her parent receive a copy of a body camera recording in contravention of his or her wishes. The phrase “parent of a minor child” may be more appropriate, dependent on the intent of the Legislature.

During the meeting of the Senate Committee on Governmental Oversight and Accountability, a handwritten amendment was adopted by the Committee, but the public necessity statement was not amended to conform to the amended language.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 119.071(2)(l) of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 17, 2015:

- Defines body camera and personal representative.
- Makes body camera recordings confidential and exempt if they are taken in certain places.
- Requires law enforcement must release body camera recordings in certain circumstances.
- Provides that a body camera recording must be retained for 90 days.
- Provides for retroactive application to all body camera recordings.
- Makes the public necessity statement more specific.
- Creates a new paragraph to eliminate the need to renumber s. 119.071(2), F.S. and change cross references.

CS by Criminal Justice on February 16, 2015:

- Creates a public records exemption for an audio or video recording made by a law enforcement officer in the course of the officer performing his or her official duties or responsibilities, if the recording is taken within certain locations, shows a minor inside a school or on school property, or shows a child younger than 14 years of age at any location.
- Specifies how the exemption operates in relation to other exemptions that may apply.
- Provides for future legislative review and repeal of the exemption under the Open Government Sunset Review Act.
- Authorizes the law enforcement agency with custody over the recording to disclose the recording to another law enforcement agency in furtherance of that agency's official duties and responsibilities.
- Specifies persons who may inspect the recording.
- Requires a law enforcement agency to have a retention policy of not longer than 90 days for the audio or video recordings unless the recording is part of an active criminal investigation or criminal intelligence operation or a court orders its retention for a longer period.
- Requires a law enforcement agency to disclose its records retention policy for recordings under the new exemption.
- Provides a statement of public necessity for the exemption.

B. Amendments:

None.



252982

LEGISLATIVE ACTION

Senate	.	House
Comm: RS	.	
03/17/2015	.	
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The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraphs (g) through (k) of subsection (2) of
section 119.071, Florida Statutes, are redesignated as
paragraphs (h) through (l), respectively, and a new paragraph
(g) is added to that subsection, to read:

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



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11 (2) AGENCY INVESTIGATIONS.-

12 (g)1. An audio or video recording made by a law enforcement
13 officer in the course of the officer performing his or her
14 official duties and responsibilities is exempt from 119.07(1)
15 and s. 24(a), Art. 1 of the State Constitution, if the
16 recording:

17 a. Is taken within the interior of a private residence;

18 b. Is taken on the property of a facility that offers
19 health care, mental health care, or social services;

20 c. Is taken at the scene of a medical emergency; or

21 d. Is taken in a place where a person recorded or depicted
22 in the recording has a reasonable expectation of privacy.

23 2. If the audio or video recording or a portion of such
24 recording is exempt or confidential and exempt pursuant to
25 another law, that exemption applies and determines under which
26 circumstances, if any, the recording or a portion of the
27 recording may be disclosed to the public.

28 3. The law enforcement agency having custody of an audio or
29 video recording described in subparagraph 1. may disclose the
30 recording to another law enforcement agency in furtherance of
31 that agency's official duties and responsibilities.

32 4.a. In accordance with s. 119.07, the following persons
33 may inspect an audio or video recording described in
34 subparagraph 1.:

35 (I) A person recorded or depicted in the recording.

36 (II) The agent or attorney of a person recorded or depicted
37 in the recording, if inspection is authorized by that person or
38 his or her legal representative.

39 (III) A person not recorded or depicted in the recording,



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40 if inspection is authorized by all persons recorded or depicted
41 in the recording.

42 b. This subparagraph does not apply to information in the
43 recording that is exempt or confidential and exempt pursuant to
44 another provision of law.

45 5. A law enforcement agency under this paragraph must have
46 a retention policy of not shorter than 4 years for audio or
47 video recordings unless the audio or video recording is part of
48 an active criminal investigation or criminal intelligence
49 operation or a court orders its retention for a longer period. A
50 law enforcement agency must disclose its records retention
51 policy for audio or video recordings under this paragraph.

52 6. This exemption shall be given retroactive application
53 unless the audio or video recording or a portion of such
54 recording is exempt or confidential and exempt pursuant to
55 another exemption, then that exemption determines if
56 retroactivity applies.

57 7. This paragraph is subject to the Open Government Sunset
58 Review Act in accordance with s. 119.15 and shall stand repealed
59 on October 2, 2020, unless reviewed and saved from repeal
60 through reenactment by the Legislature.

61 Section 2. Paragraph (a) of subsection (1) of section
62 92.56, Florida Statutes, is amended to read:

63 92.56 Judicial proceedings and court records involving
64 sexual offenses and human trafficking.—

65 (1) (a) The confidential and exempt status of criminal
66 intelligence information or criminal investigative information
67 made confidential and exempt pursuant to s. 119.071(2)(i) ~~s.~~
68 ~~119.071(2)(h)~~ must be maintained in court records pursuant to s.



252982

69 119.0714(1) (h) and in court proceedings, including testimony
70 from witnesses.

71 Section 3. Paragraph (c) of subsection (3) of section
72 119.011, Florida Statutes, is amended to read:

73 119.011 Definitions.—As used in this chapter, the term:

74 (3)

75 (c) "Criminal intelligence information" and "criminal
76 investigative information" shall not include:

77 1. The time, date, location, and nature of a reported
78 crime.

79 2. The name, sex, age, and address of a person arrested or
80 of the victim of a crime except as provided in s. 119.071(2) (i)
81 ~~s. 119.071(2) (h)~~.

82 3. The time, date, and location of the incident and of the
83 arrest.

84 4. The crime charged.

85 5. Documents given or required by law or agency rule to be
86 given to the person arrested, except as provided in s.

87 119.071(2) (i) ~~s. 119.071(2) (h)~~, and, except that the court in a
88 criminal case may order that certain information required by law
89 or agency rule to be given to the person arrested be maintained
90 in a confidential manner and exempt from the provisions of s.
91 119.07(1) until released at trial if it is found that the
92 release of such information would:

93 a. Be defamatory to the good name of a victim or witness or
94 would jeopardize the safety of such victim or witness; and

95 b. Impair the ability of a state attorney to locate or
96 prosecute a codefendant.

97 6. Informations and indictments except as provided in s.



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98 905.26.

99 Section 4. Paragraph (h) of subsection (1) of section
100 119.0714, Florida Statutes, is amended to read:

101 119.0714 Court files; court records; official records.—

102 (1) COURT FILES.—Nothing in this chapter shall be construed
103 to exempt from s. 119.07(1) a public record that was made a part
104 of a court file and that is not specifically closed by order of
105 court, except:

106 (h) Criminal intelligence information or criminal
107 investigative information that is confidential and exempt as
108 provided in s. 119.071(2)(i) ~~s. 119.071(2)(h)~~.

109 Section 5. Paragraph (b) of subsection (4) of section
110 784.046, Florida Statutes, is amended to read:

111 784.046 Action by victim of repeat violence, sexual
112 violence, or dating violence for protective injunction; dating
113 violence investigations, notice to victims, and reporting;
114 pretrial release violations; public records exemption.—

115 (4)

116 (b) The sworn petition must be in substantially the
117 following form:

118

119 PETITION FOR INJUNCTION FOR PROTECTION
120 AGAINST REPEAT VIOLENCE, SEXUAL
121 VIOLENCE, OR DATING VIOLENCE
122

123 Before me, the undersigned authority, personally appeared
124 Petitioner ...(Name)..., who has been sworn and says that the
125 following statements are true:
126



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156 fact that the respondent has: ...(list the specific incident or
157 incidents of violence and describe the length of time of the
158 relationship, whether it has been in existence during the last 6
159 months, the nature of the relationship of a romantic or intimate
160 nature, the frequency and type of interaction, and any other
161 facts that characterize the relationship.)...

162
163
164
165

166
167 4. Petitioner genuinely fears repeat violence by the
168 respondent.

169 5. Petitioner seeks: an immediate injunction against the
170 respondent, enjoining him or her from committing any further
171 acts of violence; an injunction enjoining the respondent from
172 committing any further acts of violence; and an injunction
173 providing any terms the court deems necessary for the protection
174 of the petitioner and the petitioner's immediate family,
175 including any injunctions or directives to law enforcement
176 agencies.

177 Section 6. Subsection (1) of section 794.024, Florida
178 Statutes, is amended to read:

179 794.024 Unlawful to disclose identifying information.—

180 (1) A public employee or officer who has access to the
181 photograph, name, or address of a person who is alleged to be
182 the victim of an offense described in this chapter, chapter 800,
183 s. 827.03, s. 827.04, or s. 827.071 may not willfully and
184 knowingly disclose it to a person who is not assisting in the



252982

185 investigation or prosecution of the alleged offense or to any
186 person other than the defendant, the defendant's attorney, a
187 person specified in an order entered by the court having
188 jurisdiction of the alleged offense, or organizations authorized
189 to receive such information made exempt by s. 119.071(2)(i) ~~s.~~
190 ~~119.071(2)(h)~~, or to a rape crisis center or sexual assault
191 counselor, as defined in s. 90.5035(1)(b), who will be offering
192 services to the victim.

193 Section 7. Section 794.03, Florida Statutes, is amended to
194 read:

195 794.03 Unlawful to publish or broadcast information
196 identifying sexual offense victim.—No person shall print,
197 publish, or broadcast, or cause or allow to be printed,
198 published, or broadcast, in any instrument of mass communication
199 the name, address, or other identifying fact or information of
200 the victim of any sexual offense within this chapter, except as
201 provided in s. 119.071(2)(i) ~~s. 119.071(2)(h)~~ or unless the
202 court determines that such information is no longer confidential
203 and exempt pursuant to s. 92.56. An offense under this section
204 shall constitute a misdemeanor of the second degree, punishable
205 as provided in s. 775.082 or s. 775.083.

206 Section 8. The Legislature finds that it is a public
207 necessity that an audio or video recording made by a law
208 enforcement officer in the course of the officer performing his
209 or her official duties and responsibilities be made exempt from
210 the public records requirements of s. 119.07(1), Florida
211 Statutes, and s. 24(a), Article I of the State Constitution, if
212 the recording: is taken within the interior of a private
213 residence; is taken on the property of a facility that offers



252982

214 health care, mental health care, or social services; is taken at
215 the scene of a medical emergency; is taken at a place where a
216 person recorded or depicted in the recording has a reasonable
217 expectation of privacy. The Legislature finds that information
218 recorded by these devices in these circumstances is
219 significantly more likely to include highly sensitive personal
220 information regarding the persons recorded than in other
221 circumstances. The Legislature finds that public disclosure of
222 these recordings could have an undesirable, chilling effect:
223 persons who know sensitive personal information about them is
224 being or may be recorded may be unwilling to cooperate with law
225 enforcement officers and make calls for the services of law
226 enforcement officers. This exemption allows law enforcement
227 officers to more effectively and efficiently administer their
228 duties, which would otherwise be significantly impaired. In the
229 case of minors, information about those minors could jeopardize
230 their safety if the minors' identities and whereabouts are
231 recorded and open for anyone to request and keep. The
232 Legislature recognizes an individual's right to be free of
233 government intrusion as codified in s. 23, Article I of the
234 State Constitution and finds that these exemptions to the public
235 records laws do not limit the public's right to open government.
236 The Legislature finds that these interests or concerns not only
237 necessitate the exemption of the recordings but outweigh any
238 public benefit that may be derived from their disclosure.

239 Section 9. This act shall take effect July 1, 2015.

240
241 ===== T I T L E A M E N D M E N T =====

242 And the title is amended as follows:



243 Delete everything before the enacting clause
244 and insert:

245 A bill to be entitled
246 An act relating to public records; amending s.
247 119.071, F.S.; providing an exemption from public
248 record requirements for an audio or video recording
249 made by a law enforcement officer in the course of the
250 officer performing his or her official duties and
251 responsibilities, if the recording is taken within
252 certain locations; specifying how the exemption
253 operates in relation to other exemptions that may
254 apply to the recording; authorizing the law
255 enforcement agency with custody over the recording to
256 disclose the recording to another law enforcement
257 agency in furtherance of that agency's official duties
258 and responsibilities; specifying persons who may
259 inspect the recording; requiring a law enforcement
260 agency to have a retention policy for audio or video
261 recordings of not shorter than 4 years; providing an
262 exception; requiring a law enforcement agency to
263 disclose its records retention policy for audio or
264 video recordings; providing retroactive application of
265 the exemption; providing an exception; providing for
266 future legislative review and repeal of the exemption
267 under the Open Government Sunset Review Act; amending
268 ss. 92.56, 119.011, 119.0714, 784.046, 794.024, and
269 794.03, F.S.; conforming cross-references; providing a
270 statement of public necessity; providing an effective
271 date.



968344

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/17/2015	.	
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The Committee on Governmental Oversight and Accountability
(Legg) recommended the following:

**Senate Amendment to Amendment (252982) (with title
amendment)**

Delete lines 45 - 51
and insert:

5. A law enforcement agency under this paragraph shall
retain audio and video recordings in accordance with the
requirements of s. 119.021, except as otherwise provided by law.
A law enforcement agency must have a written retention policy
for audio or video recordings and must disclose its records



968344

11 retention policy under this paragraph.

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

13 And the title is amended as follows:

14 Delete lines 259 - 264

15 and insert:

16 inspect the recording; requiring a law enforcement
17 agency to retain audio and video recordings in a
18 specified manner; requiring a law enforcement agency
19 to have a written retention policy for its audio and
20 video recordings and disclose its retention policy;
21 providing for retroactive application of



328126

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
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The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

1 **Senate Substitute for Amendment (252982) (with title**
2 **amendment)**

3
4 Delete everything after the enacting clause
5 and insert:

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

8 119.071 General exemptions from inspection or copying of
9 public records.—

10 (2) AGENCY INVESTIGATIONS.—



328126

- 11 (1)1. As used in this paragraph, the term:
- 12 a. "Body camera" means a portable electronic recording
- 13 device that is worn on a law enforcement officer's body and that
- 14 records audio and video data of the officer's activities.
- 15 b. "Personal representative" means a parent, a court-
- 16 appointed guardian, or a person holding a power of attorney of a
- 17 person recorded by a body camera, or an attorney for such
- 18 person. If a person depicted in the recording is deceased, the
- 19 term also means the personal representative of the estate of the
- 20 deceased person; the deceased person's surviving spouse, parent,
- 21 or adult child; the parent or guardian of a surviving minor
- 22 child of the deceased; or an attorney for such person.
- 23 2. A body camera recording is confidential and exempt from
- 24 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.
- 25 3. A body camera recording, or a portion thereof, may be
- 26 disclosed by a law enforcement agency:
- 27 a. In furtherance of its official duties and
- 28 responsibilities;
- 29 b. To another governmental agency in the furtherance of its
- 30 official duties and responsibilities;
- 31 c. Pursuant to a court order;
- 32 d. To a person recorded by a body camera; however, a law
- 33 enforcement agency may disclose only the portions that are
- 34 relevant to the person's presence in the recording; or
- 35 e. To the personal representative of a person recorded by a
- 36 body camera; however, a law enforcement agency may disclose only
- 37 the portions that are relevant to the represented person's
- 38 presence in the recording.
- 39 4. A law enforcement agency must retain a body camera



328126

40 recording for a minimum of 90 days.

41 5. The exemption provided in subparagraph 2. applies
42 retroactively.

43 6. This paragraph is subject to the Open Government Sunset
44 Review Act in accordance with s. 119.15 and shall stand repealed
45 on October 2, 2020, unless reviewed and saved from repeal
46 through reenactment by the Legislature.

47 Section 2. The Legislature finds that it is a public
48 necessity that body camera recordings are confidential and
49 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
50 Article I of the State Constitution. The Legislature finds that
51 information recorded by body cameras is significantly more
52 likely to capture highly sensitive personal information than
53 other law enforcement recordings or documents. The Legislature
54 finds that public disclosure of these recordings could have an
55 undesirable chilling effect. People who know that they are being
56 recorded by a body camera may be unwilling to fully cooperate
57 with law enforcement officers if they know that a body camera
58 recording can be made available to anyone in the public. People
59 may also be less likely to call a law enforcement agency for
60 services if their sensitive personal information or the
61 circumstances that necessitate a law enforcement agency's
62 involvement are subject to public dissemination as a body camera
63 recording. The Legislature also finds that body camera
64 recordings could be used for criminal purposes if they were
65 available upon request. This exemption from public records
66 requirements allows law enforcement officers to more effectively
67 and efficiently administer their duties, which would otherwise
68 be significantly impaired. The Legislature finds that these



328126

69 concerns regarding the impact of the public records requirements
70 for body camera recordings not only necessitate the exemption of
71 the recordings from the public records requirements but also
72 outweigh any public benefit that may be derived from the
73 disclosure of the recordings.

74 Section 3. This act shall take effect July 1, 2015.

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

76 And the title is amended as follows:

77 Delete everything before the enacting clause
78 and insert:

79 A bill to be entitled

80 An act relating to public records; amending s.
81 119.071, F.S.; defining the terms "body camera" and
82 "personal representative"; providing that a body
83 camera recording made is confidential and exempt from
84 public records requirements; providing exceptions;
85 requiring a law enforcement agency to retain body
86 camera recordings for a minimum period; providing for
87 retroactive application; providing for future
88 legislative review and repeal of the exemption;
89 providing a statement of public necessity; providing
90 an effective date.



864868

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
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The Committee on Governmental Oversight and Accountability
(Ring) recommended the following:

1 **Senate Amendment to Substitute Amendment (328126) (with**
2 **title amendment)**

3
4 Delete lines 24 - 25
5 and insert:

6 s. 119.07(1) and s. 24 (a), Art. I of the state constitution if
7 the recording:

8 a. Is taken within the interior of a private residence;

9 b. Is taken on the property of a facility that offers
10 health care, mental health care, or social services;



864868

- 11 c. Is taken at the scene of a medical emergency;
- 12 d. Is taken in a place where a person recorded or depicted
- 13 in the recording has a reasonable expectation of privacy.
- 14 3. A body camera recording, or a portion thereof, shall be
- 15

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

17 And the title is amended as follows:

18 Delete line 84

19 and insert:

20 public records requirements under certain
21 circumstances; providing exceptions;

By the Committee on Criminal Justice; and Senators Smith,
Thompson, and Bullard

591-01634-15

2015248c1

1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; providing an exemption from public
4 record requirements for an audio or video recording
5 made by a law enforcement officer in the course of the
6 officer performing his or her official duties and
7 responsibilities, if the recording is taken within
8 certain locations, shows a minor inside a school or on
9 school property, or shows a child younger than 14
10 years of age at any location; specifying how the
11 exemption operates in relation to other exemptions
12 that may apply to the recording; providing for future
13 legislative review and repeal of the exemption under
14 the Open Government Sunset Review Act; authorizing the
15 law enforcement agency with custody over the recording
16 to disclose the recording to another law enforcement
17 agency in furtherance of that agency's official duties
18 and responsibilities; specifying persons who may
19 inspect the recording; requiring a law enforcement
20 agency to have a retention policy for audio or video
21 recordings of not longer than 90 days; providing an
22 exception; requiring a law enforcement agency to
23 disclose its records retention policy for audio or
24 video recordings; amending ss. 92.56, 119.011,
25 119.0714, 784.046, 794.024, and 794.03, F.S.;

26 conforming cross-references; providing a statement of
27 public necessity; providing an effective date.
28
29 Be It Enacted by the Legislature of the State of Florida:

Page 1 of 9

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

591-01634-15

2015248c1

30
31 Section 1. Paragraphs (g), (h), (i), (j), and (k) of
32 subsection (2) of section 119.071, Florida Statutes, are
33 redesignated as paragraphs (h), (i), (j), (k), and (l),
34 respectively, and paragraph (g) is added to that subsection, to
35 read:
36 119.071 General exemptions from inspection or copying of
37 public records.—
38 (2) AGENCY INVESTIGATIONS.—
39 (g)1. An audio or video recording made by a law enforcement
40 officer in the course of the officer performing his or her
41 official duties and responsibilities is exempt from 119.07(1)
42 and s. 24(a), Art. 1 of the State Constitution, if the
43 recording:
44 a. Is taken within the interior of a private residence;
45 b. Is taken on the property of a facility that offers
46 health care, mental health care, or social services;
47 c. Is taken at the scene of a medical emergency;
48 d. Is taken in a place where a person recorded or depicted
49 in the recording has a reasonable expectation of privacy; or
50 e. Shows a child younger than 18 years of age inside a
51 school, as defined in s. 1003.01, or on school property, as
52 defined in s. 810.095, or shows a child younger than 14 years of
53 age at any location.
54 2. If the audio or video recording or a portion of such
55 recording is exempt or confidential and exempt pursuant to
56 another exemption in this section, that exemption applies and
57 determines under which circumstances, if any, the recording or a
58 portion of the recording may be disclosed to the public.

Page 2 of 9

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

591-01634-15

2015248c1

59 3. This paragraph is subject to the Open Government Sunset
 60 Review Act in accordance with s. 119.15 and shall stand repealed
 61 on October 2, 2020, unless reviewed and saved from repeal
 62 through reenactment by the Legislature.

63 4. The law enforcement agency having custody of an audio or
 64 video recording described in subparagraph 1. may disclose the
 65 recording to another law enforcement agency in furtherance of
 66 that agency's official duties and responsibilities.

67 5.a. In accordance with s. 119.07, the following persons
 68 may inspect an audio or video recording described in
 69 subparagraph 1.:

70 (I.) A person recorded or depicted in the recording.

71 (II.) The agent or attorney of a person recorded or
 72 depicted in the recording, if inspection is authorized by that
 73 person.

74 (III.) A person not recorded or depicted in the recording,
 75 if inspection is authorized by all persons recorded or depicted
 76 in the recording.

77 b. This subparagraph does not apply to information in the
 78 recording that is exempt or confidential and exempt pursuant to
 79 another provision of this section.

80 6. A law enforcement agency under this paragraph must have
 81 a retention policy of not longer than 90 days for audio or video
 82 recordings unless the audio or video recording is part of an
 83 active criminal investigation or criminal intelligence operation
 84 or a court orders its retention for a longer period. A law
 85 enforcement agency must disclose its records retention policy
 86 for audio or video recordings under this paragraph.

87 Section 2. Paragraph (a) of subsection (1) of section

591-01634-15

2015248c1

88 92.56, Florida Statutes, is amended to read:

89 92.56 Judicial proceedings and court records involving
 90 sexual offenses and human trafficking.—

91 (1) (a) The confidential and exempt status of criminal
 92 intelligence information or criminal investigative information
 93 made confidential and exempt pursuant to s. 119.071(2)(i) ~~s.~~
 94 ~~119.071(2)(h)~~ must be maintained in court records pursuant to s.
 95 119.0714(1)(h) and in court proceedings, including testimony
 96 from witnesses.

97 Section 3. Paragraph (c) of subsection (3) of section
 98 119.011, Florida Statutes, is amended to read:

99 119.011 Definitions.—As used in this chapter, the term:

100 (3)

101 (c) "Criminal intelligence information" and "criminal
 102 investigative information" shall not include:

103 1. The time, date, location, and nature of a reported
 104 crime.

