

**SB 984** by **Braynon**; (Identical to H 0599) Exemption from Legislative Lobbying Requirements

**SB 1612** by **Detert**; (Similar to H 7107) Public Records/Criminal History Records

**CS/SB 564** by **CM, Richter**; (Identical to CS/H 0091) Trade Secrets

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**CS/SB 566** by **CM, Richter**; (Similar to CS/H 0093) Public Records/Trade Secrets

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**CS/SB 1324** by **CJ, Latvala**; (Similar to CS/H 1015) Public Records/Agency Personnel Information

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**CS/SB 1536** by **CJ, Flores**; (Identical to H 7061) Public Records/Florida RICO Act Investigations

**SB 1582** by **Richter**; (Similar to CS/CS/H 1209) Public Records/High-pressure Well Stimulation Chemical Disclosure Registry

**CS/SB 360** by **CF, Stargel**; (Similar to CS/H 0007) Public Records/Claim Settlement on Behalf of a Ward or Minor

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**SPB 7082** by **GO**; Death Benefits Under the Florida Retirement System

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

**MEETING DATE:** Tuesday, April 7, 2015

**TIME:** 1:30 —3:30 p.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	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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**Senate Confirmation Hearing:** A public hearing will be held for consideration of the below-named executive appointment to the office indicated.

**Executive Director, Agency for State Technology**

1	Allison, Jason M. (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 4 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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2	<b>SB 984</b> Braynon (Identical H 599)	Exemption from Legislative Lobbying Requirements; Revising the definition of the term "expenditure"; specifying that the term does not include use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, to exempt such use from legislative lobbying requirements, etc.  EE     03/24/2015 Favorable GO     04/07/2015 Favorable RC	Favorable Yeas 4 Nays 0
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3	<b>SB 1612</b> Detert (Similar H 7107, Compare CS/H 7105, Link CS/S 488)	Public Records/Criminal History Records; Providing an exemption from public records requirements for specified records that have been approved for nonjudicial expunction; providing an exemption from public records requirements for criminal history records related to a withhold of adjudication that have been expunged; providing an exemption from public records requirements for a record related to a withhold of adjudication or nonviolent misdemeanor conviction that has been approved for a nonjudicial sealing; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.  GO     04/07/2015 Favorable FP	Favorable Yeas 4 Nays 0
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**COMMITTEE MEETING EXPANDED AGENDA**Governmental Oversight and Accountability  
Tuesday, April 7, 2015, 1:30 —3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>CS/SB 564</b> Commerce and Tourism / Richter (Identical CS/H 91, Compare CS/H 93, Link CS/S 566)	Trade Secrets; Including financial information in provisions prohibiting the theft, embezzlement, or unlawful copying of trade secrets; providing criminal penalties, etc.  CM 03/30/2015 Fav/CS GO 04/07/2015 Fav/CS RC	Fav/CS Yeas 4 Nays 0
5	<b>CS/SB 566</b> Commerce and Tourism / Richter (Similar CS/H 93, Compare CS/H 91, Link CS/S 564)	Public Records/Trade Secrets; Expanding public records exemptions for certain data processing software obtained by an agency, certain information held by a county tourism promotion agency, information related to trade secrets held by specified entities, and specified data, programs, or supporting documentation held by an agency; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.  CM 03/30/2015 Fav/CS GO 04/07/2015 Fav/CS RC	Fav/CS Yeas 4 Nays 0
6	<b>CS/SB 1324</b> Criminal Justice / Latvala (Similar CS/H 1015)	Public Records/Agency Personnel Information; Providing exemptions from public records requirements for certain information related to active or former sworn or civilian law enforcement personnel and specified agency personnel, current and former state attorneys, assistant state attorneys, statewide prosecutors, assistant statewide prosecutors, public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsel, and assistant capital collateral regional counsel and their parents, siblings, or cohabitants; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.  CJ 03/30/2015 Fav/CS GO 04/07/2015 Fav/CS RC	Fav/CS Yeas 4 Nays 0
7	<b>CS/SB 1536</b> Criminal Justice / Flores (Identical H 7061, Compare H 7059, Link CS/S 1514)	Public Records/Florida RICO Act Investigations; Providing an exemption from public records requirements for certain documents and information held by an investigative agency pursuant to an investigation relating to an activity prohibited under the Florida RICO Act; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 03/23/2015 Not Considered CJ 03/30/2015 Fav/CS GO 04/07/2015 Favorable AP	Favorable Yeas 4 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability  
Tuesday, April 7, 2015, 1:30 —3:30 p.m.

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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	<b>SB 1582</b> Richter (Similar CS/CS/H 1209, Compare CS/H 1205, Link S 1468)	Public Records/High-pressure Well Stimulation Chemical Disclosure Registry; Providing an exemption from public records requirements for proprietary business information relating to high pressure well stimulations obtained by the Department of Environmental Protection in connection with the department's online high pressure well stimulation chemical disclosure registry; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc.  EP 03/31/2015 Favorable GO 04/07/2015 Favorable AP	Favorable Yeas 3 Nays 1
9	<b>CS/SB 360</b> Children, Families, and Elder Affairs / Stargel (Similar CS/H 7, Compare CS/CS/CS/H 5, CS/S 318, Link S 366)	Public Records/Claim Settlement on Behalf of a Ward or Minor; Providing an exemption from public records requirements for records relating to the settlement of a claim on behalf of a ward or minor; authorizing a guardian ad litem, a ward, a minor, and a minor's attorney to inspect guardianship reports and court records relating to the settlement of a claim on behalf of a ward or minor upon a showing of good cause; authorizing the court to direct disclosure and recording of an amendment to a report or court records relating to the settlement of a claim on behalf of a ward or minor, in connection with real property or for other purposes; providing a statement of public necessity, etc.  CF 02/19/2015 Fav/CS GO 04/07/2015 Fav/CS RC	Fav/CS Yeas 4 Nays 0
Consideration of proposed bill:			
10	<b>SPB 7082</b>	Death Benefits Under the Florida Retirement System; Authorizing payment of death benefits to the surviving spouse or surviving children of a Special Risk Class member killed in the line of duty under specified circumstances; requiring the State Board of Administration or the Division of Retirement to take certain action upon receipt of notification of disqualification from the Internal Revenue Service; providing for allocations for death benefits authorized by the act, etc.	Submitted as Committee Bill Yeas 4 Nays 0
<b>(Preliminary Draft Available - final draft will be made available at least 24 hours prior to the meeting)</b>			

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Other Related Meeting Documents

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Tuesday, April 7, 2015, 1:30 —3:30 p.m.

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Amended 9

A black and white copy of this document is not official

2300

**STATE OF FLORIDA  
DEPARTMENT OF STATE  
Division of Elections**

I, Ken Detzner, Secretary of State,  
do hereby certify that

*Jason M. Allison*

is duly appointed

**Executive Director,  
Agency for State Technology**

for a term beginning on the  
Sixth day of January, A.D., 2015,  
to serve at the pleasure of the Governor  
and is subject to be confirmed by the Senate  
during the next regular session of the Legislature.

*Given under my hand and the Great Seal of the  
State of Florida, at Tallahassee, the Capital, this  
the Twenty-Sixth day of February, A.D., 2015.*

*Ken Detzner*

Secretary of State



If photocopied or chemically altered, the word "VOID" will appear.

State of Florida appears in small letters across the face of this 8 1/2 x 11" document.



**RICK SCOTT**  
GOVERNOR

March 17, 2015

Secretary Kenneth W. Detzner  
Department of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have amended the following reappointment under the provisions of Section 20.61, Florida Statutes:

as Executive Director of the Agency for State Technology, subject to confirmation by the Senate. This appointment is effective January 6, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/vh

*Amended*



**RICK SCOTT**  
GOVERNOR

RECEIVED  
15 FEB 25 PM 1:1

DIVISION OF  
SECRETARY OF STAT

February 24, 2015

Secretary Kenneth W. Detzner  
Department of State  
State of Florida  
R. A. Gray Building, Room 316  
500 South Bronough Street  
Tallahassee, Florida 32399-0250

Dear Secretary Detzner:

Please be advised I have made the following reappointment under the provisions of Section 20.16, Florida Statutes:

as Executive Director of the Agency for State Technology, subject to confirmation by the Senate. This appointment is effective January 6, 2015, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Scott".