105 2. The name, sex, age, and address of a person arrested or
 106 of the victim of a crime except as provided in s. 119.071(2)(i)
 107 ~~s. 119.071(2)(h)~~.

108 3. The time, date, and location of the incident and of the
 109 arrest.

110 4. The crime charged.

111 5. Documents given or required by law or agency rule to be
 112 given to the person arrested, except as provided in s.
 113 119.071(2)(i) ~~s. 119.071(2)(h)~~, and, except that the court in a
 114 criminal case may order that certain information required by law
 115 or agency rule to be given to the person arrested be maintained
 116 in a confidential manner and exempt from the provisions of s.

591-01634-15 2015248c1

117 119.07(1) until released at trial if it is found that the
118 release of such information would:

119 a. Be defamatory to the good name of a victim or witness or
120 would jeopardize the safety of such victim or witness; and

121 b. Impair the ability of a state attorney to locate or
122 prosecute a codefendant.

123 6. Informations and indictments except as provided in s.
124 905.26.

125 Section 4. Paragraph (h) of subsection (1) of section
126 119.0714, Florida Statutes, is amended to read:

127 119.0714 Court files; court records; official records.-

128 (1) COURT FILES.-Nothing in this chapter shall be construed
129 to exempt from s. 119.07(1) a public record that was made a part
130 of a court file and that is not specifically closed by order of
131 court, except:

132 (h) Criminal intelligence information or criminal
133 investigative information that is confidential and exempt as
134 provided in s. 119.071(2)(i) ~~s. 119.071(2)(h)~~.

135 Section 5. Paragraph (b) of subsection (4) of section
136 784.046, Florida Statutes, is amended to read:

137 784.046 Action by victim of repeat violence, sexual
138 violence, or dating violence for protective injunction; dating
139 violence investigations, notice to victims, and reporting;
140 pretrial release violations; public records exemption.-

141 (4)

142 (b) The sworn petition must be in substantially the
143 following form:

144
145 PETITION FOR INJUNCTION FOR PROTECTION

591-01634-15 2015248c1

146 AGAINST REPEAT VIOLENCE, SEXUAL
147 VIOLENCE, OR DATING VIOLENCE
148

149 Before me, the undersigned authority, personally appeared
150 Petitioner ...(Name)..., who has been sworn and says that the
151 following statements are true:

152
153 1. Petitioner resides at ...(address)... (A petitioner for
154 an injunction for protection against sexual violence may furnish
155 an address to the court in a separate confidential filing if,
156 for safety reasons, the petitioner requires the location of his
157 or her current residence to be confidential pursuant to s.
158 119.071(2)(k) ~~s. 119.071(2)(j)~~, Florida Statutes.)

159 2. Respondent resides at ...(address)...

160 3.a. Petitioner has suffered repeat violence as
161 demonstrated by the fact that the respondent has:
162 ...(enumerate incidents of violence)...

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168 b. Petitioner has suffered sexual violence as demonstrated
169 by the fact that the respondent has: ...(enumerate incident of
170 violence and include incident report number from law enforcement
171 agency or attach notice of inmate release.)...

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591-01634-15

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c. Petitioner is a victim of dating violence and has reasonable cause to believe that he or she is in imminent danger of becoming the victim of another act of dating violence or has reasonable cause to believe that he or she is in imminent danger of becoming a victim of dating violence, as demonstrated by the fact that the respondent has: ... (list the specific incident or incidents of violence and describe the length of time of the relationship, whether it has been in existence during the last 6 months, the nature of the relationship of a romantic or intimate nature, the frequency and type of interaction, and any other facts that characterize the relationship.)...

.....
.....
.....

4. Petitioner genuinely fears repeat violence by the respondent.

5. Petitioner seeks: an immediate injunction against the respondent, enjoining him or her from committing any further acts of violence; an injunction enjoining the respondent from committing any further acts of violence; and an injunction providing any terms the court deems necessary for the protection of the petitioner and the petitioner's immediate family, including any injunctions or directives to law enforcement agencies.

Section 6. Subsection (1) of section 794.024, Florida

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Statutes, is amended to read:

794.024 Unlawful to disclose identifying information.—

(1) A public employee or officer who has access to the photograph, name, or address of a person who is alleged to be the victim of an offense described in this chapter, chapter 800, s. 827.03, s. 827.04, or s. 827.071 may not willfully and knowingly disclose it to a person who is not assisting in the investigation or prosecution of the alleged offense or to any person other than the defendant, the defendant's attorney, a person specified in an order entered by the court having jurisdiction of the alleged offense, or organizations authorized to receive such information made exempt by s. 119.071(2)(i) ~~s. 119.071(2)(h)~~, or to a rape crisis center or sexual assault counselor, as defined in s. 90.5035(1)(b), who will be offering services to the victim.

Section 7. Section 794.03, Florida Statutes, is amended to read:

794.03 Unlawful to publish or broadcast information identifying sexual offense victim.—No person shall print, publish, or broadcast, or cause or allow to be printed, published, or broadcast, in any instrument of mass communication the name, address, or other identifying fact or information of the victim of any sexual offense within this chapter, except as provided in s. 119.071(2)(i) ~~s. 119.071(2)(h)~~ or unless the court determines that such information is no longer confidential and exempt pursuant to s. 92.56. An offense under this section shall constitute a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 8. The Legislature finds that it is a public

591-01634-15

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233 necessity that an audio or video recording made by a law
234 enforcement officer in the course of the officer performing his
235 or her official duties and responsibilities be made exempt from
236 the public records requirements of s. 119.07(1) and s. 24(a),
237 Article I of the State Constitution, if the recording: is taken
238 within the interior of a private residence; is taken on the
239 property of a facility that offers health care, mental health
240 care, or social services; is taken at the scene of a medical
241 emergency; is taken at a place where a person recorded or
242 depicted in the recording has a reasonable expectation of
243 privacy; or shows a child younger than 18 years of age inside a
244 school or on school property or a child younger than 14 years of
245 age at any location. The Legislature finds that information
246 recorded by these devices in these circumstances is
247 significantly more likely to include highly sensitive personal
248 information regarding the persons recorded than in other
249 circumstances. The Legislature finds that public disclosure of
250 these recordings could have an undesirable, chilling effect:
251 persons who know sensitive personal information about them is
252 being or may be recorded may be unwilling to cooperate with law
253 enforcement officers and make calls for the services of law
254 enforcement officers. In the case of minors, information about
255 those minors could jeopardize their safety. The Legislature
256 finds that these interests or concerns not only necessitate the
257 exemption of the recordings but outweigh any public benefit that
258 may be derived from their disclosure.

259 Section 9. This act shall take effect July 1, 2015.



The Florida Senate

Committee Agenda Request

To: Senator Jeremy Ring, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 4, 2015

I respectfully request that **Senate Bill #248**, relating to Public Records/Audio or Video Recording Made by a Law Enforcement Officer, be placed on the:

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

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

Senator Christopher L. Smith
Florida Senate, District 31

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

248

Bill Number (if applicable)

Topic SB-248 Body Cameras

Amendment Barcode (if applicable)

Name Michelle Richardson

Job Title Director of Public Policy

Address 4500 Biscayne Blvd #340

Phone 786-363-2700

Miami FL 33137

City

State

Zip

Email mrichardson@aclufl.org

Speaking: For Against Information

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

Representing ACLU of FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3-17-15
Meeting Date

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

248
Bill Number (if applicable)

Topic POLICE BODY CAMERAS

Amendment Barcode (if applicable)

Name J. O. PATTERSON

Job Title MIAMI-DADE COUNTY POLICE DIRECTOR/SHERIFF

Address 9105 NW 25 ST

Phone 305-471-2160

Street

DORAL 33172

Email JPATTERSON.MOPD.COM

City

State

Zip

Speaking: For Against Information

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

Representing MIAMI-DADE COUNTY POLICE

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

MARCH 17

Meeting Date

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

248

Bill Number (if applicable)

Topic PUBLIC RECORDS/VIDEO OR

Amendment Barcode (if applicable)

Name FRED LEONHART VIDEO RECORDS

Job Title

Address 301 E. PINE ST. SUITE 400 Phone 407 951 4100

Street

City

ORLANDO

FLA

State

32801

Zip

Phone

Email

LOBBY4600@AOL.COM

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing ORANGE COUNTY SHERIFF

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)

3/17/15

Meeting Date

248

Bill Number (if applicable)

Topic BWCS

Amendment Barcode (if applicable)

Name Lisa Henning

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr

Phone 766-8808

Tallahassee FL 32301

Email lregislativ@ad.com

Speaking: For Against Information

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

Representing Fraternal Order of Police

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)

3/17/15

Meeting Date

248

Bill Number (if applicable)

Topic BODY CAMERAS

Amendment Barcode (if applicable)

Name GARY BRADFORD

Job Title Government Relations

Address 40 E. Baywood St

Phone 850-733-3722

Street

Tallahassee

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA PBA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 17, 2015

Meeting Date

SB 248

Bill Number (if applicable)

328126

Amendment Barcode (if applicable)

Topic Public Records/Audio or Video Recording

Name Amy Mercer

Job Title Executive Director

Address 924 N. Gadsden St.

Phone 219-3631

Street

Tallahassee FL 32303

Email amerer@fpca.com

City

State

Zip

Speaking: For Against Information

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

Representing The Florida Police Chiefs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-17

SB 248

Meeting Date

Bill Number (if applicable)

328126

Amendment Barcode (if applicable)

Topic Body Cameras

Name Sarah Carroll

Job Title _____

Address 123 S. Adams

Phone _____

Street

Tallahassee

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Florida Sheriffs Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 552

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Public Records/Homelessness Surveys and Databases

DATE: March 18, 2015 REVISED: _____

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

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 552 provides that individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The bill defines the term “individual identifying information” and provides for retroactive application of the exemption.

The bill does not prevent the release of aggregate information from a Point-In-Time Count and Survey or data in a Homeless Management Information System that does not disclose individual identifying information of a person. The bill provides for an Open Government Sunset review and contains a statement of public necessity as required by the State Constitution.

The bill is anticipated to have limited fiscal impact on state government.

II. Present Situation:

Point-In-Time Count and Survey

A point-in-time count is an unduplicated count on a single night of the people in a community who are experiencing homelessness that includes both sheltered and unsheltered populations. Counts are provided by household type (individuals, families, and child-only households), and

are further broken down by subpopulation categories, such as homeless veterans and people who are chronically homeless.¹

The Department of Housing and Urban Development (HUD) requires that state homeless continuums of care² conduct an annual count of persons who are homeless and who are sheltered in emergency shelters, transitional housing and safe havens on a single night during the last ten days of January. Further, HUD requires that the continuums of care also must conduct a count of the unsheltered homeless population every other year, required on odd numbered years. The goal is to produce an unduplicated count, or statistically reliable estimate of the homeless in the community.³ Although HUD requires continuums of care gather survey data, federal law privacy laws do not necessarily extend to non-federal agencies that receive federal funds.⁴

Point-in-time counts are important because they establish the severity of the problem of homelessness and help policymakers and program administrators track progress toward the goal of ending homelessness. Collecting data on homelessness and tracking progress can inform public opinion, increase public awareness, and attract resources that will lead to a reduction or the eradication of the problem.⁵ On the local level, point-in-time counts help communities plan services and programs to appropriately address local needs, measure progress in decreasing homelessness, and identify strengths and gaps in a community's current homelessness assistance system.⁶

For 2014, Florida's homeless continuums of care carried out both the sheltered and unsheltered counts as required. The 2014 Point-In-Time Survey reports from the local continuums of care indicate that 41,335 persons met the HUD definition of homeless in Florida on a given day in January 2014. The Florida Department of Education reports that 70,215 public school students were homeless in Florida during the 2012-2013 school year. Sixteen rural county areas did not conduct a point-in-time count in 2014 due to a lack of resources.⁷

The intent is to identify those men, women and children who meet HUD's definition of a homeless person. This is limited to:

- Those living in a publicly or privately operated shelter providing temporary living arrangements;

¹ National Alliance to End Homelessness. Point-In-Time Count: Fact Sheet. November 4, 2010, available at: <http://www.endhomelessness.org/library/entry/fact-sheet-point-in-time-counts>. (last visited February 23, 2015).

² The federal Department of Housing and Urban Development (HUD) designed the Homeless Continuums of Care to promote communitywide commitment and planning toward the goal of ending homelessness. In Florida there are 28 Continuum of Care lead agencies serving 64 of 67 counties, according to Florida Department of Children and Families. Council on Homelessness, 2014 Annual Report. June 2014, available at: www.myflfamilies.com/service-programs/homelessness. (last visited February 23, 2015).

³ National Alliance to End Homelessness. Point-In-Time Count: Fact Sheet. November 4, 2010, available at: <http://www.endhomelessness.org/library/entry/fact-sheet-point-in-time-counts>. (last visited February 23, 2015).

⁴ *Housing Authority of City of Daytona Beach v. Gomillion*, 639 So.2d 117 (Fla. 5th DCA 1994).

⁵ *Id.*

⁶ *Id.*

⁷ Florida Department of Children and Families. Council on Homelessness, 2014 Annual Report. June 2014, available at: www.myflfamilies.com/service-programs/homelessness. (last visited February 23, 2015).

- Those persons whose primary nighttime residence is a public or private place not intended to be used as an accommodation for human beings, such as: a car, park, abandoned building or campground;
- A person who is exiting from an institution, where he or she lived for 90 days or less, and who was otherwise homeless immediately prior to entering that institution;
- A person who is fleeing from a domestic violence situation;
- A person who will lose their primary nighttime residence within 14 days, where no subsequent dwelling has been found and the individual lacks the resources to obtain permanent housing.⁸

Point-In-Time Surveys and Homeless Management Information Systems

Point-In-Time Surveys request personal information such as a person's name, date of birth, social security number, race, marital status, disability (including personal health information) and veteran status. The Surveys also inquire about a homeless person's children. Data collected through Point-In-Time Surveys⁹ and during other counts is managed through the Homeless Management Information System (HMIS), a software application designed to record and store client-level information on the characteristics and service needs of homeless persons. An HMIS is typically a web-based software application that homeless assistance providers use to coordinate care, manage their operations, and better serve their clients.¹⁰

Public Records Requirements

The Florida Constitution specifies requirements for public access to government records. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹¹ The Florida Constitution states that this right applies to the records of the legislative, executive, and judicial branches of government.¹²

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. Chapter 119, F.S., guarantees every person's

⁸ *Id.*

⁹ Sample surveys can be found on the HUD website at <https://www.onecpd.info/resource/1699/homeless-pit-count-survey-sample/> and <https://www.onecpd.info/resource/1698/homeless-pit-count-survey-domestic-violence-form-sample>. (last viewed March 11, 2015).

¹⁰ HUD Exchange Homeless Management Information System. <https://www.hudexchange.info/hmis> (last viewed on March 11, 2015).

¹¹ FLA. CONST. art. I, s. 24(a).

¹² *Id.*

right to inspect and copy any state or local government public record¹³ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.¹⁴

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

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the “OGSR”) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.²⁰

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.²¹ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

¹³ 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.” Chapter 119, F.S., does not apply to legislative or judicial records. See *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992).

¹⁴ Section 119.07(1)(a), F.S.

¹⁵ 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).

¹⁶ FLA. CONST. art. I, s. 24(c).

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

¹⁸ FLA. CONST. art. I, s. 24(c).

¹⁹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

²⁰ Section 119.15(3), F.S.

²¹ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²²
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²³ or
- It protects trade or business secrets.²⁴

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.²⁵ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁶ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁷

III. Effect of Proposed Changes:

Section 1 creates s. 420.6231, F.S., to provide that identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations, is exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. The exemption also applies retroactively to information that is already being held.

The section also provides a definition of the term "individual identifying information" as meaning information that directly or indirectly identifies a specific person or can be used to identify a specific person. The bill provides that aggregate information may be released so long as an individual cannot be identified.

Pursuant to the OGSR, the bill provides that this exemption will stand repealed on October 2, 2010, unless it is continued by the Legislature.

²² Section 119.15(6)(b)1., F.S.

²³ Section 119.15(6)(b)2., F.S.

²⁴ Section 119.15(6)(b)3., F.S.

²⁵ 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?

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ Section 119.15(7), F.S.

Section 2 provides a statement of public necessity as required by the Florida Constitution. The bill states that it is a public necessity to keep exempt from public disclosure identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System collected pursuant to federal law and regulations.

The public release of such sensitive information could lead to discrimination against or ridicule of such individuals and could make them reluctant to seek assistance for themselves or their family members. The public release of such information may put affected individuals at greater risk of injury as a significant proportion of such individuals are survivors of domestic violence or suffer from mental illness or substance abuse. Additionally, public access to such information may put affected individuals at a heightened risk for fraud and identity theft.

Section 3 provides that the bill will be effective of upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption related to individual identifying information obtained during annual counts of persons who are homeless and therefore it requires a two-thirds vote for final passage.

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 provides that this exemption is necessary in order to protect homeless people and their families and that this exemption makes it more likely that the homeless will be willing to participate in the Point-In-Time Count and Survey.

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The exemption provided for in the bill does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Department of Children and Families' (DCF) Office on Homelessness is the central point of contact within state government on homelessness.²⁸ DCF reports that this bill has no impact on it and did not provide fiscal impact information.²⁹ However, it seems plausible that government agencies and local service providers which collect Point-in-Time Surveys and HMIS information will have to expend resources to train their staff and perform redactions when a public records request is made. These costs will probably be negligible.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 17, 2015:

The CS removes specific references to part 91 of the Code of Federal Regulations and 42 USC s. 11363. These references were removed because federal statutes and rules governing the program and federal level privacy protections are located in several other sections of the Code of Federal Regulations and the United States Code.

B. Amendments:

None.

²⁸ Florida Department of Children and Families. <http://www.myflfamilies.com/service-programs/homelessness>

²⁹ 2015 Agency Legislative Bill Analysis from the Department of Children and Families prepared February 10, 2015.

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



673588

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 30 - 70
and insert:
is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution. This exemption applies to such information held
before, on, or after the effective date of this section.

(3) This section does not preclude the release, in the
aggregate, of information from a Point-In-Time Count and Survey
or data in a Homeless Management Information System which does



673588

11 not disclose individual identifying information of a person.

12 (4) This section is subject to the Open Government Sunset
13 Review Act in accordance with s. 119.15 and shall stand repealed
14 on October 2, 2020, unless reviewed and saved from repeal
15 through reenactment by the Legislature.

16 Section 2. The Legislature finds that it is a public
17 necessity that individual identifying information of a person
18 contained in a Point-In-Time Count and Survey or data in a
19 Homeless Management Information System collected pursuant to 42
20 U.S.C. chapter 119, subchapter IV, and related regulations be
21 made exempt from public records requirements. The public release
22 of such sensitive information could lead to discrimination
23 against or ridicule of such individuals and could make them
24 reluctant to seek assistance for themselves or their family
25 members. The public release of such information may put affected
26 individuals at greater risk of injury as a significant
27 proportion of such individuals are survivors of domestic
28 violence or suffer from mental illness or substance abuse.
29 Additionally, public access to such information may put affected
30 individuals at a heightened risk for fraud and identity theft.
31 The harm from disclosing such information outweighs any public
32 benefit that can be derived from widespread and unfettered
33 access to such information. This exemption is narrowly drawn so
34 that aggregate information may be disclosed, but does not
35 disclose the individual identifying information of a person from
36 the Point-In-Time Count and Survey and data in a Homeless
37 Management Information System collected pursuant to 42 U.S.C.
38 chapter 119, subchapter IV, and related regulations.

By Senator Hays

11-00581-15

2015552__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 420.6231, F.S.; creating a public records exemption
 4 for individual identifying information of a person
 5 contained in a Point-In-Time Count and Survey or data
 6 in a Homeless Management Information System; defining
 7 the term "individual identifying information";
 8 providing for retroactive application of the
 9 exemption; specifying that the exemption does not
 10 preclude the release of aggregate information;
 11 providing for future review and repeal under the Open
 12 Government Sunset Review Act; providing a statement of
 13 public necessity; providing an effective date.

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

16 Section 1. Section 420.6231, Florida Statutes, is created
 17 to read:

18 420.6231 Individual identifying information in specified
 19 homelessness surveys and databases; public records exemption.-

20 (1) As used in this section, the term "individual
 21 identifying information" means information that directly or
 22 indirectly identifies a specific person, can be manipulated to
 23 identify a specific person, or can be linked with other
 24 available information to identify a specific person.

25 (2) Individual identifying information of a person
 26 contained in a Point-In-Time Count and Survey or data in a
 27 Homeless Management Information System collected pursuant to 42
 28 U.S.C. chapter 119, subchapter IV, and related regulations
 29

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30 provided in 24 C.F.R. part 91, is exempt from s. 119.07(1) and
 31 s. 24(a), Art. I of the State Constitution. This exemption
 32 applies to such information held before, on, or after the
 33 effective date of this section.

34 (3) This section does not preclude the release, in the
 35 aggregate, of information from a Point-In-Time Count and Survey
 36 or data in a Homeless Management Information System which does
 37 not disclose individual identifying information of a person.

38 (4) This section is subject to the Open Government Sunset
 39 Review Act in accordance with s. 119.15 and shall stand repealed
 40 on October 2, 2020, unless reviewed and saved from repeal
 41 through reenactment by the Legislature.

42 Section 2. The Legislature finds that it is a public
 43 necessity that individual identifying information of a person
 44 contained in a Point-In-Time Count and Survey or data in a
 45 Homeless Management Information System collected pursuant to 42
 46 U.S.C. chapter 119, subchapter IV, and related regulations
 47 provided in 24 C.F.R. part 91, be made exempt from public
 48 records requirements. Pursuant to 42 U.S.C. s. 11363, the
 49 Secretary of Housing and Urban Development is required to
 50 instruct service providers not to disclose individual
 51 identifying information about any client for purposes of the
 52 Homeless Management Information System, which includes Point-In-
 53 Time Count and Survey information. The public release of such
 54 sensitive information could lead to discrimination against or
 55 ridicule of such individuals and could make them reluctant to
 56 seek assistance for themselves or their family members. The
 57 public release of such information may put affected individuals
 58 at greater risk of injury as a significant proportion of such

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11-00581-15

2015552__

59 individuals are survivors of domestic violence or suffer from
60 mental illness or substance abuse. Additionally, public access
61 to such information may put affected individuals at a heightened
62 risk for fraud and identity theft. The harm from disclosing such
63 information outweighs any public benefit that can be derived
64 from widespread and unfettered access to such information. This
65 exemption is narrowly drawn so that aggregate information may be
66 disclosed, but does not disclose the individual identifying
67 information of a person from the Point-In-Time Count and Survey
68 and data in a Homeless Management Information System collected
69 pursuant to 42 U.S.C. chapter 119, subchapter IV, and related
70 regulations provided in 24 C.F.R. part 91.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

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

From: Senator D. Alan Hays

Subject: Request to agenda SB 552 – Public Records/Homelessness Surveys and Databases

Date: March 5, 2015

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 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/17

Meeting Date

552

Bill Number (if applicable)

Topic SB 552

Amendment Barcode (if applicable)

Name Bryan Cherry

Job Title Lobbyist

Address 205 S. Adams St.