Rick Scott  
Governor

RS/vh



The Florida Senate  
**Committee Notice Of Hearing**

IN THE FLORIDA SENATE  
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of  
Jason M. Allison  
Executive Director, Agency for State Technology

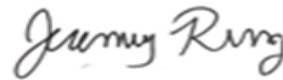
**NOTICE OF HEARING**

TO: Mr. Jason M. Allison

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, April 07, 2015, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 1:30 p.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.  
DATED this the 3rd day of April, 2015

Committee on Governmental Oversight and  
Accountability



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Senator Jeremy Ring  
As Chair and by authority of the committee

cc: Members, Committee on Governmental Oversight and Accountability  
Office of the Sergeant at Arms

OATH OF OFFICE DEPARTMENT OF STATE  
(Art. II, § 5(b), Fla. Const.)

RECEIVED  
DEPARTMENT OF STATE

2015 FEB 10 PM 4:31

STATE OF FLORIDA

County of Leon

DIVISION OF ELECTIONS  
TALLAHASSEE, FL

I do solemnly swear (or affirm) that I will support, protect, and defend the Constitution and Government of the United States and of the State of Florida; that I am duly qualified to hold office under the Constitution of the State, and that I will well and faithfully perform the duties of

Executive Director, Agency for State Technology  
(Title of Office)

on which I am now about to enter, so help me God.

[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

[Signature]  
Signature

Sworn to and subscribed before me this 9<sup>th</sup> day of February, 2015.

[Signature]  
Signature of Officer Administering Oath or of Notary Public

Jessica L Salvo  
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known  OR Produced Identification

Type of Identification Produced \_\_\_\_\_



ACCEPTANCE

I accept the office listed in the above Oath of Office.

Mailing Address:  Home  Office

\_\_\_\_\_  
Street or Post Office Box

\_\_\_\_\_  
City, State, Zip Code

Jason M. Allison  
Print name as you desire commission issued

[Signature]  
Signature

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/2015

Meeting Date

Bill Number (if applicable)

Topic Confirmation hearing

Amendment Barcode (if applicable)

Name Jason M. Allison

Job Title Executive Director, State CIO

Address 4050 Esplanade Way

Phone 412-6050

Street

TLH

City

FL

State

32399

Zip

Email jason.allison@ast.myfloridachamber.com

Speaking:  For  Against  Information

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

Representing Agency for State Technology

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

# COMMITTEE WITNESS OATH

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**CHAIR:**

Please raise your right hand and be sworn in as a witness.

Do you swear or affirm that the evidence you are about to give will be the truth, the whole truth, and nothing but the truth?

WITNESS'S NAME: Jason Allison

ANSWER: "yes sir"

Pursuant to §90.605(1), Florida Statutes: "The witness's answer shall be noted in the record."

COMMITTEE NAME: Governmental Oversight

DATE: 4/7/15

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

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

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

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BILL: SB 984

INTRODUCER: Senator Braynon

SUBJECT: Exemption from Legislative Lobbying Requirements

DATE: April 7, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carlton</u>	<u>Roberts</u>	<u>EE</u>	<b>Favorable</b>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 984 clarifies that the use of a public facility or public property provided from a governmental entity to a legislator for a public purpose is not an expenditure for purposes of the “legislative expenditure ban” in s. 11.045, F.S., regardless of whether the governmental entity is a principal. Unlike the current Rules of the Florida Senate and the Administrative Policy Manual of the Florida House of Representatives, this statutory exception does not include any requirement for approval by the presiding officers prior to the expenditure being made between the governmental entity and the legislator.

The effective date of the bill is July 1, 2015.

**II. Present Situation:**

Section 11.045, F.S., contains provisions requiring legislative lobbying registration and legislative lobbyist compensation reports, and it contains the “legislative expenditure ban.”

Section 11.045(4)(a), F.S., provides in pertinent part, that “no lobbyist or principal shall make, directly or indirectly, and no member or employee of the legislature shall knowingly accept, directly or indirectly, any expenditure . . .” A “principal” is defined as “the person, firm, corporation, or other entity which has employed or retained a lobbyist.”<sup>1</sup> This appears to include governmental entities such as municipalities, counties, water management districts, universities, and colleges.

Section 11.045(1)(c), F.S., defines the term “expenditure” as:

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<sup>1</sup> Section 11.045(1)(i), F.S.

a payment, distribution, loan, advance, reimbursement, deposit, or anything of value made by a lobbyist or principal for the purpose of lobbying. The term does not include contributions or expenditures reported pursuant to chapter 106 or federal election law, campaign-related personal services provided without compensation by individuals volunteering their time, any other contribution or expenditure made by or to a political party or affiliated party committee, or any other contribution or expenditure made by an organization that is exempt from taxation under 26 U.S.C. s. 527 or s. 501(c)(4). (emphasis supplied.)

The term “lobbying” means “influencing or attempting to influence legislative action or nonaction through oral or written communication or an attempt to obtain the goodwill of a member or employee of the Legislature.”<sup>2</sup>

The following penalties can be imposed for violation of the legislative expenditure ban:<sup>3</sup>

- A fine of not more than \$5,000;
- Reprimand;
- Censure;
- Probation; and/or
- Prohibition on lobbying for a period not to exceed 24 months.

Section 11.045(5), F.S., requires each house of the legislature to provide by rule a procedure for determining the applicability and interpretation of this section. To that end, the Florida Senate has adopted Senate Rule 9.8.

The pertinent portion of that Rule for this legislation is contained in Senate Rule 9.8, Part One – Expenditures, Section One – General Guidelines, Subsection g – Exceptions, No. 6. The text of the rule reads:

6. Government to Government Expenditures

Real property or a facility owned or operated by a state or local public agency or entity that is a lobbying principal and transportation to, from, and at the location provided by that agency or entity may, with the prior approval of the respective state legislative presiding officer or his or her designee, be used without payment, by a member, committee, or staff of the Legislature for a public legislative purpose. Such purposes include publicly noticed legislative committee meetings and site visits to operations conducted by the public agency or entity. Allowable free uses also specifically include legislative district offices and sub-offices and the normally attendant utilities, parking, janitorial services, building maintenance, and telecommunications equipment and services common to a government building in which the office is located. Allowable free use does not extend to sports or entertainment venues; does not include food, beverages, or entertainment; and does not include free parking privileges at any location other than a district office or sub-office. (Emphasis supplied.)

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<sup>2</sup> Section 11.045(1)(e), F.S.

<sup>3</sup> Section 11.045(7), F.S.

The Florida House of Representatives has included a similar approval process in its policies.<sup>4</sup>

### III. Effect of Proposed Changes:

**Section 1** creates a statutory exception to the definition of “expenditure” for a “public-legislative use.” The exception provides that a “public-legislative use” is the “use of a public facility or public property that is made available by a governmental entity to a legislator for a public purpose, regardless of whether the governmental entity is required to register a person as a lobbyist pursuant to this section.”

This statutory exception does not include the requirement of approval by the presiding officers currently contained in both the Senate Rules and the Administrative Policy Manual for the House of Representatives.

Section 2 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:

None.

#### C. Government Sector Impact:

Minimal.

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<sup>4</sup> Florida House of Representatives, “Administrative Policy Manual” dated December 2014, pages 9 and 10.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The “old” gifts law codified in s. 112.3148, F.S., which predates the “Legislative Expenditure Ban,” prohibits certain gifts in excess of \$100 to reporting individuals (anyone required to file annual financial disclosure,<sup>5</sup> including legislators) and procurement employees. Section 112.3148, F.S., exempts gifts given by a state, county, and municipal government (and certain other governmental organizations) valued at more than \$100 if a public purpose can be shown. Current law requires annual disclosure of such gifts on a Commission on Ethics (CE) Form 10. Because both ss. 11.045 and 112.3148, F.S., apply to members of the Legislature, it is important to note that, if a member or employee were to accept use of a public facility or public property from a governmental entity as authorized by the bill, the member or employee would be required to disclose the gift on a CE Form 10 (under current law and the provisions of the bill).

**VIII. Statutes Affected:**

This bill substantially amends section 11.045 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

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

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<sup>5</sup> FLA. CONST., art. II, s. 8, and s. 112.3144, F.S.



By Senator Braynon

36-00239A-15

2015984\_\_

1 A bill to be entitled  
 2 An act relating to an exemption from legislative  
 3 lobbying requirements; amending s. 11.045, F.S.;  
 4 revising the definition of the term "expenditure";  
 5 specifying that the term does not include use of a  
 6 public facility or public property that is made  
 7 available by a governmental entity to a legislator for  
 8 a public purpose, to exempt such use from legislative  
 9 lobbying requirements; providing an effective date.