Phone (850) 205-0885

Street

Tallahassee FL 32301

City

State

Zip

Email bryan@adamsstadvocates.com

Speaking: For Against Information

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

Representing FL. Coalition for the Homeless

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)

3/17/15
Meeting Date

552
Bill Number (if applicable)

Topic H M I S

Amendment Barcode (if applicable)

Name Alice Vickers

Job Title Attorney

Address 623 Beard St.

Phone 850 556 3101

Tallahassee FL 32303
City State Zip

Email alicevickers@flacp.org

Speaking: For Against Information

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

Representing Public Interest Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

3/17/15

Meeting Date

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

SB 552

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Robert Trammell

Job Title Gen Counsel

Address PO Box 1799

Phone 850 510-2187

Street

City Tallahassee State FL Zip 32302

Email RobertTrammell@5e.com

Speaking: For Against Information

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

Representing Florida Public Defenders 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
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 674

INTRODUCER: Military and Veterans Affairs, Space, and Domestic Security Committee and Senator Evers

SUBJECT: Public Records/Military Special Operations Unit Service Members

DATE: March 16, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanders</u>	<u>Ryon</u>	<u>MS</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 674 creates a public records exemption for certain identification and location information of current and former service members of U.S. military special operations units and their spouses and children.

The public records exemption established in the bill is subject to the Open Government Sunset Review Act and will repeal on October 2, 2020, unless reviewed and saved from repeal by the Legislature.

The bill contains a statement of public necessity as required by the State 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:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on

their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following purposes and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the purpose of the exemption overrides the Florida's public policy strongly favoring open government.

The OGSR also requires specified questions to be considered during the review process.¹⁷ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁹

Current Exemptions from Public Records Requirements in s. 119.071, F.S.

Section 119.071(4), F.S., exempts personal identification and location information for specified current or former state or local government personnel, their spouses and children. Information such as home addresses, telephone numbers, a spouse's employer, and children's school or day

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

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

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

¹⁸ FLA. CONST., art. I, s. 24(c).

¹⁹ Section 119.15(7), F.S.

care facility for current and former agency personnel are exempt from public disclosure. The employee must submit a written request for the exemption to be effective.²⁰

Additionally, s. 119.071(5), F.S., authorizes a public records exemption for certain identification and location information for the following federal personnel, their spouses and children:²¹

- U.S. attorneys and assistant U.S. attorneys;
- U.S. Courts of Appeal judges;
- U.S. district judges; and
- U.S. magistrates.

The identification and location information protected under this exemption includes:²²

- Home address, telephone number, and photograph of such attorney, judge, or magistrate and their spouse and child;
- Places of employment of a spouse and child, and
- Name and location of the school or day care facility attended by a child.

In order for the exemption to apply, a current or former federal attorney, judge, or magistrate must submit to an agency that has custody of the protected information a written request to exempt the information from public disclosure. In addition, the individual must submit a written statement that he or she has made a reasonable effort to protect such information from being accessible through other means available to the public.

Military Special Operations Units

Special Operations Forces (SOF) are elite military units that are highly trained and specially equipped and have the ability to infiltrate into hostile territory through land, sea, or air to conduct a variety of operations, many of them classified. The U.S. Special Operations Command (USSOCOM), headquartered at MacDill Air Force Base in Tampa, oversees the training, doctrine, and equipping of all U.S. SOF units.²³ USSOCOM's components include the U.S. Army Special Operations Command, the Naval Special Warfare Command, the Air Force Special Operations Command, and the Marine Corps Special Operations Command and the Joint Special Operations Command, which is a sub-unified command of USSOCOM.²⁴ USSOCOM currently has about 66,000 active duty, National Guard, and reserve personnel assigned to its headquarters, its four components, and sub-unified commands nationwide.²⁵

Additionally, Florida is the home to other SOF groups such as the 7th Special Operations Group at Eglin Air Force Base in Okaloosa County; the Air Force Special Operations Command, the 1st Special Operations Wing, the 720th Special Tactics Group, and the U.S. Air Force Special

²⁰ Section 119.071(4)(d)(3), F.S.

²¹ Section 119.071(5)(i), F.S.

²² Section 119.071(5)(i)1., F.S.

²³ Congressional Research Service Report "U.S. Special Operations Forces (SOF): Background and Issues for Congress," p. 1, <http://fas.org/sgp/crs/natsec/RS21048.pdf> (last visited on February 26, 2015).

²⁴ *Id.*

²⁵ *Id.*

Operations School and Training Center at Hurlburt Field in Okaloosa County; and the Air Force Reserve Command's 919th Special Operations Wing at Duke Field in Okaloosa County.²⁶

Servicemembers and the Families

The media has reported that the terror group ISIS is attempting to recruit sympathizers to hurt servicemembers while they are within the United States.²⁷ A group claiming to be ISIS sympathizers hacked into the U.S. military's Central Command's Twitter account and stated that they were watching American soldiers, their wives and children.²⁸ Because of those threats, spouses of a Special Forces service members are reducing the information they place on social media.²⁹ However, there is no indication that a special operations service member has actually been targeted at this time.³⁰ The bill is intended to be preventative rather than remedial.³¹

III. Effect of Proposed Changes:

The bill amends s. 119.071(5), F.S., to create an exemption to the public records requirements in s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution for current or former servicemembers of United States military special operations units and their spouses and children.

Specifically, the following identification and location information held by an agency is exempt from public record requirements:

- The home address, telephone number, and photograph of a servicemember of a special operations unit;
- The home address, telephone number, photograph, and places of employment of spouses and children of a military special operations servicemember; and
- Name and locations of the schools and day care facilities attended by the children of a military special operations servicemember.

The exemption only applies if the current or former servicemember submits a written request for the exemption and provides a written statement that the servicemember has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public. The servicemember must submit these statements to each agency which holds his or her information, and the servicemember must assert the exemption on behalf of his or her spouse and child.

²⁶ *Id.* at 3-4

²⁷ ISIS Threat at Home: FBI Warns US Military About Social Media Vulnerabilities. <http://abcnews.go.com/International/isis-threat-home-fbi-warns-us-military-social/story?id=27270662> (last viewed March 10, 2015)

²⁸ U.S. Central Command Twitter Account suspended After Apparent ISIS Hack. <http://www.usnews.com/news/articles/2015/01/12/us-central-command-twitter-account-suspended-after-apparent-isis-hack> (last visited March 10, 2015.)

²⁹ After ISIS Twitter threat, military families rethink online lives. <http://www.cnn.com/2015/01/14/us/social-media-military-isis/> (last visited March 10, 2015).

³⁰ <http://tbo.com/news/politics/bill-would-hide-personal-info-of-special-ops-members-20150211/> (last visited March 10, 2015)

³¹ *Id.*

This bill does not provide for retroactive application of this exemption. This is problematic because information that is public before the bill goes into effect, such as a home address, will remain public.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that allowing the identification and location information of current or former servicemembers of United States military special operations units and their families can endanger these servicemembers, their spouses, and their children.

This exemption is subject to the Open Government Sunset Review Act and will stand repealed on October, 2, 2020, unless reviewed and reenacted by the Legislature.

The bill provides an effective date of October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for the identification and location information of current or former servicemembers of the United States military special operations units, their spouses, and the children of such servicemembers; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The public necessity statement provides that Special Forces servicemembers perform critical and dangerous operations and that public access to identifying and location information endangers Special Forces servicemembers.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption limited to the identification and location information named in the bill for current or former servicemembers of the United States military special operations units, their spouses, and the children of such servicemembers. The exemption is no broader than necessary to accomplish its purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on state and local agencies, as staff may require training related to this new public record exemption. The costs, however, would likely be absorbed as part of the day-to-day responsibilities of the staff of the agency.

VI. Technical Deficiencies:

The bill creates a definition of “identification and location information” which includes photographs. When a servicemember asserts that he wishes to have his information exempt, he must state in writing that he has made reasonable efforts to protect his “identification and location information.” This is problematic because social media sites almost always contain photographs. If a servicemember, his spouse or children post photographs of themselves on public social media sites he will be unable to truthfully state that he has kept his information private.

VII. Related Issues:

The bill does not address how public records custodian will be able to verify that a servicemember is in a special operations unit. The servicemember will probably have to obtain documentation from the military confirming that he or she or was in a Special Forces unit and present it to an agency’s records custodian in order to assert the exemption.³²

³² A Certificate of Release or Discharge from Active Duty (DD 214 Form) indicates if a veteran was a member of a Special Forces unit. Email from Florida Department of Veterans Affairs, on file with the Senate Committee on Governmental Oversight and Accountability.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Military and Veterans Affairs, Space, and Domestic Security on March 4, 2015:

The committee substitute:

- Moves the exemption from s. 119.071(4), F.S. to s. 119.071(5), F.S.;
- Revises the public necessity statement to clarify that the exemption protects sensitive personal information that would jeopardize an individual's safety; and
- Requires a person to request the exemption in writing and state in writing that he has made reasonable efforts to protect the information for the exemption to apply.

- B. **Amendments:**

None.

By the Committee on Military and Veterans Affairs, Space, and Domestic Security; and Senator Evers

583-01920-15

2015674c1

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for certain personal identifying
 5 information of current or former servicemembers of a
 6 military special operations unit and the spouses and
 7 children of such servicemembers; providing for future
 8 legislative review and repeal of the exemption;
 9 providing a statement of public necessity; providing
 10 an effective date.
 11
 12 Be It Enacted by the Legislature of the State of Florida:
 13
 14 Section 1. Paragraph (k) is added to subsection (5) of
 15 section 119.071, Florida Statutes, to read:
 16 119.071 General exemptions from inspection or copying of
 17 public records.—
 18 (5) OTHER PERSONAL INFORMATION.—
 19 (k)1. For purposes of this paragraph, the term
 20 “identification and location information” means the:
 21 a. Home address, telephone number, and photograph of a
 22 current or former servicemember of a United States military
 23 special operations unit.
 24 b. Home address, telephone number, photograph, and place of
 25 employment of the spouse or child of such servicemember.
 26 c. Name and location of the school or day care facility
 27 attended by the child of such servicemember.
 28 2. Identification and location information held by an
 29 agency is exempt from s. 119.07(1) and s. 24(a), Art. I of the

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30 State Constitution if such servicemember submits to an agency
 31 that has custody of the identification and location information:
 32 a. A written request to exempt such information from public
 33 disclosure; and
 34 b. A written statement that he or she has made reasonable
 35 efforts to protect the identification and location information
 36 from being accessible through other means available to the
 37 public.
 38 3. This paragraph is subject to the Open Government Sunset
 39 Review Act in accordance with s. 119.15 and shall stand repealed
 40 on October 2, 2020, unless reviewed and saved from repeal
 41 through reenactment by the Legislature.
 42 Section 2. The Legislature finds that it is a public
 43 necessity that the identification and location information held
 44 by an agency of a current or former servicemember of a United
 45 States military special operations unit; the spouse and children
 46 of such servicemember; and the schools and day care facilities
 47 attended by the children of such servicemember be made exempt
 48 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 49 the State Constitution. United States military special
 50 operations units perform among the most critical, most
 51 effective, and most dangerous operations in defense of our
 52 nation's freedom. The unique missions undertaken by special
 53 operations units render these servicemembers and their families
 54 among the most critical assets worthy of protection in our state
 55 and country. The Legislature finds that allowing public access
 56 to the name, addresses, and identifying information of a current
 57 or former servicemember of a United States military special
 58 operations unit and his or her family may jeopardize the safety

Page 2 of 3

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59 of the servicemember, his or her spouse, and their children. The
60 Legislature finds that protecting a current or former
61 servicemember of a United States military special operations
62 unit, his or her spouse, and their children outweighs any public
63 benefit that may be derived from the disclosure of the
64 identifying information protected herein.

65 Section 3. This act shall take effect October 1, 2015.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 778

INTRODUCER: Governmental Oversight and Accountability Committee, Community Affairs Committee and Senator Hays

SUBJECT: Local Government Construction Preferences

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/CS/SB 778 prohibits any local laws that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. The bill requires a state agency or subdivision subject to this law to disclose whether payment will be made from state-appropriated funds and the percentage of such funds compared to the total cost, if known. The bill does not prohibit the application of a local preference in a competitive solicitation for construction services in which less than 50 percent of the cost will be paid from state-appropriated funds.

II. Present Situation:

Procurement of Construction Services

Chapter 255, F.S., specifies procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the Department of Management Services (DMS) to establish, through the adoption of rules,¹ the following construction contract procedures:

¹ Chapter 60D-5, F.A.C., establishes the procedures for s. 255.29, F. S., which requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; and in requesting authority to negotiate contracts and in negotiating contracts.

- For determining the qualifications and responsibility of potential bidders prior to advertising for and receiving bids on building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract;
- For awarding each state agency construction project to the lowest qualified bidder, as well as procedures to be followed in cases in which DMS declares a valid emergency to exist which would necessitate the waiver of the rules governing the awarding of state construction contracts to the lowest qualified bidder;
- For governing negotiations for construction contracts and contract modifications if negotiations are determined to be in the best interest of the state by the DMS secretary; and
- For entering into performance-based contracts for the development of public facilities if the contracts are determined to be in the best interest of the state.
- These procedures must include, but are not limited to:²
 - Prequalification of bidders;
 - Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
 - Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
 - Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

State contracts for construction projects estimated to cost in excess of \$200,000 must be competitively bid.³ County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 must also be competitively bid.⁴ Counties, municipalities, special districts,⁵ or other political subdivisions seeking to construct or improve a public building must competitively award the project if the projected cost exceeds \$300,000.⁶ To “competitively award” a project means to award the contract based on the submission of sealed bids, proposals submitted in response to a request for proposal, proposals submitted in response to a request for qualifications, or proposals submitted for competitive negotiation.⁷ Counties, municipalities, special districts, and other political subdivisions may establish, by municipal or county ordinance or special district resolution, procedures for conducting the bidding process.⁸

Section 255.0525, F.S., requires the solicitation of competitive bids or proposals for any state construction project projected to cost more than \$200,000 to be publicly advertised in the Florida Administrative Register (FAR) at least 21 days before the established bid opening.⁹ If the construction project is projected to exceed \$500,000, the advertisement must be published in the

² Section 255.29(4)(a)-(d), F.S.

³ Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2)(d) and 60D-5.0073(4), F.A.C.

⁴ Section 255.0525(2), F.S.

⁵ Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.)

⁶ *Id.* For electrical work, local governments must competitively bid projects estimated to cost more than \$75,000.

⁷ *Id.*

⁸ *Id.*

⁹ Section 255.0525(1), F.S.

FAR at least 30 days before the bid opening and also in a newspaper of general circulation in the county where the project is located at least 30 days before the bid opening.¹⁰

Florida Preference to State Residents

Florida law provides a preference for the employment of state residents in construction contracts funded by money appropriated with state funds.¹¹ Such contracts must contain a provision requiring the contractor to give preference to the employment of state residents in the performance of the work if state residents have substantially equal qualifications¹² to those of non-residents.¹³ If a construction contract is funded by local funds, the contract may contain such a provision.¹⁴ In addition, a contractor required to employ state residents must contact the Department of Economic Opportunity to post the contractor's employment needs in the state's job bank system.¹⁵

III. Effect of Proposed Changes:

Section 1 creates s. 255.0991, F.S., to prohibit local ordinances or regulations that give preference to a local contractor in circumstances involving a competitive solicitation for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds. Specifically, the bill prohibits a state college, county, municipality, school district, or other political subdivision from using a local ordinance or regulation that provides a preference based upon the contractor:

- Maintaining an office or place of business within a particular local jurisdiction;
- Hiring employees or subcontractors from within a particular local jurisdiction; or
- Making prior payment of local taxes, assessments, or duties within a particular local jurisdiction.

When 50 percent or more of the costs will be paid from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision must disclose in the solicitation document the amount of such funds or the percentage of such funds as compared to the anticipated total cost of the construction services.

The bill also provides that except for when 50 percent or more of the costs for construction services will be funded from state-appropriated funds, a state college, county, municipality, school district, or other political subdivision is not prevented from awarding a contract to a contractor in accordance with applicable state laws or local ordinances or regulations.

Section 2 provides an effective date of July 1, 2015.

¹⁰ *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and political subdivisions. *See* Section 255.0525(2), F.S.

¹¹ Section 255.099(1), F.S.

¹² Section 255.099(1)(a), F.S., defines "substantially equal qualifications" as the "qualifications of two or more persons among whom the employer cannot make a reasonable determination that the qualifications held by one person are better suited for the position than the qualifications held by the other person or persons."

¹³ Section 255.099(1), F.S.

¹⁴ *Id.*

¹⁵ Section 255.099(1)(b), F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may result in more business being awarded to state certified contractors as a result of prohibiting certain local ordinances and regulations that may otherwise restrict a non-local contractor from competing.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 255.0991 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 17, 2015:

Rather than amending s. 287.084, F.S., the CS creates a new section in ch. 255, F.S., that prohibits a state college, county, municipality, school district, or other political

subdivision from providing a local preference to contractors in competitive solicitations for construction services in which 50 percent or more of the cost will be paid from state-appropriated funds.

CS by Community Affairs on March 4, 2015:

Provides that state-appropriated funds do not include any federal aid funds for purposes of this section.

Raises the percentage of funding that must be derived from state-appropriated funds in order to prohibit application of a local preference from 20 percent to 50 percent.

Changes the word “vendor” to “contractor” throughout the bill.

B. Amendments:

None.



847222

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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. Section 255.0991, Florida Statutes, is created
to read:

255.0991 Contracts for construction services; prohibited
local government preferences.-

(1) For a competitive solicitation for construction
services in which 50 percent or more of the cost will be paid



847222

11 from state-appropriated funds, a state college, county,
12 municipality, school district, or other political subdivision of
13 the state may not use a local ordinance or regulation that
14 provides a preference based upon:

15 (a) The contractor's maintaining an office or place of
16 business within a particular local jurisdiction;

17 (b) The contractor's hiring employees or subcontractors
18 from within a particular local jurisdiction; or

19 (c) The contractor's prior payment of local taxes,
20 assessments, or duties within a particular local jurisdiction.

21 (2) For any competitive solicitation subject to this
22 section, a state college, county, municipality, school district,
23 or other political subdivision of the state shall disclose in
24 the solicitation document whether payment will be made from
25 funds appropriated by the state and, if known, the amount of
26 such funds or the percentage of such funds as compared to the
27 anticipated total cost of the construction services.

28 (3) Except as provided in subsection (1), this section does
29 not prevent a state college, county, municipality, school
30 district, or other political subdivision of the state from
31 awarding a contract to a contractor in accordance with
32 applicable state laws or local ordinances or regulations.

33 Section 2. This act shall take effect July 1, 2015.

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete everything before the enacting clause
38 and insert:

39 A bill to be entitled



847222

40 An act relating to local government construction
41 preferences; creating s. 255.0991, F.S.; prohibiting
42 local ordinances and regulations from restricting
43 competition for the award of a contract for
44 construction services based upon certain conditions;
45 requiring a state college, county, municipality,
46 school district, or other political subdivision of the
47 state to make specified disclosures in competitive
48 solicitation documents; providing applicability;
49 providing an effective date.

By the Committee on Community Affairs; and Senator Hays

578-01929-15

2015778c1

1 A bill to be entitled
 2 An act relating to local government construction
 3 preferences; amending s. 287.084, F.S.; specifying
 4 that funds appropriated by the state for certain
 5 competitively solicited projects do not include
 6 federal aid funds; prohibiting local ordinances and
 7 regulations from restricting a certified contractor's
 8 competition for award of a contract for construction
 9 services based upon certain conditions; requiring a
 10 state college, school district, or other political
 11 subdivision to make specified disclosures in
 12 competitive solicitation documents; providing
 13 construction; providing an effective date.
 14
 15 Be It Enacted by the Legislature of the State of Florida:
 16
 17 Section 1. Paragraphs (b) and (c) of subsection (1) of
 18 section 287.084, Florida Statutes, are amended to read:
 19 287.084 Preference to Florida businesses.—
 20 (1)
 21 (b) For purposes of this section:
 22 1. Paragraph (a) does not apply to transportation projects
 23 for which federal aid funds are available.
 24 2. State-appropriated funds used for a project
 25 competitively solicited under paragraph (c) does not include any
 26 federal aid funds.
 27 (c) 1. For a competitive solicitation for construction
 28 services in which 50 percent or more of the cost will be paid
 29 from state-appropriated funds, a local ordinance or regulation

Page 1 of 2

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

578-01929-15

2015778c1

30 may not restrict a certified contractor as defined in s.
 31 489.105(8) from competing for an award based upon:
 32 a. The contractor's maintaining an office or place of
 33 business within a particular local jurisdiction;
 34 b. The contractor's hiring employees or subcontractors from
 35 within a particular local jurisdiction; or
 36 c. The contractor's prior payment of local taxes,
 37 assessments, or duties within a particular local jurisdiction.
 38 2. For any competitive solicitation subject to this
 39 section, a state college, county, municipality, school district,
 40 or other political subdivision shall disclose in the
 41 solicitation document whether payment will be made from funds
 42 appropriated by the state and, if known, the amount of such
 43 funds or the percentage of such funds as compared to the
 44 anticipated total cost of the construction services.
 45 3. Except as provided in subparagraph 1., this section does
 46 not prevent a state college, county, municipality, school
 47 district, or other political subdivision from awarding a
 48 contract to a contractor in accordance with applicable state
 49 laws or local ordinances or regulations. As used in this
 50 section, the term "other political subdivision of this state"
 51 does not include counties or municipalities.
 52 Section 2. This act shall take effect July 1, 2015.