10

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

12

13 Section 1. Paragraph (c) of subsection (1) of section  
 14 11.045, Florida Statutes, is amended to read:

15 11.045 Lobbying before the Legislature; registration and  
 16 reporting; exemptions; penalties.—

17 (1) As used in this section, unless the context otherwise  
 18 requires:

19 (c) "Expenditure" means a payment, distribution, loan,  
 20 advance, reimbursement, deposit, or anything of value made by a  
 21 lobbyist or principal for the purpose of lobbying. The term does  
 22 not include:

23 1. Contributions or expenditures reported pursuant to  
 24 chapter 106 or federal election law, campaign-related personal  
 25 services provided without compensation by individuals  
 26 volunteering their time, any other contribution or expenditure  
 27 made by or to a political party or affiliated party committee,  
 28 or any other contribution or expenditure made by an organization  
 29 that is exempt from taxation under 26 U.S.C. s. 527 or s.

Page 1 of 2

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

36-00239A-15

2015984\_\_

30 501(c) (4) .  
 31 2. A public-legislative use, which is the use of a public  
 32 facility or public property that is made available by a  
 33 governmental entity to a legislator for a public purpose,  
 34 regardless of whether the governmental entity is required to  
 35 register a person as a lobbyist pursuant to this section.  
 36 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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 1612

INTRODUCER: Senator Detert

SUBJECT: Public Records/Criminal History Records

DATE: April 7, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kim	McVaney	GO	<b>Favorable</b>
2.			FP	

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**I. Summary:**

SB 1612 is the public records exemption companion to CS/SB 488. CS/SB 488 makes substantial changes to Florida's expunge and seal laws by creating a nonjudicial process for the expunction and sealing of criminal history records. CS/SB 488 retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case in which a court issued a withhold of adjudication.

This bill is subject to review and repeal on October 2, 2020, unless saved from repeal by the Legislature.

Because this bill expands and creates a public records exemption, it will require a two-thirds vote of each house in order to pass.

**II. Present Situation:**

**Criminal History Record Sealing and Expunging**

Sections 943.0585 and 943.059, F.S., set forth procedures for sealing and expunging criminal history records. The courts have jurisdiction over their own judicial records containing criminal history information and over their procedures for maintaining and destroying those records. The FDLE can administratively expunge non-judicial records of arrest that are made contrary to law or by mistake.

When a record is expunged, it is physically destroyed and no longer exists if it is in the custody of a criminal justice agency<sup>1</sup> other than the FDLE. Criminal justice agencies are allowed to make

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<sup>1</sup> Section 943.045(11), F.S., defines a criminal justice agency as follows: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families (DCF), which investigates the crimes of abuse and neglect; or any other governmental agency or subunit thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice.

a notation indicating compliance with an expunction order. The FDLE, on the other hand, is required to retain expunged records. When a record is sealed, it is not destroyed, but access is limited to the subject of the record, his or her attorney, criminal justice agencies for their respective criminal justice purposes, and certain other specified agencies for their respective licensing and employment purposes.<sup>2</sup>

Persons who have had their criminal history records sealed or expunged may lawfully deny or fail to acknowledge the arrests covered by their record, except when they are applying for certain types of licensure or employment,<sup>3</sup> petitioning the court for a record sealing or expunction, or are a defendant in a criminal prosecution.<sup>4</sup>

Records that have been sealed or expunged are confidential and exempt from the public records law. It is a first degree misdemeanor to divulge their existence, except to specified entities for licensing or employment purposes.<sup>5</sup>

In 1992, the Legislature amended the sealing and expunction statute to require a person seeking a sealing or expunction to first obtain a certificate of eligibility from FDLE and then, if the person meets the statutory criteria based on the department's criminal history check and receives a certificate, he or she can petition the court for a record sealing or expunction.<sup>6</sup> It is then up to the court to decide whether the sealing or expunction is appropriate.