Page 2 of 2

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/2015
Meeting Date

Topic Pre-emption of local construction bid preference Bill Number SB 778
(if applicable)

Name M. DeLores Kelly Amendment Barcode _____
(if applicable)

Job Title Retired - CONSTRUCTION

Address P. O. Box 1477

Phone 352 603-1149

Bushnell FL 33513
City State Zip

E-mail edkell65719@embargo.com

Speaking: For Against Information

Representing SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15
Meeting Date

778
Bill Number (if applicable)

Topic LOCAL GOV

Amendment Barcode (if applicable)

Name GAIL MARIE PERRY

Job Title CHAIR

Address PO BOX 1766
Street

Phone 954 850 4055

POMPANO BEACH FLORIDA 33061
City State Zip

Email workingfolk@yahoo.com

Speaking: For Against Information

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

Representing COMMUNICATIONS WORKERS 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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THE FLORIDA SENATE
APPEARANCE RECORD

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

3.17.2015

Meeting Date

Topic Pre-emption of Local Construction Bid Preferences Bill Number SB 778
Name Katherine J. Hiley Amendment Barcode _____ (if applicable)
Job Title CLERK (if applicable)

Address 657 Sweetbriar Drive Phone _____
Oldsmar FL 34677
City State Zip
E-mail Kathyhiley@yahoo.com

Speaking: For Against Information

Representing American Postal Workers Union #259

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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3/17/15
Meeting Date

SB-778
Bill Number (if applicable)

Topic BID PREFERENCES

Amendment Barcode (if applicable)

Name J. B. CLARK

Job Title LOBBYIST

Address 2071 CYNTHIA DRIVE
Street

Phone 850-556-8143

TALL FL 32303
City State Zip

Email

Speaking: For Against Information

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

Representing

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)

3/17/15 Meeting Date

778 Bill Number (if applicable)

Topic Local Government Construction Preferences

847222 Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Suite 200 Street

Phone 954-465-6841

Coconut Creek FL 33066 City State Zip

Email cbowen@associatedbuilders.com

Speaking: [] For [] Against [] Information

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

Representing Associated Builders and Contractors of Florida

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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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)

3/17/15
Meeting Date

778
Bill Number (if applicable)

Topic Local Government Construction Preferences

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Deputy Chief Lobbyist

Address 3730 Coconut Creek Pkwy Suite 200
Street

Phone 954-465-6811

Coconut Creek FL 33006
City State Zip

Email cbowen@abcwaflorida.com

Speaking: For Against Information

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

Representing Associated Builders and Contractors of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15
Meeting Date

778
Bill Number (if applicable)

Topic Local Preferences

Amendment Barcode (if applicable)

Name Rich Templin

Job Title _____

Address 135 S. Monroe
Street

Phone 850 - 224 - 6926

Tallahassee
City

FL
State

32301
Zip

Email _____

Speaking: For Against Information

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

Representing Florida AFL-CIO

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

3/17
Meeting Date

778
Bill Number (if applicable)

Topic Local Preferences

Amendment Barcode (if applicable)

Name ERIC POOLE

Job Title ASST. LEG. DIRECTOR

Address 100 M. AVE
Street

Phone 972-4300

T-11 FL
City State Zip

Email _____

Speaking: For Against Information

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

Representing Florida Assoc. Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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 _____ Bill Number (if applicable) _____
Topic Local Reference Amendment Barcode (if applicable) _____
Name G. Ross
Job Title MAYOR
Address 3777 Bimini Ave Phone 954 434 4300 x 760
Street _____
City Copier City State FL Zip 33026 Email MAYOR Ross @ Copier City
City _____ State _____ Zip _____

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

Representing Copier City
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)

3/17

Meeting Date

Topic Pre-emption

Bill Number 778
(if applicable)

Name Steve Hall

Amendment Barcode _____
(if applicable)

Job Title IT-tech instructor

Address 2619 Coraine Dr.

Phone 4078969941

Orlando Fl. 32808
City State Zip

E-mail SHVOTE@aol.com

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3/17/15
Meeting Date

778
Bill Number (if applicable)

Topic Local Prof.

Amendment Barcode (if applicable)

Name Frank Ortis

Job Title Mayor

Address 10100 Pines Blvd
Street

Phone 954-435-6505

Pembroke Pines FL 33026
City State Zip

Email Fortis@Pines.com

Speaking: For Against Information

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

Representing Pembroke Pines

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)

3/17

Meeting Date

Topic Local Hiring

Bill Number 778
(if applicable)

Name Patricia Ingle

Amendment Barcode _____
(if applicable)

Job Title Organizer

Address 3589 NW 22nd Dr

Phone 352-231-3647

Street

Gainesville FL 32605

City

State

Zip

E-mail Mama_Ingle
@hotmail.com

Speaking: For Against Information

Representing ~~SELF~~ SELF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17

Meeting Date

Topic Pre-emption

Bill Number 778
(if applicable)

Name TERRANCE THOMPSON

Amendment Barcode _____
(if applicable)

Job Title VO-tech instructor

Address 7944 VOLVO ST.
Street

Phone 904-303-2301

JACKSONVILLE FL 32244
City State Zip

E-mail TThompson@DC.78.DC.G

Speaking: For Against Information

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic Local Wiring

Bill Number 778
(if applicable)

Name James Eagle

Amendment Barcode _____
(if applicable)

Job Title Electrician

Address 3509 NW 22nd Dr
Street

Phone 901-483-4800

Gainesville FL 32605
City State Zip

E-mail JWewI@yahoo.com

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)

3/17/2015
Meeting Date

SB-778
Bill Number (if applicable)

Topic LOCAL PREFERENCE BILL

Amendment Barcode (if applicable)

Name DOMINICK MONTANARO

Job Title VICE MAYOR SATELLITE BCIT

Address 565 CASSIA BLVD
Street

Phone 321-501-4316

SATELLITE BEACH FL 32937
City State Zip

Email DMONTANARO@SATELLITE BEACH.ORG

Speaking: For Against Information

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

Representing SATELLITE BEACH + SPACE COAST 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

APPEARANCE RECORD

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

3/17/15

Meeting Date

5778

Bill Number (if applicable)

Topic 5778

Amendment Barcode (if applicable)

Name Bill Barrett

Job Title

Address 4001 Hudson Terr

Phone 321-403-6410

Street

Tampa FL 33618

City

State

Zip

Email bbarrett.spg@gmail.com

Speaking: For Against Information

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

Representing City of St. Cloud

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)

3/17/15
Meeting Date

778
Bill Number (if applicable)

Topic 778

Amendment Barcode (if applicable)

Name Casey Cook

Job Title Legislative Advocate

Address PO Box 1757
Street

Phone 850 701 3701

Tallahassee FL 32302
City State Zip

Email ccook@flcities.com

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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)

Meeting Date _____

778
Bill Number (if applicable)

Topic Local Preference

Amendment Barcode (if applicable) _____

Name David Bryant

Job Title Electrician

Address 8853 AHer Ln.
Street

Phone 904-928-3744

Jax. FL 32216
City State Zip

Email davidbryant177@gmail.com

Speaking: For Against Information

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

Representing Self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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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)

3-17-15

Meeting Date

Topic Pre-emption of local construction Bid Prep. Bill Number SB778
Name LORI Bell Amendment Barcode _____ (if applicable)
Job Title CDL DIST 17 NALC (if applicable)

Address 2115D Gertrude Ave T2 Phone 9418156042
Street
Port Charlotte FL 33952 E-mail loriebell58@gmail.com
City State Zip

Wave
Speaking: For Against Information

Representing National Assn of Letter Carriers / Working Family Lobby Corp

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)

3-17-15

Meeting Date

SB 778

Bill Number (if applicable)

Topic Pre-emption of local construction bid preferences Amendment Barcode (if applicable)

Name Joanne Cannon

Job Title NAAC - retired

Address 3410-50th St W
Street

Phone 941-812-7113

BRADENTON, FL 34209
City State Zip

Email joann24@aol.com

Speaking: For Against Information

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

Representing National Assoc of Letter Carriers

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)

3/17/15

Meeting Date

778

Bill Number (if applicable)

Topic Local Gov't Construction Preferences

Amendment Barcode (if applicable)

Name Warren Husband

Job Title

Address PO Box 10909

Phone 850 205 9000

Street

Tallahassee FL

32302

Email

City

State

Zip

Speaking: [X] For [] Against [] Information

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

Representing Fla. Associated General Contractors Council

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

CS SB 778
Bill Number (if applicable)

Meeting Date _____

Topic CS SB 778

Amendment Barcode (if applicable) _____

Name THOM BARWAGROVE LOCAL PREF

Job Title Vice Mayor City Seminole

Address 11084 Duncan St

Phone 727-492-2786

Seminole FL 33772
City State Zip

Email TBARWAGROVE@myseminole.com

Speaking: For Against Information

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

Representing Seminole

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)

3/17/15

Meeting Date

SB 778

Bill Number (if applicable)

Topic Local Govt Construction Preferences

Amendment Barcode (if applicable)

Name Bruce Kershner

Job Title

Address 231 West Bay Ave.

Phone 407 830 1882

Street

Longwood

FL

State

32750

Zip

Email BKershner@att.net

Speaking: [X] For [] Against [] Information

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

Representing National Utility Contractors Assn. of Florida

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [X] Yes [] No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15
Meeting Date

778
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Sue Carson

Job Title SEA President

Address 2538 S Magnolia Dr

Phone 321 262 3908

Sanford FL 32771

City State Zip

Email lvsateacher@Yahoo

Speaking: For Against Information

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

Representing AFLCIO WFLC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

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

From: Senator D. Alan Hays

Subject: Request to agenda SB 778 – Local Government Construction Preferences

Date: March 4, 2015

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 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1284

INTRODUCER: The Governmental Oversight and Accountability Committee and Senator Soto

SUBJECT: Administrative Procedures

DATE: March 18, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1284 revises the requirements governing the maintenance of all agency final orders and requires each state agency to electronically transmit specified final orders rendered on or after July 1, 2015, to the electronic database of the Division of Administrative Hearings (DOAH) within 90 days of rendering such order. Before electronically transmitting agency final orders to DOAH's database, each agency must redact all information in such document which is exempt or confidential and exempt from public records requirements. The bill provides database requirements for DOAH.

The bill also requires that each state agency maintain a list of all final orders that are not required to be electronically transmitted to DOAH's database. A state agency must maintain a subject-matter index for final orders rendered before July 1, 2015, and identify the location of this index on the agency's website. DOAH'S database will constitute the official compilation of administrative final orders rendered after July 1, 2015, for each agency.

The bill revises the duties of the Department of State (DOS) to coordinate the transmittal and listing of agency final orders. DOS is required to provide standards and guidelines for the certification, electronic transmittal, and maintenance of agency final orders in DOAH's database.

The bill authorizes DOS to adopt rules that are binding on state agencies and DOAH, which acts in the capacity of official compiler of final orders. DOS is also authorized to designate an alternative official compiler under certain circumstances.

Further, the technical assistance advisements issued by the Department of Revenue continue to be exempt from the final order maintenance requirements specified in s. 120.53, F.S.

II. Present Situation:

Administrative Procedure Act

Chapter 120, F.S., known as the Administrative Procedure Act (APA),¹ regulates administrative rulemaking, administrative enforcement and administrative resolution of disputes arising out of administrative actions of most state agencies and some subdivisions of state government. The term “agency” is defined in s. 120.52(1), F.S., as:

- Each state officer and state department, and departmental unit described in s. 20.04, F.S.²
- The Board of Governors of the State University System, the Commission on Ethics and the Fish and Wildlife Conservation Commission when acting pursuant to statutory authority derived from the Legislature.
- A regional water supply authority.
- A regional planning agency.
- A multicounty special district with a majority of its governing board comprised of non-elected persons.
- Educational units.
- Each entity described in chs. 163 (Intergovernmental Programs), 373 (Water Resources), 380 (Land and Water Management), and 582 (Soil and Water Conservation), F.S., and s. 186.504 (regional planning councils), F.S.
- Other units of government in the state, including counties and municipalities, to the extent they are expressly made subject to the act by general or special law or existing judicial decisions.³

The definition of “agency” also includes the Governor⁴ in the exercise of all executive powers other than those derived from the State Constitution.

Administrative actions authorized by law and regulated by the APA include adoption of a rule,⁵ granting or denying a permit or license, an order enforcing a law or rule that assesses a fine or other discipline and final decisions in administrative disputes or other matters resulting in an agency decision. Such disputes include challenges to the validity of a rule or proposed rule or challenges to agency reliance on unadopted rules,⁶ as well as challenges to other proposed agency actions which affect substantial interests of any party.⁷ In addition to disputes, agency

¹ Section 120.51, F.S.

² Section 20.04, F.S., sets the structure of the executive branch of state government.

³ The definition of agency expressly excludes certain legal entities or organizations found in chs. 343, 348, 349 and 361, F.S., and ss. 339.175 and 163.01(7), F.S.

⁴ Section 120.52(1)(a), F.S.

⁵ Section 120.54, F.S.

⁶ Section 120.56, F.S.

⁷ Section 120.569, F.S.

action occurs when the agency acts on a petition for a declaratory statement⁸ or settles a dispute through mediation.⁹

Agency Final Orders

Section 120.52(7), F.S., defines the term “final order,” in pertinent part, as “a written final decision which results from a proceeding under s. 120.56,¹⁰ s. 120.565,¹¹ s. 120.569,¹² s. 120.57,¹³ s. 120.573,¹⁴ or s. 120.574¹⁵ which is not a rule, and which is not excepted from the definition of a rule, and which has been filed with the agency clerk, and includes final agency actions which are affirmative, negative, injunctive, or declaratory in form. A final order includes all materials explicitly adopted in it.”

The APA requires agencies to “maintain” all final orders (with certain exceptions) and a hierarchical subject-matter index thereof, allowing orders to be located and publicly accessed for research or copying.¹⁶ One purpose of the requirement was to enhance public notice of agency policy expressed in precedents.¹⁷ In lieu of the requirement for making available for public inspection and copying a hierarchical subject-matter index of agency orders, the APA authorizes agencies to maintain an electronic database of final orders that allow public users to research and retrieve the full text of final orders using common logical search terms.¹⁸

Currently state agencies must index the following, within 120 days of rendering:¹⁹

- Each final order resulting from a proceeding under s. 120.57 or s. 120.573.
- Each final agency order rendered pursuant to s. 120.57(4)²⁰ which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.
- Each declaratory statement issued by an agency.
- Each final order resulting from a proceeding under s. 120.56 or s. 120.574.

⁸ Section 120.565, F.S.

⁹ Section 120.573, F.S.

¹⁰ Section 120.56, F.S., provides procedures for challenging the validity of an agency’s existing rule, proposed rule, agency statements defined as rules, and emergency rules.

¹¹ Section 120.565, F.S., governs procedures for requesting a declaratory statement from an agency by a substantially affected person regarding the applicability of a statutory provision, or of any rule or order of the agency, as it applies to the person’s particular set of circumstances.

¹² Section 120.569, F.S., governs procedures which affect substantial interests.

¹³ Section 120.57, F.S., provides additional procedures for particular cases regarding hearings involving disputed issues of material fact and hearings not involving disputed issues of material fact.

¹⁴ Section 120.573, F.S., governs procedures for the mediation of disputes of agency action that affects substantial interests.

¹⁵ Section 120.574, F.S., governs summary hearing procedures.

¹⁶ Section 120.53(1)(a)2.a., F.S.

¹⁷ *McDonald v. Department of Banking and Finance*, 346 So.2d 569, 582 (1st DCA 1977). Also, see *Gessler v. Dep’t of Bus. & Prof. Reg.*, 627 So.2d 501, 503 (Fla. 4th DCA 1993) (“Persons have the right to examine agency precedent and the right to know the factual basis and policy reasons for agency action.”).

¹⁸ Section 120.53(1)(a)2.b., F.S.

¹⁹ Section 120.53(1)(b), F.S.

²⁰ Section 120.57(4), F.S., provides that “[u]nless precluded by law, informal disposition may be made of any proceeding by stipulation, agreed settlement, or consent order.”

Agency final orders may be maintained in hard copy in agency files, published by a reporter²¹ or made available online in an electronic database. These various methods can make finding agency final orders difficult at time. The Ad Hoc Orders Access Committee of the Florida Bar's Administrative Law Section surveyed state agencies to gather information on how agencies index final orders and where final orders may be accessed.²² The survey revealed that some agencies still require a public records request to access their index and copies of final orders, or they simply identify a particular agency employee to contact for access. Such methods are not always in keeping with the information age. Florida's public records law require agencies to permanently maintain records of agency final orders.²³

Coordination of Indexing of Final Orders by Department of State

In addition to its supervisory role in the archiving of state records,²⁴ the Department of State (DOS) is required to administer the coordination of the indexing, management, preservation, and availability of agency final orders that must be indexed or listed in accordance with s. 120.53(1), F.S.²⁵ DOS has rulemaking authority over the system of indexing that agencies may use²⁶ and the storage and retrieval systems used to provide access.²⁷ DOS may approve more than one system.²⁸ Authorized storage and retrieval systems for agencies include reporters, microfilm, automated systems or any other system considered appropriate by DOS.²⁹ Also, DOS is required to determine which final orders agencies must index.³⁰ Agencies must receive approval in writing from DOS regarding various provisions for indexing final orders.³¹

Division of Administrative Hearings

The Division of Administrative Hearings (DOAH) is a state agency consisting of an independent group of administrative law judges (ALJs) that presides over disputes under the APA and other state laws.³² DOAH is placed administratively under the Department of Management Services (DMS);³³ however, DOAH is not subject to any control, supervision, or direction by DMS. The director of DOAH, who also serves as chief administrative law judge, has effective administrative control over DOAH, its resources and operations.³⁴

²¹ Section 120.53(2)(a), F.S., provides, in part, that “[a]n agency may comply with subparagraphs (1)(a)1. and 2. by designating an official reporter to publish and index by subject matter each agency order that must be indexed and made available to the public . . .”

²² Jowanna N. Oates, *Access to Agency Final Orders*, The Florida Bar, Administrative Law Section Newsletter, Vol. XXXIV, No. 4 (June 2013). For an updated list on accessing agency final orders, see <http://www.fladminlaw.org/pdf/information-about-accessing-agency-final-orders.pdf>.

²³ Section 119.021(3), F.S.

²⁴ Section 257.35, F.S., Also, see s. 15.02, F.S.

²⁵ Section 120.533(1), F.S.

²⁶ Section 120.533(2), F.S.

²⁷ Section 120.533(3), F.S.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 120.533(4), F.S. The rules adopted under this section are found in ch. 1B-32, F.A.C.

³¹ Section 120.53(1)(c), F.S.

³² Section 120.65, F.S.

³³ Section 120.65(1), F.S.

³⁴ *Id.*

Since the 2008 amendments to the APA,³⁵ agencies have been permitted to satisfy the final order index requirement by electronically transmitting a copy of its final orders to DOAH for posting on DOAH's website.³⁶ Many agencies use the DOAH alternative.³⁷ There does not appear to be any law requiring DOAH to maintain its electronic database that is accessible for searching orders.

Department of Revenue Technical Assistance Advisements

Upon request the Department of Revenue (DOR) issues informal technical assistance regarding certain tax consequences.³⁸ Currently, these technical assistance advisements are exempted from the requirements of s. 120.53(1), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 119.021(3), F.S., to make conforming changes regarding the requirement of each state agency to permanently maintain all final orders rendered before July 1, 2015, which were indexed or listed pursuant to s. 120.53, F.S., and agency final orders rendered on or after July 1, 2015, which must be listed or copies of which must be electronically transmitted to DOAH pursuant to s. 120.53, F.S.

Section 2 amends s. 120.53, F.S., to require each state agency, in addition to the agency requirement of maintaining records in accordance with s. 119.021(3), F.S., to electronically transmit a certified text-searchable copy of each agency final orders rendered on or after July 1, 2015, to a centralized electronic database maintained by the Division of Administrative Hearings (DOAH).

The DOAH database must allow users to search and retrieve the full texts of agency final orders by:

- The name of the agency that issued the final order.
- The date the final agency order was issued.
- The type of final order.
- The subject of the final order.
- Terms contained in the text of the final order.

The types of agency final orders that must be electronically transmitted to DOAH's database include the following:

- Each final order resulting from a proceeding under s. 120.57 or s. 120.573.

³⁵ Ch. 2008-104, L.O.F.

³⁶ Section 120.53(2)(a), F.S., provides, in part that that “[a]n agency may comply with subparagraphs (1)(a)1. and 2. by . . . electronically transmitting to the division a copy of such orders for posting on the division’s website.” Also, see DOAH’s website at <https://www.doah.state.fl.us/FLAIO/>.

³⁷ The DOAH website lists the following agencies having final orders accessible: Department of Agriculture and Consumer Services, Agency for Persons with Disabilities, Department of Children and Family Services, Department of Corrections, Department of Community Affairs, Department of Economic Opportunity, Department of Environmental Protection, Department of Health, Department of Education, Department of State, Department of Business and Professional Regulation, Florida Housing Finance Corporation, Office of the Governor, Agency for Health Care Administration, and Department of Highway Safety and Motor Vehicles.

³⁸ Section 213.22(1), F.S.

- Each final order rendered pursuant to s. 120.57(4) which contains a statement of agency policy that may be the basis of future agency decisions or that may otherwise contain a statement of precedential value.
- Each declaratory statement issued by an agency.
- Each final order resulting from a proceeding under s. 120.56 or s. 120.574.

Also, the bill requires each agency to maintain a list of all agency final orders rendered pursuant to s. 120.57(4), F.S., which are not required to be electronically transmitted to DOAH's database.

The bill requires each agency to maintain a subject matter index for final orders rendered before July 1, 2015, and the agency must identify where this index is located on its website.

Within 90 days after the final order is rendered, each agency must electronically transmit the order to DOAH's database. If the final order is rendered pursuant to s. 120.57(4), F.S., the agency must maintain such order on its list as required by this bill.

Additionally, for cases where DOAH has final order authority, DOAH must transmit the final order to its database within 90 days of issuance of such order.

The bill authorizes an agency to electronically transmit to DOAH's database certified copies of all final orders rendered before July 1, 2015, that are required to be placed in a subject-matter index. DOAH's centralized electronic database constitutes the official compilation of administrative final orders rendered on or after July 1, 2015.

The bill requires each agency to redact all information in a final order that is exempt or confidential and exempt from public records requirements before electronically transmitting the agency final order to DOAH.

Section 3 amends s. 120.533, F.S., to require the Department of State (DOS) to coordinate the transmittal of agency final orders pursuant to s. 120.53, F.S. . DOS is required to provide for storage and retrieval systems to be maintained by agencies pursuant to s. 120.53(5), F.S., for indexing and making available agency final orders by subject matter. DOS is authorized to approve more than one of these systems.

DOS is required to provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to DOAH in accordance with s. 120.53, F.S., and for protection of integrity and authenticity of information publicly accessible through the electronic database.

DOS is also required to provide standards and guidelines to ensure security of copies of agency final orders transmitted and maintained in DOAH's electronic database.

The bill authorizes DOS to adopt rules to administer its responsibilities that are binding on state agencies and DOAH, which acts in capacity of official compiler of administrative final orders

under s. 120.53, F.S. DOS is also authorized to designate an alternative official compiler if the Administration Commission³⁹ determines that DOAH's performance is unsatisfactory.

Section 4 amends s. 213.22, F.S., to make conforming changes regarding the non-applicability of s. 120.53, F.S., requirements to technical assistance advisements issued by the Department of Revenue.

Section 5 provides an effective date of July 1, 2015.

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:

The bill may have a slight positive economic impact on the private sector by offering easy internet access to agency orders that may only be accessible in person under current law.

C. Government Sector Impact:

Minimal. The bill analysis submitted by DOAH notes that this agency can maintain all final orders on its website and host full public access with current resources, personnel and equipment.⁴⁰ The requirement for state agencies to electronically submit copies of their final orders to DOAH for inclusion in the electronic database would cause minimal fiscal impact to agencies.

³⁹ Section 14.202, F.S. Also, see s. 120.65, F.S.

⁴⁰ See DOAH legislative bill analysis dated February 12, 2015. A copy of this analysis is on file with the Governmental Oversight and Accountability Committee.

VI. Technical Deficiencies:

Amendments to s. 120.533(7), F.S. contained in Section 3 of the bill requires DOAH to act as the official compiler of “administrative final orders” under s. 120.53, F.S. The bill consistently refers to “agency final orders”. The use of the word “administrative” may create ambiguity in regards to DOAH’s responsibilities under this legislation. It is recommended that the word “administrative” be deleted and replaced with the word “agency.”

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 120.53, 119.021(3), 120.533, and 213.22(1).

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

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

CS by Governmental Oversight and Accountability on March 17, 2015:

Each agency is required to redact all information in a final order that is exempt or confidential and exempt from public records requirements before electronically transmitting such order to DOAH.

DOAH’s electronic database will constitute the official compilation of administrative final orders rendered after July 1, 2015, for each agency.

The bill amends s. 120.533, F.S., regarding DOS’s duty to coordinate the transmittal and listing of agency final orders.

DOS is required to provide standards and guidelines for the certification and electronic transmittal of copies of agency final orders to DOAH in accordance with s. 120.53, F.S., and for protection of integrity and authenticity of information publicly accessible through the electronic database.

DOS is also required to provide standards and guidelines to ensure security of copies of agency final orders transmitted and maintained in DOAH’s electronic database.

DOS is authorized to adopt rules to administer its responsibilities that are binding on state agencies and DOAH, which acts in capacity of official compiler of administrative final orders under s. 120.53, F.S. DOS is also authorized to designate an alternative official compiler if the Administration Commission determines that DOAH’s performance is unsatisfactory.

B. Amendments:

None.

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



797194

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (3) of section 119.021, Florida
Statutes, is amended to read:

119.021 Custodial requirements; maintenance, preservation,
and retention of public records.—

(3) Agency final orders rendered before July 1, 2015, which
were indexed or listed pursuant to s. 120.53, and agency final



797194

11 orders rendered on or after July 1, 2015, which must be listed
12 or copies of which must be transmitted to the Division of
13 Administrative Hearings orders that comprise final agency action
14 ~~and that must be indexed or listed pursuant to s. 120.53,~~ have
15 continuing legal significance; therefore, notwithstanding any
16 other provision of this chapter or any provision of chapter 257,
17 each agency shall permanently maintain records of such orders
18 pursuant to the applicable rules of the Department of State.

19 Section 2. Section 120.53, Florida Statutes, is amended to
20 read:

21 120.53 Maintenance of agency final orders; ~~indexing;~~
22 ~~listing; organizational information.~~-

23 (1) In addition to maintaining records contained in s.
24 119.021(3), each agency shall also electronically transmit a
25 certified text-searchable copy of each agency final order listed
26 in subsection (2) rendered on or after July 1, 2015, to a
27 centralized electronic database of agency final orders
28 maintained by the division. The database must allow users to
29 research and retrieve the full texts of agency final orders by:

30 (a) The name of the agency that issued the final order.

31 (b) The date the final order was issued.

32 (c) The type of final order.

33 (d) The subject of the final order.

34 (e) Terms contained in the text of the final order.

35 ~~(a) Each agency shall maintain:~~

36 ~~1. All agency final orders.~~

37 ~~2.a. A current hierarchical subject-matter index,~~
38 ~~identifying for the public any rule or order as specified in~~
39 ~~this subparagraph.~~



797194

40 ~~b. In lieu of the requirement for making available for~~
41 ~~public inspection and copying a hierarchical subject-matter~~
42 ~~index of its orders, an agency may maintain and make available~~
43 ~~for public use an electronic database of its orders that allows~~
44 ~~users to research and retrieve the full texts of agency orders~~
45 ~~by devising an ad hoc indexing system employing any logical~~
46 ~~search terms in common usage which are composed by the user and~~
47 ~~which are contained in the orders of the agency or by~~
48 ~~descriptive information about the order which may not be~~
49 ~~specifically contained in the order.~~

50 ~~(2)e.~~ The agency final orders that must be electronically
51 transmitted to the centralized electronic database indexed,
52 ~~unless excluded under paragraph (c) or paragraph (d),~~ include:

53 ~~(a)(I)~~ Each final agency order resulting from a proceeding
54 under s. 120.57 or s. 120.573.

55 ~~(b)(II)~~ Each final agency order rendered pursuant to s.
56 120.57(4) which contains a statement of agency policy that may
57 be the basis of future agency decisions or that may otherwise
58 contain a statement of precedential value.

59 ~~(c)(III)~~ Each declaratory statement issued by an agency.

60 ~~(d)(IV)~~ Each final order resulting from a proceeding under
61 s. 120.56 or s. 120.574.

62 ~~(3)3.~~ Each agency shall maintain a list of all final orders
63 rendered pursuant to s. 120.57(4) that are not required to be
64 electronically transmitted to the centralized electronic
65 database which have been excluded from the indexing requirement
66 of this section, with the approval of the Department of State,
67 because they do not contain statements of agency policy or
68 statements of precedential value. The list must include the name



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69 of the parties to the proceeding and the number assigned to the
70 final order.

71 ~~4. All final orders listed pursuant to subparagraph 3.~~

72 (4)(b) Each An agency final order, whether rendered by the
73 agency or the division, that must be electronically transmitted
74 to the centralized electronic database or maintained on a list
75 pursuant to subsection (3) must be electronically transmitted to
76 the database or added to the list within 90 days after the final
77 ~~indexed or listed pursuant to paragraph (a) must be indexed or~~
78 ~~listed within 120 days after the order is rendered. Each final~~
79 ~~order that must be electronically transmitted to the database or~~
80 ~~added to the list indexed or listed pursuant to paragraph (a)~~
81 ~~must have attached a copy of the complete text of any materials~~
82 ~~incorporated by reference; however, if the quantity of the~~
83 ~~materials incorporated makes attachment of the complete text of~~
84 ~~the materials impractical, the final order may contain a~~
85 ~~statement of the location of such materials and the manner in~~
86 ~~which the public may inspect or obtain copies of the materials~~
87 ~~incorporated by reference. The Department of State shall~~
88 ~~establish by rule procedures for indexing final orders, and~~
89 ~~procedures of agencies for indexing orders must be approved by~~
90 ~~the department.~~

91 (5) Nothing in this section relieves an agency from its
92 responsibility for maintaining a subject matter index of final
93 orders rendered before July 1, 2015, and identifying the
94 location of the subject matter index on the agency's website. In
95 addition, an agency may electronically transmit to the
96 centralized electronic database certified copies of all of the
97 final orders that were rendered before July 1, 2015, which were



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98 required to be in the subject matter index. The centralized
99 electronic database constitutes the official compilation of
100 administrative final orders rendered on or after July 1, 2015,
101 for each agency.

102 ~~(c) Each agency must receive approval in writing from the~~
103 ~~Department of State for:~~

104 ~~1. The specific types and categories of agency final orders~~
105 ~~that may be excluded from the indexing and public inspection~~
106 ~~requirements, as determined by the department pursuant to~~
107 ~~paragraph (d).~~

108 ~~2. The method for maintaining indexes, lists, and final~~
109 ~~orders that must be indexed or listed and made available to the~~
110 ~~public.~~

111 ~~3. The method by which the public may inspect or obtain~~
112 ~~copies of indexes, lists, and final orders.~~

113 ~~4. A sequential numbering system which numbers all final~~
114 ~~orders required to be indexed or listed pursuant to paragraph~~
115 ~~(a), in the order rendered.~~

116 ~~5. Proposed rules for implementing the requirements of this~~
117 ~~section for indexing and making final orders available for~~
118 ~~public inspection.~~

119 ~~(d) In determining which final orders may be excluded from~~
120 ~~the indexing and public inspection requirements, the Department~~
121 ~~of State may consider all factors specified by an agency,~~
122 ~~including precedential value, legal significance, and purpose.~~
123 ~~Only agency final orders that are of limited or no precedential~~
124 ~~value, that are of limited or no legal significance, or that are~~
125 ~~ministerial in nature may be excluded.~~

126 ~~(e) Each agency shall specify the specific types or~~



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127 ~~categories of agency final orders that are excluded from the~~
128 ~~indexing and public inspection requirements.~~

129 ~~(f) Each agency shall specify the location or locations~~
130 ~~where agency indexes, lists, and final orders that are required~~
131 ~~to be indexed or listed are maintained and shall specify the~~
132 ~~method or procedure by which the public may inspect or obtain~~
133 ~~copies of indexes, lists, and final orders.~~

134 ~~(g) Each agency shall specify all systems in use by the~~
135 ~~agency to search and locate agency final orders that are~~
136 ~~required to be indexed or listed, including, but not limited to,~~
137 ~~any automated system. An agency shall make the search~~
138 ~~capabilities employed by the agency available to the public~~
139 ~~subject to reasonable terms and conditions, including a~~
140 ~~reasonable charge, as provided by s. 119.07. The agency shall~~
141 ~~specify how assistance and information pertaining to final~~
142 ~~orders may be obtained.~~

143 ~~(h) Each agency shall specify the numbering system used to~~
144 ~~identify agency final orders.~~

145 ~~(2)(a) An agency may comply with subparagraphs (1)(a)1. and~~
146 ~~2. by designating an official reporter to publish and index by~~
147 ~~subject matter each agency order that must be indexed and made~~
148 ~~available to the public, or by electronically transmitting to~~
149 ~~the division a copy of such orders for posting on the division's~~
150 ~~website. An agency is in compliance with subparagraph (1)(a)3.~~
151 ~~if it publishes in its designated reporter a list of each agency~~
152 ~~final order that must be listed and preserves each listed order~~
153 ~~and makes it available for public inspection and copying.~~

154 ~~(b) An agency may publish its official reporter or may~~
155 ~~contract with a publishing firm to publish its official~~



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156 ~~reporter; however, if an agency contracts with a publishing firm~~
157 ~~to publish its reporter, the agency is responsible for the~~
158 ~~quality, timeliness, and usefulness of the reporter. The~~
159 ~~Department of State may publish an official reporter for an~~
160 ~~agency or may contract with a publishing firm to publish the~~
161 ~~reporter for the agency; however, if the department contracts~~
162 ~~for publication of the reporter, the department is responsible~~
163 ~~for the quality, timeliness, and usefulness of the reporter. A~~
164 ~~reporter that is designated by an agency as its official~~
165 ~~reporter and approved by the Department of State constitutes the~~
166 ~~official compilation of the administrative final orders for that~~
167 ~~agency.~~

168 ~~(c) A reporter that is published by the Department of State~~
169 ~~may be made available by annual subscription, and each agency~~
170 ~~that designates an official reporter published by the department~~
171 ~~may be charged a space rate payable to the department. The~~
172 ~~subscription rate and the space rate must be equitably~~
173 ~~apportioned to cover the costs of publishing the reporter.~~

174 ~~(d) An agency that designates an official reporter need not~~
175 ~~publish the full text of an agency final order that is rendered~~
176 ~~pursuant to s. 120.57(4) and that must be indexed pursuant to~~
177 ~~paragraph (1)(a), if the final order is preserved by the agency~~
178 ~~and made available for public inspection and copying and the~~
179 ~~official reporter indexes the final order and includes a~~
180 ~~synopsis of the order. A synopsis must include the names of the~~
181 ~~parties to the order; any rule, statute, or constitutional~~
182 ~~provision pertinent to the order; a summary of the facts, if~~
183 ~~included in the order, which are pertinent to the final~~
184 ~~disposition; and a summary of the final disposition.~~



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185 ~~(3) Agency orders that must be indexed or listed are~~
186 ~~documents of continuing legal value and must be permanently~~
187 ~~preserved and made available to the public. Each agency to which~~
188 ~~this chapter applies shall provide, under the direction of the~~
189 ~~Department of State, for the preservation of orders as required~~
190 ~~by this chapter and for maintaining an index to those orders.~~

191 ~~(4) Each agency must provide any person who makes a request~~
192 ~~with a written description of its organization and the general~~
193 ~~course of its operations.~~

194 Section 3. Section 120.533, Florida Statutes, is amended to
195 read:

196 120.533 Coordination of the transmittal, indexing, and
197 listing of agency final orders by Department of State.—The
198 Department of State shall:

199 (1) Coordinate ~~Administer the coordination of the~~
200 transmittal, indexing, management, preservation, and
201 availability of agency final orders that must be transmitted,
202 indexed, or listed pursuant to s. 120.53 ~~s. 120.53(1)~~.

203 (2) ~~Provide, by rule,~~ guidelines for ~~the~~ indexing ~~of~~ agency
204 final orders. More than one system for indexing may be approved
205 by the Department of State, including systems or methods in use,
206 or proposed for use, by an agency. More than one system may be
207 approved for use by a single agency as best serves the needs of
208 that agency and the public.

209 (3) ~~Provide, by rule,~~ for storage and retrieval systems to
210 be maintained by agencies pursuant to s. 120.53(5) for indexing,
211 and making available, ~~agency final~~ orders by subject matter. The
212 Department of State may authorize ~~approve~~ more than one system,
213 including systems in use, ~~or proposed for use,~~ by an agency.



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214 Storage and retrieval systems that may be used by an agency
215 include, without limitation, a designated reporter or reporters,
216 a microfilming system, an automated system, or any other system
217 considered appropriate by the Department of State.

218 (4) Provide standards and guidelines for the certification
219 and electronic transmittal of copies of agency final orders to
220 the division as required under s. 120.53, and, to protect the
221 integrity and authenticity of information publicly accessible
222 through the electronic database, coordinate and provide
223 standards and guidelines to ensure the security of copies of
224 agency final orders transmitted and maintained in the electronic
225 database by the division under s. 120.53(1).

226 (5)~~(4)~~ For each agency, determine which final orders must
227 be indexed or transmitted ~~for each agency.~~

228 (6)~~(5)~~ Require each agency to report to the department
229 concerning which types or categories of agency orders establish
230 precedent for each agency.

231 (7) Adopt rules as necessary to administer its
232 responsibilities under this section, which shall be binding on
233 all agencies, including the division acting in the capacity of
234 official compiler of administrative final orders under s.
235 120.53, notwithstanding s. 120.65. The Department of State may
236 provide for an alternative official compiler to manage and
237 operate the division's database and related services if the
238 Administration Commission determines that the performance of the
239 division as official compiler is unsatisfactory.

240 Section 4. Subsection (1) of section 213.22, Florida
241 Statutes, is amended to read:

242 213.22 Technical assistance advisements.—



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243 (1) The department may issue informal technical assistance
244 advisements to persons, upon written request, as to the position
245 of the department on the tax consequences of a stated
246 transaction or event, under existing statutes, rules, or
247 policies. After the issuance of an assessment, a technical
248 assistance advisement may not be issued to a taxpayer who
249 requests an advisement relating to the tax or liability for tax
250 in respect to which the assessment has been made, except that a
251 technical assistance advisement may be issued to a taxpayer who
252 requests an advisement relating to the exemptions in s.
253 212.08(1) or (2) at any time. Technical assistance advisements
254 shall have no precedential value except to the taxpayer who
255 requests the advisement and then only for the specific
256 transaction addressed in the technical assistance advisement,
257 unless specifically stated otherwise in the advisement. Any
258 modification of an advisement shall be prospective only. A
259 technical assistance advisement is not an order issued pursuant
260 to s. 120.565 or s. 120.569 or a rule or policy of general
261 applicability under s. 120.54. The provisions of s. 120.53 ~~s.~~
262 ~~120.53(1)~~ are not applicable to technical assistance
263 advisements.

264 Section 5. This act shall take effect July 1, 2015.

265
266 ===== T I T L E A M E N D M E N T =====

267 And the title is amended as follows:

268 Delete everything before the enacting clause
269 and insert:

270 A bill to be entitled

271 An act relating to the maintenance of agency final



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272 orders; amending s. 119.021, F.S.; conforming a
273 provision to changes made by the act; amending s.
274 120.53, F.S.; requiring agencies to electronically
275 transmit certain agency final orders to a centralized
276 electronic database maintained by the Division of
277 Administrative Hearings; providing the methods by
278 which such final orders can be searched; requiring
279 each agency to maintain a list of final orders that
280 are not required to be electronically transmitted to
281 the database; providing a timeframe for electronically
282 transmitting or listing the final orders; authorizing
283 agencies to maintain subject matter indexes of final
284 orders issued before a specified date or to
285 electronically transmit such orders to the database;
286 providing that the centralized electronic database is
287 the official compilation of administrative final
288 orders issued on or after a specified date for each
289 agency; deleting obsolete provisions regarding filing,
290 indexing, and publishing final orders; amending s.
291 120.533, F.S.; requiring the Department of State to
292 provide standards and guidelines for the certification
293 and electronic transmittal and the secure transmittal
294 and maintenance of agency final orders; authorizing
295 the department to adopt rules; authorizing the
296 department to provide for an alternative official
297 compiler of agency final orders under certain
298 circumstances; conforming provisions to changes made
299 by the act; amending s. 213.22, F.S.; conforming a
300 cross-reference; providing an effective date.



763754

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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

1 **Senate Amendment to Amendment (797194) (with title**
2 **amendment)**

3
4 Between lines 101 and 102
5 insert:

6 (6) Before electronically transmitting agency final orders
7 to the centralized electronic database, each agency shall redact
8 all information in a final order which is exempt or confidential
9 and exempt from public records requirements.

10



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

12 And the title is amended as follows:

13 Delete line 289

14 and insert:

15 agency; requiring an agency to redact information
16 exempt from public records requirements before
17 electronically transmitting final orders to the
18 database; deleting obsolete provisions regarding
19 filing,

By Senator Soto

14-00231-15

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A bill to be entitled

An act relating to administrative procedures; amending s. 120.53, F.S.; revising requirements governing the maintenance, indexing, and listing of agency final orders; requiring an agency to upload specified agency final orders to the electronic database of the Division of Administrative Hearings; prescribing database requirements; specifying types of agency final orders that must be uploaded to the database; requiring an agency to maintain a list of agency final orders not required to be uploaded; reducing the length of time within which an agency or the division must upload or list an agency final order; providing that the agency must maintain a subject-matter index for final orders rendered before a certain date and identify the location of the index on its website; removing the requirement that the Department of State adopt certain rules governing indexing; deleting requirements governing an agency's indexing and listing of final orders; amending ss. 119.021, 120.533, and 213.22, F.S.; conforming provisions and cross-references to changes made by the act; providing an effective date.

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

Section 1. Section 120.53, Florida Statutes, is amended to read:
120.53 Maintenance of agency final orders; ~~indexing;~~

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~~listing; organizational information.-~~

(1) Notwithstanding s. 119.021(3), each agency shall upload copies of agency final orders rendered on or after July 1, 2015, which meet the criteria specified in subsection (2) to a centralized

~~(a) Each agency shall maintain:~~

~~1. All agency final orders.~~

~~2.a. A current hierarchical subject-matter index, identifying for the public any rule or order as specified in this subparagraph.~~

b. In lieu of the requirement for making available for public inspection and copying a hierarchical subject matter index of its orders, an agency may maintain and make available for public use an electronic database of agency final ~~its~~ orders maintained by the division. The database must allow ~~that allows~~ users to research and retrieve the full texts of agency final orders by:

(a) The name of the agency that issued the final order;

(b) The date the final order was issued;

(c) The type of final order;

(d) The subject of the final order; and

(e) Terms present in the text of the final order ~~devising an ad hoc indexing system employing any logical search terms in common usage which are composed by the user and which are contained in the orders of the agency or by descriptive information about the order which may not be specifically contained in the order.~~

(2)e. The Agency final orders that must be uploaded to the division's electronic database indexed, unless excluded under

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59 ~~paragraph (e) or paragraph (d)~~, include:

60 (a)(I) Each final agency final order resulting from a
 61 proceeding under s. 120.57 or s. 120.573.

62 (b)(II) Each final agency final order rendered pursuant to
 63 s. 120.57(4) which contains a statement of agency policy that
 64 may be the basis of future agency decisions or that may
 65 otherwise contain a statement of precedential value.

66 ~~(c)(III) Each declaratory statement issued by an agency.~~

67 ~~(d)(IV) Each final order resulting from a proceeding under~~
 68 ~~s. 120.56 or s. 120.574.~~

69 ~~(3)3- Each agency shall maintain a list of all agency final~~
 70 ~~orders rendered pursuant to s. 120.57(4) which are not required~~
 71 ~~to be uploaded to the division's electronic database which have~~
 72 ~~been excluded from the indexing requirement of this section,~~
 73 ~~with the approval of the Department of State, because they do~~
 74 ~~not contain statements of agency policy or statements of~~
 75 ~~precedential value. The list must include the name of the~~
 76 ~~parties to the proceeding and the number assigned to the final~~
 77 ~~order.~~

78 ~~4. All final orders listed pursuant to subparagraph 3-~~

79 (4)(b) An agency final order that must be uploaded to the
 80 division's electronic database or maintained on an agency's list
 81 pursuant to subsection (3) must be uploaded to the database or
 82 included on the agency's list, respectively, indexed or listed
 83 pursuant to paragraph (a) must be indexed or listed within 90
 84 120 days after the final order is rendered. In proceedings in
 85 which the division has final order authority, the division shall
 86 upload all final orders that meet the criteria specified in
 87 subsection (2) to the electronic database within 90 days of

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88 rendering the final order. Each final order that must be
 89 uploaded to the electronic database or maintained on an agency's
 90 list indexed or listed pursuant to paragraph (a) must have
 91 attached a copy of the complete text of any materials
 92 incorporated by reference; however, if the quantity of the
 93 materials incorporated makes attachment of the complete text of
 94 the materials impractical, the final order may contain a
 95 statement of the location of such materials and the manner in
 96 which the public may inspect or obtain copies of the materials
 97 incorporated by reference.