To receive a certificate of eligibility<sup>7</sup>, a person must:

- Submit to FDLE a written, certified statement from the appropriate state attorney or statewide prosecutor indicating that:
  - An indictment, information, or other charging document was not filed or issued in the case; or if filed, was dismissed or nolle prosequi by the state attorney or statewide prosecutor or was dismissed by a court of competent jurisdiction;<sup>8</sup>
  - None of the charges related to the record the person wishes to expunge resulted in a trial, without regard to whether the outcome of the trial was other than an adjudication of guilt;<sup>9</sup> and

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<sup>2</sup> Including the following: a criminal justice agency; the Florida Bar; working in a sensitive position involving direct contact with children, the developmentally disabled, or the elderly through the DCF, Division of Vocational Rehabilitation within the Department of Education (DOE), the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice; or persons seeking to be employed or licensed by the DOE, any district school board, any university laboratory school, any charter school, any private or parochial school, or any local governmental entity licensing child care facilities; a Florida seaport; the Division of Insurance Agent and Agency Services within the Department of Financial Services; or the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services. Sections 943.0585(4) and 985.059(4), F.S.

<sup>3</sup> *Id.*

<sup>4</sup> Section 943.0585(4)(a), F.S.

<sup>5</sup> Section 943.0585(4)(c), F.S.

<sup>6</sup> Section 943.0585(2), F.S.

<sup>7</sup> A certificate of eligibility for expunction or sealing is valid for 12 months after the date stamped on the certificate. If the certificate expires then a person must reapply for a new certificate of eligibility. The new certificate of eligibility must be based on the status of the applicant and the law in effect at the time of the reapplication. Sections 943.0585(2) and 943.059(2), F.S.

<sup>8</sup> Only required for an expunction.

<sup>9</sup> *Id.*

- The criminal history record does not relate to a violation of specified listed offenses regardless of whether adjudication was withheld<sup>10</sup>;
- Pay a \$75 processing fee;
- Submit a certified copy of the disposition of the record desired to be sealed or expunged;
- Have not previously been adjudicated guilty of any offense or adjudicated delinquent for any felony or misdemeanor specified in s. 943.051(3)(b), F.S.;<sup>11</sup>
- Have never been adjudicated guilty or delinquent for any of the acts stemming from the arrest or alleged criminal activity of the record desired to be sealed or expunged;
- Have never had a prior sealing or expunction of a criminal history record (unless it is the required ten year sealing for the offense desired to be expunged); and
- No longer be under any court supervision related to the disposition of the record desired to be sealed or expunged.

In addition to the certificate, a petition to seal or expunge a criminal history record must also include the petitioner's sworn statement that he or she:

- Has not previously been adjudicated guilty of any offense or adjudicated delinquent for any felony or misdemeanor offense specified in s. 943.051(3)(b), F.S.;
- Has not been adjudicated guilty or delinquent for any of the charges he or she is currently trying to have sealed or expunged;
- Has not obtained a prior sealing or expunction (unless it is the required ten year sealing for the offense desired to be expunged); and
- Is eligible to the best of his or her knowledge and has no other pending expunction or sealing petitions before the court.<sup>12</sup>

The statute also requires that the record be sealed for 10 years before it can be expunged, unless charges were not filed or were dismissed by the prosecutor or court, regardless of the outcome of the trial.<sup>13</sup> In other words, if the formal adjudication of guilt is withheld by the court, or the applicant is acquitted, the record must first be sealed for ten years. If the charges are dropped, the record can be immediately expunged.<sup>14</sup>

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<sup>10</sup> These listed offenses include the following: sexual misconduct with developmentally disabled clients, mental health patients, or forensic clients; luring or enticing a child; sexual battery; procuring a person under 18 years for prostitution; lewd, lascivious, or indecent assault upon a child; lewd or lascivious offenses committed on an elderly or disabled person; voyeurism; communications fraud; sexual performance by a child; unlawful distribution of obscene materials to a minor; unlawful activities involving computer pornography; selling or buying minors for the purpose of engaging in sex trafficking or prostitution, or sexually explicit conduct; offenses by public officers and employees; drug trafficking; and, other dangerous crimes such as arson, aggravated assault or battery, illegal use of explosives, child abuse or aggravated child abuse, elderly or disabled abuse, aggravated elderly or disabled abuse, aircraft piracy, sexual activity with a child, terrorism, manufacturing controlled substances, kidnapping, murder, manslaughter, robbery, home invasion robbery, carjacking, stalking, domestic violence, burglary and any violation specified as a predicate offense for sexual predator or sexual offender registration.

<sup>11</sup> These misdemeanors include: assault; battery; carrying a concealed weapon; unlawful use of destructive devices or bombs; negligent treatment of children; assault or battery on a law enforcement officer, firefighter, or other specified officers; open carrying of a weapon; exposure of sexual organs; unlawful possession of a firearm; petit theft; cruelty to animals; arson; and unlawful possession or discharge of a weapon or firearm at a school- sponsored event or on school property.