98 (5) This section does not waive an agency's responsibility
 99 for maintaining a subject matter index for final orders rendered
 100 before July 1, 2015, and identifying where such subject matter
 101 index is kept on the agency's website. An agency may upload to
 102 the division's electronic database all final orders rendered
 103 before July 1, 2015, which were required to be placed in a
 104 subject-matter index The Department of State shall establish by
 105 ~~rule procedures for indexing final orders, and procedures of~~
 106 ~~agencies for indexing orders must be approved by the department.~~

107 ~~(c) Each agency must receive approval in writing from the~~
 108 ~~Department of State for-~~

109 ~~1. The specific types and categories of agency final orders~~
 110 ~~that may be excluded from the indexing and public inspection~~
 111 ~~requirements, as determined by the department pursuant to~~
 112 ~~paragraph (d)-~~

113 ~~2. The method for maintaining indexes, lists, and final~~
 114 ~~orders that must be indexed or listed and made available to the~~
 115 ~~public.~~

116 ~~3. The method by which the public may inspect or obtain~~

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117 ~~copies of indexes, lists, and final orders.~~

118 ~~4. A sequential numbering system which numbers all final~~
 119 ~~orders required to be indexed or listed pursuant to paragraph~~
 120 ~~(a), in the order rendered.~~

121 ~~5. Proposed rules for implementing the requirements of this~~
 122 ~~section for indexing and making final orders available for~~
 123 ~~public inspection.~~

124 ~~(d) In determining which final orders may be excluded from~~
 125 ~~the indexing and public inspection requirements, the Department~~
 126 ~~of State may consider all factors specified by an agency,~~
 127 ~~including precedential value, legal significance, and purpose.~~
 128 ~~Only agency final orders that are of limited or no precedential~~
 129 ~~value, that are of limited or no legal significance, or that are~~
 130 ~~ministerial in nature may be excluded.~~

131 ~~(e) Each agency shall specify the specific types or~~
 132 ~~categories of agency final orders that are excluded from the~~
 133 ~~indexing and public inspection requirements.~~

134 ~~(f) Each agency shall specify the location or locations~~
 135 ~~where agency indexes, lists, and final orders that are required~~
 136 ~~to be indexed or listed are maintained and shall specify the~~
 137 ~~method or procedure by which the public may inspect or obtain~~
 138 ~~copies of indexes, lists, and final orders.~~

139 ~~(g) Each agency shall specify all systems in use by the~~
 140 ~~agency to search and locate agency final orders that are~~
 141 ~~required to be indexed or listed, including, but not limited to,~~
 142 ~~any automated system. An agency shall make the search~~
 143 ~~capabilities employed by the agency available to the public~~
 144 ~~subject to reasonable terms and conditions, including a~~
 145 ~~reasonable charge, as provided by s. 119.07. The agency shall~~

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146 ~~specify how assistance and information pertaining to final~~
 147 ~~orders may be obtained.~~

148 ~~(h) Each agency shall specify the numbering system used to~~
 149 ~~identify agency final orders.~~

150 ~~(2) (a) An agency may comply with subparagraphs (1) (a)1. and~~
 151 ~~2. by designating an official reporter to publish and index by~~
 152 ~~subject matter each agency order that must be indexed and made~~
 153 ~~available to the public, or by electronically transmitting to~~
 154 ~~the division a copy of such orders for posting on the division's~~
 155 ~~website. An agency is in compliance with subparagraph (1) (a)3.~~
 156 ~~if it publishes in its designated reporter a list of each agency~~
 157 ~~final order that must be listed and preserves each listed order~~
 158 ~~and makes it available for public inspection and copying.~~

159 ~~(b) An agency may publish its official reporter or may~~
 160 ~~contract with a publishing firm to publish its official~~
 161 ~~reporter; however, if an agency contracts with a publishing firm~~
 162 ~~to publish its reporter, the agency is responsible for the~~
 163 ~~quality, timeliness, and usefulness of the reporter. The~~
 164 ~~Department of State may publish an official reporter for an~~
 165 ~~agency or may contract with a publishing firm to publish the~~
 166 ~~reporter for the agency; however, if the department contracts~~
 167 ~~for publication of the reporter, the department is responsible~~
 168 ~~for the quality, timeliness, and usefulness of the reporter. A~~
 169 ~~reporter that is designated by an agency as its official~~
 170 ~~reporter and approved by the Department of State constitutes the~~
 171 ~~official compilation of the administrative final orders for that~~
 172 ~~agency.~~

173 ~~(c) A reporter that is published by the Department of State~~
 174 ~~may be made available by annual subscription, and each agency~~

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175 that designates an official reporter published by the department
176 may be charged a space rate payable to the department. The
177 subscription rate and the space rate must be equitably
178 apportioned to cover the costs of publishing the reporter.

179 ~~(d) An agency that designates an official reporter need not~~
180 ~~publish the full text of an agency final order that is rendered~~
181 ~~pursuant to s. 120.57(4) and that must be indexed pursuant to~~
182 ~~paragraph (1) (a), if the final order is preserved by the agency~~
183 ~~and made available for public inspection and copying and the~~
184 ~~official reporter indexes the final order and includes a~~
185 ~~synopsis of the order. A synopsis must include the names of the~~
186 ~~parties to the order; any rule, statute, or constitutional~~
187 ~~provision pertinent to the order; a summary of the facts, if~~
188 ~~included in the order, which are pertinent to the final~~
189 ~~disposition; and a summary of the final disposition.~~

190 ~~(3) Agency orders that must be indexed or listed are~~
191 ~~documents of continuing legal value and must be permanently~~
192 ~~preserved and made available to the public. Each agency to which~~
193 ~~this chapter applies shall provide, under the direction of the~~
194 ~~Department of State, for the preservation of orders as required~~
195 ~~by this chapter and for maintaining an index to those orders.~~

196 ~~(4) Each agency must provide any person who makes a request~~
197 ~~with a written description of its organization and the general~~
198 ~~course of its operations.~~

199 Section 2. Subsection (3) of section 119.021, Florida
200 Statutes, is amended to read:

201 119.021 Custodial requirements; maintenance, preservation,
202 and retention of public records.—

203 (3) Agency orders that comprise final agency action and

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204 that must be electronically uploaded ~~indexed~~ or listed pursuant
205 to s. 120.53 have continuing legal significance; therefore,
206 notwithstanding any other provision of this chapter or any
207 provision of chapter 257, each agency shall permanently maintain
208 records of such orders pursuant to the applicable rules of the
209 Department of State.

210 Section 3. Section 120.533, Florida Statutes, is amended to
211 read:

212 120.533 Coordination of maintenance ~~indexing~~ by Department
213 of State.—The Department of State shall:

214 (1) Administer the coordination of the maintenance
215 indexing, management, preservation, and availability of agency
216 orders that are required to be maintained ~~must be indexed or~~
217 ~~listed~~ pursuant to s. 120.53 ~~s. 120.53(1)~~.

218 (2) Provide, by rule, guidelines for the maintenance
219 indexing of agency orders. ~~More than one system for indexing may~~
220 ~~be approved by~~ The Department of State may approve more than one
221 system for maintenance, including systems or methods in use, or
222 proposed for use, by an agency. More than one system may be
223 approved for use by a single agency as best serves the needs of
224 that agency and the public.

225 (3) Provide, by rule, for storage and retrieval systems to
226 be maintained by agencies for maintenance and availability of
227 indexing, ~~and making available~~, agency orders by subject matter.
228 The Department of State may approve more than one system,
229 including systems in use, or proposed for use, by an agency.
230 Storage and retrieval systems that may be used by an agency
231 include, without limitation, a designated reporter or reporters,
232 a microfilming system, an automated system, or any other system

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233 considered appropriate by the Department of State.

234 (4) Determine which final orders must be maintained ~~indexed~~
235 for each agency.

236 (5) Require each agency to report to the department
237 concerning which types or categories of agency orders establish
238 precedent for each agency.

239 Section 4. Subsection (1) of section 213.22, Florida
240 Statutes, is amended to read:

241 213.22 Technical assistance advisements.—

242 (1) The department may issue informal technical assistance
243 advisements to persons, upon written request, as to the position
244 of the department on the tax consequences of a stated
245 transaction or event, under existing statutes, rules, or
246 policies. After the issuance of an assessment, a technical
247 assistance advisement may not be issued to a taxpayer who
248 requests an advisement relating to the tax or liability for tax
249 in respect to which the assessment has been made, except that a
250 technical assistance advisement may be issued to a taxpayer who
251 requests an advisement relating to the exemptions in s.
252 212.08(1) or (2) at any time. Technical assistance advisements
253 shall have no precedential value except to the taxpayer who
254 requests the advisement and then only for the specific
255 transaction addressed in the technical assistance advisement,
256 unless specifically stated otherwise in the advisement. Any
257 modification of an advisement shall be prospective only. A
258 technical assistance advisement is not an order issued pursuant
259 to s. 120.565 or s. 120.569 or a rule or policy of general
260 applicability under s. 120.54. Section 120.53 does not apply ~~The~~
261 ~~provisions of s. 120.53(1) are not applicable~~ to technical

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

14-00231-15 20151284__

262 assistance advisements.

263 Section 5. This act shall take effect July 1, 2015.

Page 10 of 10

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Rules, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Environmental Preservation and Conservation
Finance and Tax
Judiciary

JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

SENATOR DARREN SOTO

Democratic Caucus Rules Chair
14th District

March 5, 2015

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

Chair Ring,

I respectfully request that Senate Bill 1284, Administrative Procedures, be placed on the agenda as soon as possible. Senate Bill 1284 requires agency final orders rendered on or after July 1, 2015 to be uploaded to an electronic database within 90 days.

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
Allison Rudd, Committee Administrative Assistant

REPLY TO:

- Kissimmee City Hall, 101 North Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (407) 846-5188
- 220 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5014

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-17-15
Meeting Date

1284
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Daniel Nordby

Job Title Chair - Administrative Law Section of the Bar

Address 215 South Monroe Street, Suite 804

Phone 921-0600

Street

Tallahassee

FL

32301

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Administrative Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7016

INTRODUCER: Judiciary Committee

SUBJECT: OGSR/Minor Identifying Information

DATE: March 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Davis</u>	<u>Cibula</u>		JU Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7016 continues an existing public record exemption. The exemption makes confidential and exempt information that might be used to identify a minor petitioning for a judicial waiver of parental notice under the Parental Notice of Abortion Act. The exemption protects from disclosure any identifying information held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission. These offices are in possession of the information when either the office of criminal conflict and civil regional counsel represents the minor in a court proceeding. The Justice Administrative Commission may possess this information as a result of it processing payments for a court-appointed private attorney who represents the minor.

It is essential that any identifying information of a minor held by either of these agencies be exempted from public disclosure or the current statute will not meet constitutional requirements.

The original exemption was enacted in 2010 and is scheduled for repeal on October 2, 2015, unless continued by the Legislature.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution

Under the Florida Constitution, the public is guaranteed the right of access to government records and meetings. The public may 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, unless the record is exempted or specifically made confidential.¹

¹ FLA. CONST., art. I, s. 24(a).

The public is also guaranteed the right to be notified and have access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless an exception is provided for in the Constitution.³

The Florida Statutes

Similarly, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. Chapter 119, F.S., which deals with public records access, guarantees every person's right to inspect and copy any state or local government public record.⁴ Section 286.011, F.S., which is often referred to as the state's sunshine law, requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁵

The Legislature may create an exemption to public records or open meetings requirements.⁶ An exemption must specifically state the public necessity justifying the exemption and must be tailored to accomplish the stated purpose of the law.⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.⁸ The act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or

² FLA. CONST., art. I, s. 24(b).

³ *Id.*

⁴ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The public records chapter does not apply to legislative records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). The Legislature's records are public pursuant to s. 11.0431, F.S.

⁵ Section 286.011(1) and (2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provides that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

substantial amendment. However, in order to save an exemption from repeal, the Legislature must reenact the exemption before it expires.⁹

The Sunset Review Act provides that a public record or open meeting exemption may be created or maintained only if it serves an identifiable public purpose and is written no broader than is necessary.¹⁰ An exemption serves an identifiable purpose if it meets one of the stated requirements below *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption. The exemption must:

- Allow the state or its political subdivisions to effectively and efficiently administer a program, which administration would be significantly impaired without the exemption;¹¹
- Protect sensitive personal information that would be defamatory or damaging to someone's reputation or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹² or
- Protect confidential information of entities including trade or business secrets.¹³

The act also requires specified questions to be considered during the review process.¹⁴ In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁵ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.¹⁶

Parental Notice of Abortion Act

The Legislature first enacted a Parental Notice of Abortion Act in 1999. As its name indicates, the act required that a parent be given advance notice of a child's intent to have an abortion.¹⁷ The statute was challenged in court on the basis that the law violated a person's right to privacy

⁹ Section 119.15(3), F.S.

¹⁰ Section 119.15(6)(b), F.S.

¹¹ Section 119.15(6)(b)1., F.S.

¹² Section 119.15(6)(b)2., F.S.

¹³ Section 119.15(6)(b)3., F.S.

¹⁴ 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?

¹⁵ FLA. CONST., art. I, s. 24(c).

¹⁶ Section 119.15(7), F.S.

¹⁷ Chapter 99-322, Laws of Fla. (Creating s. 390.01115, F.S., effective July 1, 1999. A companion measure, the public records exemption bill that would shield identifying information of the minor, was passed that same session and became Chapter 99-321, Laws of Fla.)

under the Florida Constitution.¹⁸ The Florida Supreme Court determined that the law violated the state's constitutional right to privacy because the minor was not given a method to "bypass" the parental notification provision when certain circumstances existed.¹⁹ In response to the Florida Supreme Court's decision, the Legislature proposed a constitutional amendment that authorized the Legislature, notwithstanding a minor's right to privacy under the State Constitution, to require a physician to notify a minor's parent or guardian prior to the abortion. The amendment was ratified by the voters in 2004.²⁰

In response to the adoption of the proposed amendment, the Legislature passed another Parental Notice of Abortion Act in 2005.²¹ In its current version, the statute requires an attending physician to give actual notice, in person or by phone, to a parent or legal guardian of the minor, at least 48 hours before the inducement or performance of a termination of a pregnancy on the minor.²² If actual notice is not possible after a reasonable effort, the physician performing or inducing the termination of the pregnancy or the referring physician must give constructive notice.²³ Parental notice is not required under the act if certain circumstances are present.²⁴

Judicial Waiver of Parental Notice or the Judicial Bypass Proceeding

The Parental Notice of Abortion Act provides that a minor may petition the circuit court where she resides for a waiver of the notice requirements under the act.²⁵ To initiate the process, she may file the petition under a pseudonym or by using initials, as provided by court rule. The petition must contain a statement that the petitioner is pregnant and notice has not been waived. The court must advise the petitioner that she has a right to court-appointed counsel and must provide her with counsel, if she requests, at no cost to the young woman.²⁶

¹⁸ FLA. CONST., art. I s. 23.

¹⁹ *North Florida Women's Health and Counseling Services v. State*, 866 So. 2d 612 (Fla. 2003).

²⁰ FLA. CONST. art. X. s. 22. The amendment states:

The Legislature shall not limit or deny the privacy right guaranteed to a minor under the United States Constitution as interpreted by the United States Supreme Court. Notwithstanding a minor's right of privacy provided in Section 23 of Article I, the Legislature is authorized to require by general law for notification to a parent or guardian of a minor before the termination of the minor's pregnancy. The Legislature shall provide exceptions to such requirement for notification and shall create a process for judicial waiver of the notification.

²¹ Chapter 2005-52, s. 2, Laws of Fla.

²² Section. 390.01114(3)(a), F.S. and s. 390.01114(2)(a), F.S.

²³ Section 390.01114(3)(a), F.S. Constructive notice is defined to mean notice given in writing, signed by the physician, and mailed at least 72 hours before the procedure to the last known address of the parent or legal guardian of the minor, by first-class mail and by certified mail, return receipt requested with delivery restricted to the parent or legal guardian. Notice is deemed to have occurred after 72 hours have passed pursuant to s. 390.01114(2)(c). F.S.

²⁴ Parental notice is not necessary under s. 390.01114(3)(b), F.S., if: In the good faith clinical judgment of the physician, a medical emergency exists and there is insufficient time for the attending physician to comply with the notification requirements; notice is waived in writing by the person entitled to notice and the waiver is notarized; notice is waived by the minor who is or has been married or has had the disability of nonage removed in compliance with law; notice is waived by the patient because she has a minor child dependent on her; or notice is waived by a circuit court in a judicial bypass proceeding according to statute.

²⁵ Section 390.01114(4)(a), F.S.

²⁶ *Id.*

Once a petition is filed, the court must rule and issue written findings of fact and conclusions of law within three business days after the petition is filed. This time period may be extended at the request of the minor.²⁷

If the circuit court determines, by clear and convincing evidence, that the minor is sufficiently mature to decide whether to terminate her pregnancy, the court must issue an order authorizing the minor to consent to the abortion without the notification of a parent or guardian. If the court finds that the minor does not possess the requisite maturity to make that determination, it must dismiss the petition.²⁸ If the court determines by a preponderance of the evidence, that the minor is a victim of child abuse or sexual abuse inflicted by her parent or guardian, or if the court determines by clear and convincing evidence that the notification of a parent or guardian is not in her best interest, the court must issue an order authorizing the minor to consent to the performance or inducement of a termination of the pregnancy without the notification of a parent or guardian.²⁹

Court Records Exemption for Judicial Bypass Cases

When the current Florida Parental Notice of Abortion Act was passed in 2005, the Legislature created a corresponding public records exemption that prohibited public access to judicial records pertaining to parental notification bypass proceedings. Any information contained in documents related to the petition, which could be used to identify the minor, were made confidential and exempt from the disclosure requirements in the Florida Statutes and Florida Constitution.³⁰ The Florida Rules of Juvenile Procedure³¹ provide that “any information including the petition, documents, transcripts, recording of cases, and any other information that” might be used to identify the young woman are confidential and exempt. Additionally, to ensure that the minor’s identity remains anonymous, the court file must be sealed unless otherwise ordered by the court.³²

The public records exemption, enacted in 2005, was set to be repealed on October 2, 2010, but the Legislature reviewed and saved the exemption from repeal.³³ Accordingly, all information held by a circuit court or an appellate court remains confidential and exempt.

²⁷ Section 390.01114(4)(b)1., F.S. If the court does not rule within the required three business days and the minor has not requested an extension, the minor may immediately petition for a hearing with the chief judge of the circuit. The chief judge is responsible for guaranteeing that a hearing is held within 48 hours after the receipt of the minor’s petition and an order must be entered within 24 hours after the hearing. If the circuit court does not grant a judicial waiver of the required parental notice, the minor has a right to appeal and that ruling must be issued within seven days after receipt of the appeal. Section 390.01114(4)(b) 2., F.S.

²⁸ Section 390.01114(4)(c), F.S.

²⁹ Section 390.01114(4)(d), F.S.

³⁰ Chapter 2005-104, Laws of Fla. (amending s. 390.01116, F.S.).

³¹ FLA. R. JUV. P. 8.835.

³² *Id.*

³³ Chapter 2010-41, Laws of Fla. The measure made an editorial change and the statute now provides that identifying information that can be used to identify a minor seeking a judicial bypass is confidential and exempt only from s. 24(a), art. I of the State Constitution. The previous reference to an exemption pursuant to s. 119.07(1), F.S., was deleted because that provision pertains to agencies, and the court is not deemed to fall within the definition of an agency.

Expansion of the Initial Exemption

When reenacted in 2010, the public records exemption was expanded to include records in possession of additional entities – the offices of criminal conflict and civil regional counsel and the Justice Administrative Commission. Section 390.01116(2)(a), F.S. provides that any information that can be used to identify a minor petitioning a circuit court for a judicial waiver is confidential and exempt from section 119.071(1), F.S., and Article I, section 24(a) of the Florida Constitution if held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

The exemption for those two agencies was made subject to the Open Government Sunset Review Act in accordance with statute and will stand repealed on October 2, 2015, unless reviewed and saved from repeal through reenactment by the Legislature.

In the statement of public necessity³⁴ detailing the need to create the exemption for information held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission, the Legislature recognized that:

The information contained in these records is of a sensitive, personal nature regarding a minor petitioner, the release of which could harm the reputation of the minor, as well as jeopardize her safety. Disclosure of this information could jeopardize the safety of the minor in instances in which child abuse or child sexual abuse against her is present by exposing her to further acts of abuse from an abuser who, without the public record exemption, could learn of the minor's pregnancy, her plans to terminate the pregnancy, and her petition to the court. The Legislature further finds that it is a public necessity to keep this identifying information in records held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission confidential and exempt in order to protect the privacy of the minor.

Additionally, the Legislature took notice of the constitutional requirements expressed through case law in the statement of public necessity. After acknowledging that the State Constitution contains an express right of privacy it noted that:

the United States Supreme Court has repeatedly required parental-notification laws to contain judicial-bypass procedures and to preserve confidentiality at every level of court proceedings in order to protect the privacy rights of the minor. Without the public record exemption provided in this act, the disclosure of personal identifying information would violate the right of privacy of the minor. Further, without the confidential and exempt status for this information, the constitutionality of the state's program providing for notification of a minor's termination of pregnancy, and the judicial-bypass procedure in particular, would be in question. Thus, the public record exemption provided in this act is necessary

³⁴ Chapter 2010-41, s. 2, Laws of Fla,

for the effective administration of the state’s program, which administration would be impaired without the exemption.³⁵

Roles of the office of criminal conflict and civil regional counsel and the Justice Administrative Commission

When a minor initiates a judicial bypass proceeding in the circuit court, a private court-appointed attorney is available to represent her should she request counsel.³⁶ The statute is clear that private court-appointed counsel approved for this type of work are to be used first for minors who request counsel, but if no attorney is available through the clerk’s list of attorneys, then the office of criminal conflict and civil regional counsel in that area will supply an attorney for the proceedings.³⁷ Court precedent interpreting the U.S. Constitution says it is essential that the office’s records be exempt from public access.

The Justice Administrative Commission serves in the capacity of paying the invoices for the attorneys who volunteer for these cases through the clerk of court’s list of attorneys. Similarly, their records which could identify a minor should be exempt from public disclosure. It should be noted that the Justice Administrative Commission records do not contain the full name of the minor, but only her initials or a pseudonym.

The public records exemption will stand repealed on October 2, 2015, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act.³⁸

Data Obtained from the Office of the State Courts Administrator

The Florida Supreme Court, through the Office of the State Courts Administrator, is required to report by February 1 of each year to the Governor, the President of the Senate, and the Speaker of the House of Representatives the number of petitions filed for judicial bypass waivers in the previous year for each circuit court. The report must also contain the timing and manner of disposal of the petitions by each circuit.³⁹ Below is a statewide summary of the number of petitions filed in recent years.

<u>Year</u>	<u>Total Petitions Filed</u>
2013	319
2012	353
2011	391
2010	381
2009	476 ⁴⁰

³⁵ *Id.*

³⁶ The chief judge of the circuit maintains a list of qualified attorneys in private practice, by county and by category of cases, and provides the list to the clerk of court in each county. Section 27.40(3)(a), F.S.

³⁷ Section 27.511(6)(a), F.S.

³⁸ Chapter 2010-41, s. 1, Laws of Fla.

³⁹ Section 390.01114(6), F.S.

⁴⁰ Florida Office of the State Court Administrator, *Fiscal Years 2009-2013, Parental Notice of Abortion Act, Petitions Filed and Disposed by Circuit and County, January through December* (on file with the Senate Committee on Judiciary).

Judiciary Committee's Open Government Sunset Review

Based upon a review of this public record exemption under the Open Government Sunset Review Act and discussions with the different offices of criminal conflict and civil regional counsel and the Justice Administrative Commission, the professional staff of the Judiciary Committee recommends that the Legislature retain the public records exemption established in s. 390.01116(2)(a), F.S. The exemption is necessary to comply with the requirements of the decisions of the U.S. Supreme Court. The identifying information held by either of these two entities must remain confidential at every level of court proceedings to protect the privacy rights of the minor seeking to bypass parental notification. If this exemption did not remain in statute, the disclosure of the identifying information would violate the right of privacy of the minor and the constitutionality of the state's program would be in jeopardy.

Staff has concluded that, in addition to ensuring the privacy of the minor, the exemptions are necessary to administer the Parental Notice of Abortion Act and are also essential to the constitutionality of the act.

III. Effect of Proposed Changes:

This legislation continues a public record exemption that was created in 2010 and which otherwise is subject to repeal on October 2, 2015. The exemption protects from disclosure any identifying information of a minor seeking a judicial bypass under the Parental Notice of Abortion Act if the information is held by the office of criminal conflict and civil regional counsel or by the Justice Administrative Commission.

Section 1 amends s. 390.01116(2)(b), F.S., to remove the scheduled repeal of the public records exemption for identifying information held by the office of criminal conflict and civil regional counsel or the Justice Administrative Commission.

Section 2 provides that the bill takes effect on October 1, 2015.

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:

The office of criminal conflict and civil regional counsel and the Justice Administrative Commission will need to redact confidential information from their records if the records are disclosed to the public. This is their current practice and will not impose an additional burden on them.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 390.01116 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 Judiciary

590-01496-15

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A bill to be entitled

An act relating to a review under the Open Government
Sunset Review Act; amending s. 390.01116, F.S.,
relating to an exemption from public record
requirements for certain information that could
identify a minor petitioning a court to waive parental
notice requirements before terminating a pregnancy;
saving the exemption from repeal under the Open
Government Sunset Review Act; providing an effective
date.

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

Section 1. Subsection (2) of section 390.01116, Florida
Statutes, is amended to read:

390.01116 Public records exemptions; minors seeking waiver
of notice requirements.—Any information that can be used to
identify a minor petitioning a circuit court for a judicial
waiver, as provided in s. 390.01114, of the notice requirements
under the Parental Notice of Abortion Act is:

(2) ~~(a)~~ Confidential and exempt from s. 119.07(1) and s.
24(a), Art. I of the State Constitution if held by the office of
criminal conflict and civil regional counsel or the Justice
Administrative Commission.

~~(b) Paragraph (a) is subject to the Open Government Sunset
Review Act in accordance with s. 119.15 and shall stand repealed
on October 2, 2015, unless reviewed and saved from repeal
through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Judiciary, *Chair*
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Community Affairs
Finance and Tax
Regulated Industries
Rules

SENATOR MIGUEL DIAZ de la PORTILLA

40th District

March 13, 2015

The Honorable Jeremy Ring
Chairman
Governmental Oversight and Accountability

Via Email

Dear Chair Ring:

I will be in the Community Affairs meeting on Tuesday, March 17, from 9:00 to 10:30 a.m.

There is a bill on the Governmental Oversight and Accountability committee during that time. The bill is SPB 7016, OGSR/Minor Identifying Information, by Judiciary Committee.

Due to the conflict in my schedule, I respectfully request that Ms. Eva Davis, Staff Attorney for the Judiciary Committee, present the bill to your Committee.

Thank you for your consideration.

Sincerely,

Miguel Diaz de la Portilla
Senator, District 40

Cc: Mr. Joe McVaney, Staff Director; Ms. Allison Rudd, Committee Administrative Assistant;
Ms. Eva Davis, Attorney, Judiciary Committee;
Ms. Shirley Proctor, Judiciary Committee Administrative Assistant

REPLY TO:

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

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7032

INTRODUCER: Health Policy Committee

SUBJECT: Public Records/Reports of a Deceased Child

DATE: March 17, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Looke</u>	<u>Stovall</u>		HP Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7032 continues and amends the current public records and public meetings exemptions for certain identifying information held by the State Child Abuse Death Review Committee or a local child abuse death review committee to reflect changes to the child welfare laws enacted during the 2014 Session. Specifically, the bill extends the exemption to cases reviewed by a committee where the death was determined not to be the result of abuse or neglect and limits the exemption for cases involving verified abuse or neglect. Identifying information related to deaths from verified abuse or neglect, with the exception of surviving siblings, is now posted on the Child Fatality Prevention Website of the Department of Children and Families. As such, confidentiality under s. 383.412, F.S., is no longer warranted for other family members or others living in the home. The bill also authorizes release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

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

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

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on

their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.² The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Section 119.15, F.S. Section 119.15(4)(b), F.S. provides that an exemption is considered to be substantially amended if it expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

October 2 of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

The OGSR also requires specific questions to be considered during the review process.¹⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁰

Child Abuse Death Review

Current law establishes the State Child Abuse Death Review Committee and local child abuse death review committees within the Department of Health.²¹ The committees must review the facts and circumstances of all deaths of children from birth through age 18 that occurred in Florida and are reported to the central abuse hotline of the Department of Children and

¹² Section 119.15(3), F.S.

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ 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?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

²¹ Section 383.402, F.S.

Families.²² The state committee must prepare an annual statistical report on the incidence and causes of death resulting from reported child abuse in the state. The report must include recommendations for:

- State and local action, including specific policy, procedural, regulatory, or statutory changes; and
- Any other recommended preventive action.²³

The law provides the committees with broad access to any information related to the deceased child, or his or her family, that is necessary to carry out its duties, including:

- Medical, dental, or mental health treatment records;
- Records in the possession of a state agency or political subdivision; and
- Records of law enforcement which are not part of an active investigation.²⁴

Records typically obtained by the committees include, among others: death and birth certificates; medical examiner report; law enforcement report; criminal history reports; first responder reports; physician, hospital, and/or substance abuse and mental health records; and the Department of Children and Families case file.²⁵

Exemptions Under Review

Current law provides a public records and a public meetings exemption for the State Child Abuse Death Review Committee and local child abuse death review committees.²⁶

Information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the state committee or a local committee is confidential and exempt from public records requirements.²⁷ In addition, confidential or exempt information obtained by the state committee or a local committee retains its confidential or exempt status.²⁸ The state and local committees may share with each other any relevant confidential or exempt information regarding case reviews.²⁹ Any person who knowingly or willfully violates the public records exemption commits a misdemeanor of the first degree.^{30,31}

Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which confidential and exempt information is discussed are exempt from public meetings

²² Section 383.402(1), F.S.

²³ Section 383.402(3)(c), F.S.

²⁴ Section 383.412(8) & (9), F.S.

²⁵ Email from Bryan Wendel, Office of Legislative Planning, Florida Dept. of Health, (August 25, 2014) (on file with the Senate Committee on Health Policy).

²⁶ Section 383.412, F.S.

²⁷ Section 383.412(2)(a), F.S.

²⁸ Section 383.412(2)(b), F.S.

²⁹ Section 383.412(4), F.S.

³⁰ Section 383.412(5), F.S.

³¹ A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. *See* 775.082(4)(a) and 775.083(1)(d), F.S.

requirements.³² Any portion of a closed meeting must be recorded and the recordings maintained by the state committee or local committee. No portion of the closed meeting may be off the record. The recording of a closed meeting is exempt from public records requirements.³³

Pursuant to the Open Government Sunset Review Act, these exemptions will repeal on October 2, 2015, unless reenacted by the Legislature.³⁴

The public records exemption was initially enacted by the Legislature in 1999 and amended and reenacted, thereafter in 2005 and 2010.^{35,36} The stated purpose for the exemption was “to increase the potential for reduced morbidity or mortality of children and reduce the potential for poor outcomes for children, thereby improving the overall quality of life for children.”³⁷ The Legislature found that the release of sensitive, personal information could hamper open communication and coordination among parties during the death review and that the harm resulting from the release of such information substantially outweighed any public benefit.³⁸

Senate Review of s. 383.412, F.S.

In the course of conducting the Open Government Sunset Review of s. 383.412, F.S., Senate Health Policy Committee Staff met with representatives from the Department of Health and the Department of Children and Families and requested written input from the Florida Sheriffs Association.

Staff also reviewed ch. 2014-224, Laws of Florida (SB 1666), which contains substantial reforms to Florida’s child welfare laws, to determine its effect on the exemption. Since 2004, the statewide and local child abuse death review committees have reviewed only cases reported to the central abuse hotline that were determined to be the result of abuse or neglect.³⁹ Thus, the public records exemption related only to identifying information of the surviving siblings, family members, or others living in the home of a child who died as a result of verified abuse or neglect. SB 1666 expanded the scope of cases reviewed by the committees to include all deaths reported to the child abuse hotline, whether or not the result of verified abuse or neglect.⁴⁰

SB 1666 also directed the Department of Children and Families to post certain information on its website when a child death is reported to the central abuse hotline. Data required to be posted includes the following de-identified demographic data: the date and alleged or verified cause of death; county of residence; existence of prior reports of abuse; whether the child was under 5

³² Section 383.412(3), F.S.

³³ Section 383.412(3)(b), F.S.

³⁴ Section 383.412(6), F.S.

³⁵ See Chs. 99-210, 2005-190, and 2010-40, Laws of Florida

³⁶ The initial act sunset in 2004 when legislation to reenact the exemption failed to pass both chambers of the Legislature. See Florida Senate, *Website Archive*, Senate 0462: Relating to Child Fatalities/Pub. Rec./OGSR http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2004&billnum=462 (last visited Feb. 13, 2015).

³⁷ Ch. 99-210, s. 2, Laws of Fla.

³⁸ *Id.*

³⁹ Ch. 2004-350, s. 14, Laws of Fla.

⁴⁰ Ch. 2014-224, s. 21, Laws of Fla.

years of age; and the involved community-based care lead agency, if applicable.⁴¹ SB 1666 provides that posted data are supplemental to records that may be available to the public pursuant to a public records request.⁴²

Section 39.202(1), F.S., makes all records held by the Department of Children and Families concerning reports of child abandonment, abuse, or neglect confidential and exempt from disclosure under the public records law. However, those files become publicly-available once the cause of death is determined to be the result of abuse, abandonment, or neglect, subject to the following exceptions:

- Information that identifies the person who reported the abuse, abandonment, or neglect;
- Information that is otherwise confidential and exempt;⁴³
- Information that would identify siblings of a deceased child.⁴⁴

Before SB 1666 was passed, the Department of Children and Families released the records of reported deaths resulting from verified abuse on a case-by-case basis, in response to individual public records requests. After SB 1666 was passed, the Department of Children and Families implemented its transparency requirements by launching the Child Fatality Prevention Website. Data and features on the website exceed the requirements of SB 1666.⁴⁵

Among the expanded data elements are child fatality case summaries that reflect summary information contained in a deceased child's case file, including:

- Circumstances surrounding the death;
- Other children in the family; and
- Summary of prior agency involvement with the family.

Posted summary reports about child deaths resulting from verified abandonment, abuse, or neglect have been redacted to remove only sibling names. The names of others living in the household are published. Posted summary reports about deaths that are determined not to be the result of abandonment, abuse, or neglect report case files have been redacted to remove all identifiers.⁴⁶ Currently, identifying information that has been publicly-available from the case file, but was infrequently accessed, is now broadly accessible on demand from a public website.

⁴¹ *Id.* at s. 7.

⁴² *Id.*

⁴³ Section 39.202(2)(o), F.S.

⁴⁴ The Department of Children and Families interprets ss. 39.202(1) and 39.202(2)(o), F.S., as prohibiting release of information that would identify siblings of a deceased child. When a sibling is named in a report about a deceased child, the Department views information related to the sibling as a new report of abuse, abandonment, or neglect that is protected under s. 39.202(1), F.S.. See Email from Tim Parson, Office of Legislative Affairs, Florida Dept. of Children and Families (June 25, 2014) (on file with the Senate Health Policy Committee).

⁴⁵ Department of Children and Families, *DCF Launches Child Fatality Prevention Website Solidifying Commitment to Transparency* (June 25, 2014) <http://www.myflfamilies.com/press-release/dcf-launches-child-fatality-prevention-website-solidifying-commitment-transparency> (last visited Feb. 13, 2015).

⁴⁶ See e.g., Total Miami-Dade County Child Fatalities 2014: 31, Accidental Death Occurring 1/20/2014 as compared with Death From Verified Abuse Occurring 4/24/2014, available at <http://www.dcf.state.fl.us/childfatality/localresults.shtml?county=Miami-Dade&minage=0&maxage=18&year=2014&cause=&prior12=&verified=> (last visited Jan. 24, 2015).

III. Effect of Proposed Changes:

The bill substantially amends the current the public records and public meetings exemptions provided by s. 383.412, F.S., and aligns them with the transparency of data involving child deaths reported to the central abuse hotline that are posted on the Child Fatality Prevention Website. Specifically, the bill narrows the exemption for identifying information related to cases of verified abuse and neglect to information that identifies the deceased child's siblings. The bill also expressly expands the exemption to include information held by the committees which reveals the identity of a deceased child whose death is not the result of verified abuse or neglect as well as the identity of the surviving siblings, family members, or others living in the home.

The bill also authorizes release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes. The person or entity must enter into a privacy agreement with the Department of Health and comply with all laws and rules governing the use of the information and may not disclose identifying information.

The bill provides a public necessity statement as required by the State Constitution. The public necessity statement explains that the scope of cases which the committees will review was enlarged pursuant to the change in law in 2014. This expansion in the types of cases that committees reviewed necessitated an expansion of the public records exemption. The exemption serves to protect the families of a deceased child from emotional or reputational harm and limits the invasion of the privacy of the deceased child and his or her family. This public necessity statement provides that committees must be able to review confidential and exempt information in order to perform thorough child death reviews.

The bill extends the repeal date for the exemptions from October 2, 2015, to October 2, 2020.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill expands a public records exemption and includes the required public necessity statement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 383.412 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 Health Policy

588-01670-15

20157032__

1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 383.412, F.S.; removing the public records exemption
 4 for information held by the State Child Abuse Death
 5 Review Committee or a local committee that reveals the
 6 identity of family members or others living in the
 7 home of a child whose death occurred as a result of a
 8 verified report of abuse or neglect; exempting
 9 information held by the State Child Abuse Death Review
 10 Committee or a local committee that identifies a
 11 deceased child whose death is reported to the central
 12 abuse hotline but whose death is not the result of
 13 abuse or neglect and the identity of the surviving
 14 siblings, family members, or others living in the home
 15 of such a deceased child; authorizing release of such
 16 information to specified persons under certain
 17 circumstances; providing for future legislative review
 18 and repeal of the exemption under the Open Government
 19 Sunset Review Act; providing a statement of public
 20 necessity; providing an effective date.

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

22 Section 1. Section 383.412, Florida Statutes, is amended to
 23 read:

24 383.412 Public records and public meetings exemptions.—

25 (1) For purposes of this section, the term "local
 26 committee" means a local child abuse death review committee or a
 27 panel or committee assembled by the State Child Abuse Death
 28
 29

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30 Review Committee or a local child abuse death review committee
 31 pursuant to s. 383.402.

32 (2) (a) Any information held by the State Child Abuse Death
 33 Review Committee or a local committee which reveals the identity
 34 of the surviving siblings of a deceased child whose death
 35 occurred as the result of a verified report of abuse or neglect
 36 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 37 I of the State Constitution.

38 (b) Any information held by the State Child Abuse Death
 39 Review Committee or a local committee which ~~that~~ reveals the
 40 identity of a deceased child whose death has been reported to
 41 the central abuse hotline but determined not to be the result of
 42 abuse or neglect, or the identity of the surviving siblings,
 43 family members, or others living in the home of such a deceased
 44 child, who is the subject of review by and which information is
 45 held by the State Child Abuse Death Review Committee or a local
 46 committee is confidential and exempt from s. 119.07(1) and s.
 47 24(a), Art. I of the State Constitution.

48 (c) ~~(b)~~ Information made confidential or exempt from s.
 49 119.07(1) and s. 24(a), Art. I of the State Constitution which
 50 that is obtained by the State Child Abuse Death Review Committee
 51 or a local committee shall retain its confidential or exempt
 52 status.

53 (3) (a) Portions of meetings of the State Child Abuse Death
 54 Review Committee or a local committee at which information made
 55 confidential and exempt pursuant to subsection (2) is discussed
 56 are exempt from s. 286.011 and s. 24(b), Art. I of the State
 57 Constitution. The closed portion of a meeting must be recorded,
 58 and no portion of the closed meeting may be off the record. The

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59 recording shall be maintained by the State Child Abuse Death
60 Review Committee or a local committee.

61 (b) The recording of a closed portion of a meeting is
62 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
63 Constitution.

64 (4) The State Child Abuse Death Review Committee and local
65 committees may share any relevant information regarding case
66 reviews involving child death which is made confidential and
67 exempt by this section:

68 (a) With each other;

69 (b) With a governmental agency in furtherance of its
70 duties; or

71 (c) With any person or entity authorized by the Department
72 of Health to use such relevant information for bona fide
73 research or statistical purposes. A person or entity who is
74 authorized to obtain such relevant information for research or
75 statistical purposes must enter into a privacy and security
76 agreement with the Department of Health and comply with all laws
77 and rules governing the use of such records and information for
78 research or statistical purposes. Anything identifying the
79 subjects of such relevant information must be treated as
80 confidential by the person or entity and may not be released in
81 any form ~~any relevant information regarding case reviews~~
82 ~~involving child death, which information is made confidential~~
83 ~~and exempt by this section.~~

84 (5) Any person who knowingly or willfully makes public or
85 discloses to any unauthorized person any information made
86 confidential and exempt under this section commits a misdemeanor
87 of the first degree, punishable as provided in s. 775.082 or s.

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88 775.083.

89 (6) This section is subject to the Open Government Sunset
90 Review Act in accordance with s. 119.15, and shall stand
91 repealed on October 2, 2020 ~~2015~~, unless reviewed and saved from
92 repeal through reenactment by the Legislature.

93 Section 2. The Legislature finds that it is a public
94 necessity that any information held by the State Child Abuse
95 Death Review Committee or a local committee as defined in s.
96 383.412, Florida Statutes, which reveals the identity of a
97 deceased child whose death has been reported to the central
98 abuse hotline but determined not to be the result of abuse or
99 neglect, or the identity of the surviving siblings, family
100 members, or others living in the home of such deceased child, be
101 held confidential and exempt from public records requirements.
102 The Legislature further finds that it is a public necessity that
103 these committees have the authority to maintain the confidential
104 or exempt status of records otherwise confidential or exempt
105 which are provided to them regarding such children. In 1999, the
106 Legislature authorized the creation of the committees to review
107 the facts and circumstances surrounding the deaths of children
108 in this state which occur as the result of reported child abuse
109 or neglect and to prepare an annual statistical report on the
110 incidence and causes of death resulting from child abuse. Since
111 2004, cases analyzed by the committees have been limited to
112 reports of verified abuse or neglect. The Legislature made
113 identifying information of the surviving siblings, family
114 members, or others living in the home of the child who died as a
115 result of verified abuse or neglect confidential and exempt from
116 public records requirements to ensure that cases could be vetted

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117 thoroughly through open communication without risk of disclosure
118 of the identifying information. In 2014, the Legislature
119 expanded the scope of cases reviewed by the committees to
120 include all deaths reported to the child abuse hotline,
121 regardless of whether the deaths were the result of verified
122 abuse or neglect, and this bill expands the public records
123 exemption accordingly. If the identifying information related to
124 these reports were to be disclosed, it could result in emotional
125 or reputational harm to the family and caregivers and an
126 unnecessary invasion of their privacy and the privacy of the
127 deceased child. In addition, the committees must be able to
128 maintain the otherwise confidential and exempt status of records
129 that are provided to them to ensure continued access to such
130 records and the opportunity for a thorough and open review of
131 cases. Therefore, the Legislature finds that the harm that may
132 result from the release of such information substantially
133 outweighs any minimal public benefit that may be derived from
134 its disclosure.

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 7034

INTRODUCER: Governmental Oversight and Accountability Committee and Ethics and Elections Committee

SUBJECT: OGSR/Stalking Victims Identifying Information

DATE: March 18, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Fox</u>	<u>Roberts</u>		EE Submitted as Committee Bill
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
2.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7034 is the result of an Open Government Sunset Review conducted by the Ethics and Elections Committee. It continues the “voter stalking exemption” that the Legislature adopted in 2010, exempting from public records disclosure the names, addresses, and telephone numbers of voters and voter registrants who participate in the Attorney General’s Address Confidentiality Program for Victims of Domestic Violence.

If not reenacted by the Legislature, the exemption will expire on October 2, 2015, pursuant to the Open Government Sunset Review Act.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution provides that the public has the right to access government records and meetings. The public may inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The public also has a right to be afforded notice and access to meetings of any collegial public body of the executive branch of state government or of any local government.²

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(b).

The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided for by the Constitution.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record.⁵ The Sunshine Law⁶ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁷

The Legislature may create an exemption to public records or open meetings requirements.⁸ An exemption must specifically state the public necessity justifying the exemption⁹ and must be tailored to accomplish the stated purpose of the law.¹⁰

Open Government Sunset Review Act

The Open Government Sunset Review Act (referred to hereafter as the "OGSR") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹¹ The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.¹²

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

⁶ Section 286.011, F.S.

⁷ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in the Florida Constitution. Article III, section 4(e) of the Florida Constitution provide that legislative committee meetings must be open and noticed to the public. In addition, prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁸ 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. *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential, such record may not be released, to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ Sections 119.15 and 119.15(4)(b), F.S., provide that an exemption is considered to be substantially amended if it is expanded to include more information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to section 119.15(2), F.S.

¹² Section 119.15(3), F.S.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.¹³ An exemption serves an identifiable public purpose if it meets one of the following criteria:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;¹⁴
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;¹⁵ or
- It protects trade or business secrets.¹⁶

In addition, the Legislature must find that the identifiable public purpose is compelling enough to override Florida's open government public policy and that the purpose of the exemption cannot be accomplished without the exemption.¹⁷

The OGSR also requires specific questions to be considered during the review process.¹⁸ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁹ If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁰

Public Records Exemption Under Review: Voter Stalking Exemption

The 2010 Legislature created a public-records exemption for specific personal information of voters and voter registrants who identify themselves as victims of stalking or aggravated stalking (hereinafter, the "voter stalking exemption").²¹ The purpose of the exemption is to allow these individuals to fully participate in the electoral process without fear of their home addresses being made public or their location being narrowed down to a particular voting precinct.²² Specifically,

¹³ Section 119.15(6)(b), F.S.

¹⁴ Section 119.15(6)(b)1., F.S.

¹⁵ Section 119.15(6)(b)2., F.S.

¹⁶ Section 119.15(6)(b)3., F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ 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?

¹⁹ FLA. CONST., art. I, s. 24(c).

²⁰ Section 119.15(7), F.S.

²¹ Ch. 2010-115, s. 1, LAWS OF FLA.

²² *Id.* at s. 3.

the Legislature exempted the names, addresses, and phone numbers of victims of stalking or aggravated stalking in the same manner as participants in the Attorney General's Address Confidentiality Program for Victims of Domestic Violence ("the Program").

In order for the exemption to take effect, an individual must file a sworn statement that he or she was victim of stalking with the Office of the Attorney General (OAG).²³ The OAG provides the voter with documentation which permits the voter to register with the Supervisor of Elections without his or her actual name, address and phone number being subject to public disclosure. Voters who are already registered with the Supervisor of Election may request that their information be made exempt from public disclosure.²⁴

According to the OAG, there are only about 50 stalking victims participating in the Program, almost half of which are household members of victims who are eligible to participate.²⁵ But despite its relatively minor scope, the OAG stressed the *critical* importance of the exemption to those individuals and their families who are benefitting from its protection.²⁶ Consequently, the OAG, the Florida Division of Elections, and the Florida State Association of Supervisors of Elections (FSASE) all support maintaining the current exemption.

The voter stalking exemption is due to expire under the Open Government Sunset Review Act on October 2, 2015, if not reenacted by the Legislature.

III. Effect of Proposed Changes:

The bill continues the voter stalking exemption by removing the scheduled repeal of the exemption, and transferring those exemption to s. 741.4651, F.S., to be closer in proximity in the statutes to the public records exemption for the Address Confidentiality Program for Victims of Domestic Violence – a similar program administered by the Department of Legal Affairs.

The bill takes effect October 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²³ *Id.* at s. 1 (codified at Section 98.0585(3), F.S. (2010)).

²⁴ Florida Department of State Processing Voters Who are Participants in the Address Confidentiality Program Training for Supervisors of Elections PowerPoint slides dated May 2014, on file with the Senate Committee on Governmental Oversight and Accountability.