<sup>12</sup> Section 943.0585(1)(b), F.S.

<sup>13</sup> Section 943.0585(1)(b), F.S.

<sup>14</sup> Section 943.0585(2)(h), F.S.

<sup>14</sup> This also includes when an indictment, information, or other charging document is not filed or is dismissed by the state attorney, or dismissed by the court, because it was found that the person acted in lawful self-defense under the provisions related to justifiable use of force in ch. 776, F.S. Section 943.0585(5), F. S.

Any person knowingly providing false information on the sworn statement commits a felony of the third degree.<sup>15</sup>

To summarize, a person is not currently eligible to have a record expunged or sealed if the person was convicted for any of the charges to which the petition to expunge or seal pertains. Similarly, a person who has a previous unrelated conviction is ineligible to have a record expunged or sealed. In addition, a court may not seal or expunge a record that relates to any of the prohibited listed offenses in which the defendant was found guilty of or pled guilty or nolo contendere to such offense, or if the defendant, as a minor, was found to have committed, or pled guilty or pled nolo contendere to committing the offense as a delinquent act.<sup>16</sup>

### **Automatic Expunction of Criminal History Records of Minors**

Section 943.0515, F.S., requires FDLE to automatically expunge the criminal history records of specified juveniles at age 24 or 26. For juveniles who are classified as serious or habitual juvenile offenders, or that have been committed to a juvenile correctional facility or juvenile prison, the FDLE must retain their record until the age of 26, at which time it is automatically expunged.<sup>17</sup> For all other juveniles, FDLE must retain the record until the juvenile reaches the age of 24, at which time it is automatically expunged.<sup>18</sup>

A juvenile's record is prohibited from being automatically expunged if:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to a minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.<sup>19,20</sup>

In these three instances, the person's record as a minor must be merged with and retained as part of their adult record.<sup>21</sup>

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

#### **Criminal History Record Sealing and Expunging As Provided in CS/SB 488**

CS/SB 488 creates a nonjudicial process for the expunction and sealing of criminal history records. CS/SB 488 retains the court-ordered expunction process, but limits its application to the expunction of a record related to a case when a court withholds adjudication.

<sup>15</sup> Section 943.0585(1), F.S.

<sup>16</sup> This restriction applies regardless to whether adjudication was withheld on any of the listed offenses. Sections 943.0585(1) and 943.059(1), F.S.

<sup>17</sup> Section 943.0515(1)(a), F.S.

<sup>18</sup> Section 943.0515(1)(b), F.S.

<sup>19</sup> Sections 943.0515(2) and (3), F.S.

<sup>20</sup> Section 943.0435, F.S., defines a "sexual offender" and proscribes when a sexual offender is required to register with FDLE.

<sup>21</sup> *Id.*

CS/SB 488 permits a person to obtain:

- An unlimited number of “nonjudicial expunctions” for records that resulted in a no-information, a dismissal, a dismissal based on the lawful self-defense exception, or a not guilty verdict, regardless of whether the person has previous misdemeanor or felony convictions;
- One court-ordered expunction of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction; and either
- One “nonjudicial sealing” of a record that resulted in a withhold of adjudication, regardless of whether the person has a previous misdemeanor conviction, or
- One “nonjudicial sealing” of a record that resulted in a conviction for a specified “nonviolent misdemeanor,” regardless of whether the person has a previous misdemeanor conviction.

### *Nonjudicial Expunction*

CS/SB 488 creates s. 943.0584, F.S., requiring specified records to be expunged without petitioning the court. CS/SB 488 requires FDLE to approve the nonjudicial expunction of an unlimited number of criminal history records of a minor or adult relating to cases in which a:

- No-Information was issued;
- Dismissal was granted by the state attorney or statewide prosecutor, or by a court of competent jurisdiction;
- Dismissal was granted by the state attorney or court based on the lawful self-defense exception; or
- Not-guilty verdict was rendered subsequent to a trial or adjudicatory hearing.

It should be noted that a person may not obtain a nonjudicial expunction unless all charges stemming from the arrest or alleged criminal activity to which the application for expunction pertains were not filed or issued, dismissed or discharged, or resulted in an acquittal.