²⁵ Telephone conversation between Tim Frizzell, Assistant Attorney General, Victim Services, Office of the Attorney General, and Jonathan Fox, Chief Attorney, Senate Ethics and Elections Committee (July 16, 2014).

²⁶ *Id.* The position of the AG's office is that if the exemption protects *just one person* it is worth keeping, because of the gravity of the potential consequences involved. *Id.*

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 97.0585 of the Florida Statutes and renumbers and transfers those provisions to section 741.4651 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 17, 2015:

The CS places the amendment next to s. 741.465, the public records exemption for the Address Confidentiality Program for Victims of Domestic Violence – a similar program administered by the Department of Legal Affairs.

B. Amendments:

None.



530940

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2015	.	
	.	
	.	
	.	

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. Present subsection (4) of section 97.0585,
Florida Statutes, is redesignated as subsection (3) of that
section, and present subsections (3) and (5) of that section are
transferred and renumbered as section 741.4651, Florida
Statutes, and amended to read:

741.4651 Public records exemption; victims of stalking or



530940

11 aggravated stalking.-

12 ~~(3)~~ The names, addresses, and telephone numbers of persons
13 who are victims of stalking or aggravated stalking are exempt
14 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
15 in the same manner that the names, addresses, and telephone
16 numbers of participants in the Address Confidentiality Program
17 for Victims of Domestic Violence which are held by the Attorney
18 General under s. 741.465 are exempt from disclosure, provided
19 that the victim files a sworn statement of stalking with the
20 Office of the Attorney General and otherwise complies with the
21 procedures in ss. 741.401-741.409.

22 ~~(5) Subsection (3) is subject to the Open Government Sunset~~
23 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
24 ~~on October 2, 2015, unless reviewed and saved from repeal~~
25 ~~through reenactment by the Legislature.~~

26 Section 2. This act shall take effect October 1, 2015.

27
28 ===== T I T L E A M E N D M E N T =====

29 And the title is amended as follows:

30 Delete everything before the enacting clause
31 and insert:

32 A bill to be entitled
33 An act relating to a review under the Open Government
34 Sunset Review Act; transferring, renumbering, and
35 amending s. 97.0585(3) and (5), F.S., relating to an
36 exemption from public records requirements for certain
37 information of persons who are victims of stalking or
38 aggravated stalking; removing the scheduled repeal of
39 the exemption; providing an effective date.

By the Committee on Ethics and Elections

582-01885-15

20157034__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 97.0585, F.S., which
 4 provides a public records exemption for specified
 5 personal identifying information of stalking victims
 6 held by the Attorney General or contained in voter
 7 registration and voting records held by the supervisor
 8 of elections or the Department of State; saving the
 9 exemption from repeal under the Open Government Sunset
 10 Review Act; providing an effective date.

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

13
 14 Section 1. Subsections (3) and (4) of section 97.0585,
 15 Florida Statutes, are republished, and subsection (5) of that
 16 section is amended, to read:

17 97.0585 Public records exemption; information regarding
 18 voters and voter registration; confidentiality.-

19 (3) The names, addresses, and telephone numbers of persons
 20 who are victims of stalking or aggravated stalking are exempt
 21 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution
 22 in the same manner that the names, addresses, and telephone
 23 numbers of participants in the Address Confidentiality Program
 24 for Victims of Domestic Violence which are held by the Attorney
 25 General under s. 741.465 are exempt from disclosure, provided
 26 that the victim files a sworn statement of stalking with the
 27 Office of the Attorney General and otherwise complies with the
 28 procedures in ss. 741.401-741.409.

29 (4) This section applies to information held by an agency

Page 1 of 2

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

582-01885-15

20157034__

30 before, on, or after the effective date of this exemption.
 31 ~~(5) Subsection (3) is subject to the Open Government Sunset~~
 32 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 33 ~~on October 2, 2015, unless reviewed and saved from repeal~~
 34 ~~through reenactment by the Legislature.~~
 35 Section 2. This act shall take effect October 1, 2015.

Page 2 of 2

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7050

INTRODUCER: For consideration by the Governmental Oversight and Accountability Committee

SUBJECT: Digital Classrooms

DATE: March 18, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	McVaney		Favorable
2.				
3.				

I. Summary:

SPB 7050 requires the Agency for State Technology (AST) to establish and publish information technology architecture standards for purposes of implementing digital classrooms by July 1, 2016. The bill requires AST to collaborate with the Department of Education (DOE) and the Department of Management Services to identify certain state contract procurement options for services that support such standards and to identify certain shared services available through the State Data Center to facilitate the implementation of school district digital classrooms plans.

Also, SPB 7050 requires AST’s annual assessment of DOE to include a review of specified issues with respect to school district digital classrooms plans and to provide planning assistance to address and reduce issues identified by the assessment. The bill authorizes AST to contract for assistance with the annual assessment if needed.

Additionally, the bill requires AST to provide the annual assessment to DOE by December 1, 2016, and annually thereafter.

The bill requires the Department of Education to contract with an independent auditing entity to evaluate and provide recommendations to remediate noncompliance in the administration of online assessments for the digital classrooms allocation if such assessment does not comply with minimum protocols and requirements after January 1, 2015.

The bill appropriates roughly \$10 million from the General Revenue Fund to the AST to conduct its duties required by this legislation.

II. Present Situation:

Agency for State Technology

The Agency for State Technology (AST) was created by HB 7073 with an effective date of July 1, 2014.¹ The executive director of AST is appointed by the Governor and confirmed by the Senate. The duties and responsibilities of AST include:²

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

Florida Digital Classrooms Allocation

In 2014, the Legislature elevated policy and funding for technology-enhanced classroom teaching and learning by creating the Florida digital classrooms allocation to support efforts and strategies of school districts and public schools in integrating technology into classroom

¹ Chapter 2014-221, Laws of Florida.

² Section 282.0051, F.S.

instruction to improve student performance outcomes.³ The Department of Education (DOE) has adopted a Strategic Technology Plan that establishes the general parameters for digital classrooms which are used by the district school boards to adopt their district digital classrooms plan.⁴

For the 2014-2015 fiscal year, the Legislature appropriated \$40 million to school districts to support digital classrooms.⁵ At a minimum, \$250,000 was provided to each school district.⁶ The remaining balance was allocated based on each district's share of the state's total unweighted student enrollment.⁷

State Digital Classrooms Plan

The Office of Technology and Information Services, within DOE, is responsible for developing a 5-year strategic plan (state plan) that must:⁸

- Describe how technology will be integrated into classroom teaching and learning to improve student performance outcomes and prepare students to be digital learners.
- Establish minimum technology requirements that include specifications for hardware, software, devices, networking, security, and bandwidth capacity and guidelines for the ratio of students per device.
- Establish minimum requirements for professional development opportunities and training to assist district instructional personnel staff with integrating technology into classroom teaching.
- Identify the types of digital tools and resources that can assist district instructional personnel and staff in management, assessment, and monitoring of student learning and performance.

DOE must update the state plan annually by January 1.⁹

III. Effect of Proposed Changes:

Section 1 amends s. 282.0051, F.S., to require AST to establish and publish information technology architecture standards, by July 1, 2016, that address issues relating to the implementation of the digital classroom including, but not limited to, the following:

- Device recommendations.
- Security requirements.
- Connectivity requirements.
- Browser expectations.

³ Section 1011.62(12)(a), F.S.

⁴ *DOE Digital Classrooms Plan*, <http://www.fldoe.org/about-us/division-of-technology-info-services/bureau-of-edu-tech.stml> (last visited March 6, 2015); Also, see ss. 1001.20(4) and 1011.62(12)(b), F.S. DOE has provided a technical assistance memo and guidance document regarding digital classrooms to school districts. See, *DOE Digital Classrooms Plan (DCP) and Allocation*, <http://www.fldoe.org/about-us/division-of-technology-info-services/bureau-of-edu-tech.stml> (last visited March 9, 2015).

⁵ Specific Appropriation 96, s. 2, ch. 2014-51, LO.F.

⁶ *Id.*

⁷ *Id.*

⁸ Section 1001.20(4)(a)1., F.S.

⁹ *Id.*

The bill also requires AST to collaborate with DOE and the Department of Management Service (DMS) to identify:

- State term contract procurement options available to school districts that provide information technology commodities, consultant services, or staff augmentation contractual services that support the information technology architecture standards applicable to digital classrooms.
- Shared services available to school districts through the State Data Center to facilitate the implementation of school district digital classrooms plans.

Additional, the bill requires AST to include the following in its annual assessment of DOE:

- A review each school district's digital classrooms plan submitted to DOE under s. 1011.62(12), F.S., to determine the school district's compliance with the information technology architecture standards adopted and to ensure accuracy of the school district's information technology resources inventory as submitted to DOE's Technology Resources Inventory System.
- Planning assistance to DOE, school districts, and public schools to address and reduce any issues identified by the annual assessments.

The bill authorizes AST to contract with one or more independent, third-party professional organizations if assistance with the annual assessment is needed. AST is required to provide the annual assessment to DOE by Dec. 1, 2016, and annually thereafter.

Further, SPB 7050 provides that within 60 days after notification by DOE that a school district is not in compliance with the information technology architecture standards, the school district must either become compliant, obtain an exemption from compliance from DOE or procure services through AST or DMS to achieve compliance.

Section 2 amends s. 282.00515, F.S., to make conforming changes regarding duties of cabinet agencies to adopt standards established in s. 282.0051(2)(a),(3), and (8), F.S., as required by this bill.

Section 3 amends s. 1011.62(12)(b)5., F.S., to require DOE to contract with an independent auditing entity to evaluate and provide recommendations to remediate noncompliance in future administrations of online assessments for the digital classrooms allocation if such assessment does not comply with minimum protocols and requirements after January 1, 2015.

Section 4 appropriates \$9,993,566 from the General Revenue Fund to AST to conduct the agency's duties under s. 282.0051(10)(b) and (c), F.S.

Section 5 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The bill appropriates roughly \$10 million from the General Revenue Fund to the AST to perform its duties.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 282.0051 and 282.00515 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.



777752

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
03/17/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Between lines 113 and 114

insert:

Section 3. Paragraph (b) of subsection (12) of section
1011.62, Florida Statutes, is amended to read:

1011.62 Funds for operation of schools.—If the annual
allocation from the Florida Education Finance Program to each
district for operation of schools is not determined in the
annual appropriations act or the substantive bill implementing



777752

11 the annual appropriations act, it shall be determined as
12 follows:

13 (12) FLORIDA DIGITAL CLASSROOMS ALLOCATION.—

14 (b) Each district school board shall adopt a district
15 digital classrooms plan that meets the unique needs of students,
16 schools, and personnel and submit the plan for approval to the
17 Department of Education. In addition, each district school board
18 must, at a minimum, seek input from the district's
19 instructional, curriculum, and information technology staff to
20 develop the district digital classrooms plan. The district's
21 plan must be within the general parameters established in the
22 Florida digital classrooms plan pursuant to s. 1001.20. In
23 addition, if the district participates in federal technology
24 initiatives and grant programs, the district digital classrooms
25 plan must include a plan for meeting requirements of such
26 initiatives and grant programs. Funds allocated under this
27 subsection must be used to support implementation of district
28 digital classrooms plans. By October 1, 2014, and by March 1 of
29 each year thereafter, on a date determined by the department,
30 each district school board shall submit to the department, in a
31 format prescribed by the department, a digital classrooms plan.
32 At a minimum, such plan must include, and be annually updated to
33 reflect, the following:

34 1. Measurable student performance outcomes. Outcomes
35 related to student performance, including outcomes for students
36 with disabilities, must be tied to the efforts and strategies to
37 improve outcomes related to student performance by integrating
38 technology in classroom teaching and learning. Results of the
39 outcomes shall be reported at least annually for the current



40 school year and subsequent 3 years and be accompanied by an
41 independent evaluation and validation of the reported results.

42 2. Digital learning and technology infrastructure purchases
43 and operational activities. Such purchases and activities must
44 be tied to the measurable outcomes under subparagraph 1.,
45 including, but not limited to, connectivity, broadband access,
46 wireless capacity, Internet speed, and data security, all of
47 which must meet or exceed minimum requirements and protocols
48 established by the department. For each year that the district
49 uses funds for infrastructure, a third-party, independent
50 evaluation of the district's technology inventory and
51 infrastructure needs must accompany the district's plan.

52 3. Professional development purchases and operational
53 activities. Such purchases and activities must be tied to the
54 measurable outcomes under subparagraph 1., including, but not
55 limited to, using technology in the classroom and improving
56 digital literacy and competency.

57 4. Digital tool purchases and operational activities. Such
58 purchases and activities must be tied to the measurable outcomes
59 under subparagraph 1., including, but not limited to,
60 competency-based credentials that measure and demonstrate
61 digital competency and certifications; third-party assessments
62 that demonstrate acquired knowledge and use of digital
63 applications; and devices that meet or exceed minimum
64 requirements and protocols established by the department.

65 5. Online assessment-related purchases and operational
66 activities. Such purchases and activities must be tied to the
67 measurable outcomes under subparagraph 1., including, but not
68 limited to, expanding the capacity to administer assessments and



69 compatibility with minimum assessment protocols and requirements
70 established by the department. If the administration of online
71 assessments after January 1, 2015, does not comply with the
72 minimum assessment protocols and requirements established by the
73 department, the department shall contract with an independent,
74 auditing entity that has expertise in the area of the
75 noncompliance to evaluate the extent of the noncompliance and
76 provide recommendations to remediate the noncompliance in future
77 administrations of online assessments.

78 Section 4. For the 2015-2016 fiscal year, the sum of
79 \$9,993,566, from the General Revenue Fund is appropriated in the
80 "Special Categories - Contracted Services" appropriation
81 category to the Agency for State Technology to conduct the
82 agency's duties under s. 282.0051(10)(b) and (c), Florida
83 Statutes.

84
85 ===== T I T L E A M E N D M E N T =====

86 And the title is amended as follows:

87 Delete line 28

88 and insert:

89 conforming a cross-reference; amending s. 1011.62,
90 F.S.; requiring the Department of Education to
91 contract with an independent, auditing entity if the
92 administration of online assessments after a certain
93 date does not comply with the minimum assessment
94 protocols and requirements established by the
95 department; requiring the auditing entity to perform
96 certain duties; providing an appropriation to the
97 agency; providing an effective

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-02213A-15

20157050pb

1 A bill to be entitled
 2 An act relating to digital classrooms; amending s.
 3 282.0051, F.S.; requiring the Agency for State
 4 Technology to establish and publish information
 5 technology architecture standards for purposes of
 6 implementing digital classrooms by a specified date;
 7 requiring the agency to collaborate with the
 8 Department of Education and the Department of
 9 Management Services to identify certain state contract
 10 procurement options for services that support such
 11 standards and to identify certain shared services
 12 available through the State Data Center to facilitate
 13 the implementation of school district digital
 14 classrooms plans; requiring the agency's annual
 15 assessment of the Department of Education to review
 16 specified issues with respect to school district
 17 digital classrooms plans and to provide planning
 18 assistance to address and reduce issues identified by
 19 the assessment; authorizing the agency to contract for
 20 assistance with the annual assessment if needed;
 21 requiring the agency to provide the annual assessment
 22 to the Commissioner of Education by a specified date;
 23 requiring a school district to take specified action
 24 within a certain period if the district is notified by
 25 the Department of Education that it is not in
 26 compliance with the information technology
 27 architecture standards; amending s. 282.00515, F.S.;
 28 conforming a cross-reference; providing an effective
 29 date.

Page 1 of 4

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

585-02213A-15

20157050pb

30
 31 Be It Enacted by the Legislature of the State of Florida:
 32
 33 Section 1. Subsections (2), (7), and (10) of section
 34 282.0051, Florida Statutes, are amended to read:
 35 282.0051 Agency for State Technology; powers, duties, and
 36 functions.—The Agency for State Technology shall have the
 37 following powers, duties, and functions:
 38 (2) Establish and publish information technology
 39 architecture standards that:
 40 (a) ~~to~~ Provide for the most efficient use of the state's
 41 information technology resources and ~~that~~ ~~to~~ ensure
 42 compatibility and alignment with the needs of state agencies.
 43 The agency shall assist state agencies in complying with the
 44 standards.
 45 (b) Address for purposes of implementing digital classrooms
 46 under s. 1011.62(12) issues that include, but are not limited
 47 to, device recommendations, security requirements, connectivity
 48 requirements, and browser expectations. Such standards must be
 49 published by July 1, 2016.
 50 (7) (a) Participate with the Department of Management
 51 Services in evaluating, conducting, and negotiating competitive
 52 solicitations for state term contracts for information
 53 technology commodities, consultant services, or staff
 54 augmentation contractual services pursuant to s. 287.0591.
 55 (b) Collaborate with the Department of Management Services
 56 in information technology resource acquisition planning.
 57 (c) Collaborate with the Department of Education and the
 58 Department of Management Services to identify:

Page 2 of 4

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

585-02213A-15

20157050pb

59 1. State term contract procurement options that are
 60 available to school districts which provide information
 61 technology commodities, consultant services, or staff
 62 augmentation contractual services that support the information
 63 technology architecture standards applicable to digital
 64 classrooms.

65 2. Shared services available to school districts through
 66 the State Data Center to facilitate the implementation of school
 67 district digital classrooms plans.

68 (10) (a) Beginning July 1, 2016, and annually thereafter,
 69 conduct annual assessments of state agencies to determine
 70 compliance with all information technology standards and
 71 guidelines developed and published by the agency, and beginning
 72 December 1, 2016, and annually thereafter, provide results of
 73 the assessments to the Executive Office of the Governor, the
 74 President of the Senate, and the Speaker of the House of
 75 Representatives.

76 (b) Include in the annual assessment of the Department of
 77 Education under paragraph (a):

78 1. A review of each school district's digital classrooms
 79 plan submitted to the Department of Education under s.
 80 1011.62(12), to determine the school district's compliance with
 81 the information technology architecture standards adopted under
 82 paragraph (2)(b) and to ensure the accuracy of the school
 83 district's information technology resources inventory as
 84 submitted to the Department of Education's Technology Resources
 85 Inventory System.

86 2. Planning assistance to the Department of Education,
 87 school districts, and public schools to address and reduce any

585-02213A-15

20157050pb

88 issues identified by the annual assessment.

89 (c) Contract, if assistance with the completion of the
 90 annual assessment under paragraph (b) is needed, with one or
 91 more independent, third-party professional organizations.

92 (d) Provide the annual assessment under paragraph (b) to
 93 the Commissioner of Education by December 1, 2016, and annually
 94 thereafter. If the Department of Education notifies a school
 95 district that the district is not in compliance with the
 96 information technology architecture standards adopted under
 97 paragraph (2)(b), the district, within 60 days after such
 98 notification, must become compliant, obtain an exemption from
 99 such compliance from the Department of Education, or procure
 100 services through the agency or the Department of Management
 101 Services to achieve compliance.

102 Section 2. Section 282.00515, Florida Statutes, is amended
 103 to read:

104 282.00515 Duties of Cabinet agencies.—The Department of
 105 Legal Affairs, the Department of Financial Services, and the
 106 Department of Agriculture and Consumer Services shall adopt the
 107 standards established in s. 282.0051(2)(a), (3), and (8) or
 108 adopt alternative standards based on best practices and industry
 109 standards, and may contract with the Agency for State Technology
 110 to provide or perform any of the services and functions
 111 described in s. 282.0051 for the Department of Legal Affairs,
 112 the Department of Financial Services, or the Department of
 113 Agriculture and Consumer Services.

114 Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/17/15

Meeting Date

SB 7050

Bill Number (if applicable)

Topic Digital classrooms

Amendment Barcode (if applicable)

Name Brittney Burch

Job Title Director of Ed. Policy

Address _____

Phone _____

Street

City

State

Zip

Email bburch@flchamber.com

Speaking: For Against Information

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

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: SB 401

Case:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 3/17/2015 9:03:27 AM

Ends: 3/17/2015 10:25:47 AM

Length: 01:22:21

9:03:30 AM Meeting called to order, Roll Call
9:04:12 AM Tab 8 - SB 7034 by Ethics and Elections—OGSR/Stalking Victims Identifying Info
9:05:17 AM Amendment Barcode 530940
9:05:37 AM Roll Call on SB 7034
9:06:58 AM Tab 9 - SPB 7050 by Governmental Oversight and Accountability
9:08:08 AM Amendment Barcode 777752
9:12:10 AM Senator Ring closes
9:12:43 AM Roll Call on SPB 7050
9:13:33 AM Tab 2 - SB 552 by Senator Hays—Public Records/Homelessness Surveys and Databases
9:14:03 AM Amendment Barcode 673588 Senator Hays
9:14:55 AM Roll Call on SB 552
9:15:50 AM Tab 6 - SB 7016 by Judiciary—OGSR/Minor Identifying Information
9:17:09 AM Roll Call on SB 7016
9:17:30 AM Tab 5 - SB 1284 by Senator Soto—Administrative Procedures
9:18:15 AM Amendment Barcode 797194 Senator Bullard
9:19:03 AM Roll Call on SB 1284
9:19:45 AM Tab 7 - SB 7032 by Health Policy—Public Records/Reports of a Deceased Child
9:21:15 AM Roll Call on SB 7032
9:21:51 AM Tab 1 - CS/SB 248 by Criminal Justice / Senator Smith—Public Records/Audio or Video Recording Mad
9:22:33 AM Senator Smith speaks on CS/SB 248 amendment
9:23:07 AM Amendment Barcode 252982 Senator Ring
9:24:07 AM Amendment Barcode 328126
9:25:19 AM Late filed amendment 864868
9:26:47 AM Senator Hays asked a question to Senator Smith.
9:29:45 AM J.O. Patterson, Miami-Dade County Police
9:30:52 AM Michelle Richardson, ACLU of Florida
9:35:07 AM Senator Smith closes on CS/SB 248.
9:36:24 AM Roll Call on CS/SB 248
9:36:56 AM Tab 4 - CS/SB 778 by Community Affairs / Senator Hays—Local Government Construction Preference
9:41:40 AM Amendment Barcode 847222 Senator Hays
9:43:13 AM J.B. Clark, Lobbyist, speaks against the bill.
9:44:22 AM Carol Bowen, Associated Builders & Contractors of Florida
9:46:14 AM Rich Templin, Florida AFL-CIO
9:50:15 AM Senator Legg asks a question of Mr. Templin.
9:50:52 AM Mr. Templin responds.
9:52:03 AM Eric Poole, Florida Association of Counties
9:59:21 AM Greg Ross, Mayor, Cooper City
10:01:19 AM Frank Ortis, Mayor, Pembroke Pines
10:05:54 AM Patricia Ingle, self, Gainesville, Florida
10:07:47 AM Senator Latvala asks Senator Hays a question about where the labor comes from.
10:09:46 AM James Ingle, Electrician from Gainesville, Florida
10:12:44 AM Dominick Montanaaro, Vice Mayor, Satellite Beach & Space Coast League of Cities
10:13:37 AM Bill Barrett, City of St. Cloud
10:20:04 AM Casey Cook, Florida League of Cities
10:20:55 AM Thom Barnhorn, Vice Mayor, City of Seminole
10:24:05 AM Senator Hays closes on CS/SB 778
10:25:08 AM Roll Call on CS/SB 778
10:25:31 AM Meeting Adjourned