Additionally, a record may not be approved for nonjudicial expunction if the:

- Case was dismissed pursuant to ss. 916.145 or 985.19, F.S., as a result of the person never being restored to competency; or
- Verdict at trial was not-guilty by reason of insanity.

CS/SB 488 removes the current requirement that a record related to a not guilty verdict be sealed for ten years prior to such record being eligible for expunction.

CS/SB 488 does not alter current law as it relates to obtaining an expunction when the dismissal was based on the lawful self-defense exception, but moves this from a court-ordered process to the newly-created nonjudicial expunction process.

Upon receiving a complete application, FDLE must approve the nonjudicial expunction of all records pertaining to the applicant that are eligible for the nonjudicial expunction.

Upon approval of a nonjudicial expunction, FDLE must serve a certified copy of the form approving the nonjudicial expunction to the state attorney or statewide prosecutor, the arresting agency, the clerk of the court, and the Federal Bureau of Investigation (FBI). The arresting agency must forward the approval form to any other agency that it disseminated the criminal

history record information to which the form pertains. Lastly, the clerk of the court must forward a copy of the form to any other agency which the records of the court reflect has received the criminal history record from the court.

CS/SB 488 provides that records that are approved for nonjudicial expunction pursuant to s. 943.0584, F.S., must have the same effect and be disclosed in the same manner as current law requires for records expunged pursuant to a court order under s. 943.0585, F.S. (i.e., that the record must be destroyed by all parties except FDLE, and a person may not lawfully deny the existence of the record to specified parties).

CS/SB 488 provides FDLE with authority to adopt a rule pursuant to ch. 120, F.S., for the nonjudicial expunction of any criminal history record of a minor or an adult described in this section.

### ***Court-Ordered Expunction***

Codified in s. 985.0585, F.S., CS/SB 488 leaves the general process of court-ordered expunction intact. However, CS/SB 488 limits its application to the expunction of a record related to a case in which a court issued a withhold of adjudication. A person must still obtain a certificate of eligibility from FDLE and petition the court to expunge the record. CS/SB 488 does not alter current law as it relates to the processing of an order to expunge, how the record is treated once an order to expunge is granted, or the persons that have access to a record that has been expunged.

CS/SB 488 amends s. 943.0585, F.S., to permit one record related to a withhold of adjudication to be expunged. A person no longer is required to first seal the withhold of adjudication for ten years to be eligible for an expunction. However, a court is prohibited from expunging a record pertaining to a withhold of adjudication if:

- The person seeking the expunction has, at any time prior to the date of filing the certificate of eligibility, been adjudicated guilty for a felony offense or adjudicated delinquent for an offense which, if committed by an adult, would be a felony; or
- The record relates to a prohibited listed offense where the person was convicted of, adjudicated delinquent of, or pled nolo contendere to the offense, regardless of whether adjudication was withheld.

### ***Nonjudicial Sealing***

CS/SB 488 amends s. 943.059, F.S., requiring specified records to be sealed without petitioning the court. A person may apply to FDLE for the nonjudicial sealing of one criminal history record of a minor or adult relating to cases in which a person:

- Received a withhold of adjudication from the court; or
- Was convicted of a “nonviolent misdemeanor,” as defined by the CS/SB 488.

CS/SB 488 authorizes FDLE to approve the nonjudicial sealing under s. 943.059, F.S., of a record related to one arrest or one incident of alleged criminal activity, unless the state attorney or statewide prosecutor provides supporting documentation that additional arrests are directly related to the arrest sought to be sealed. If FDLE approves the sealing of such additional arrests, the approval form must express the intent to do so.

Upon approval of a nonjudicial sealing, FDLE must forward a certified copy of the form approving the nonjudicial sealing to the state attorney or statewide prosecutor, the arresting agency, the clerk of the court, and the FBI. The arresting agency must forward the approval form to any other agency that it disseminated the criminal history record information to which the form pertains. Lastly, the clerk of the court must forward a copy of the form to any other agency which the records of the court reflect has received the criminal history record from the court.

CS/SB 488 does not alter current law as it relates to how the record is treated once an order to seal is granted, or the persons that have access to the record that has been sealed (i.e. that the record continues to be maintained by FDLE and other criminal justice agencies, specified persons can access the sealed record, and the list of entities to which the person may not lawfully deny the existence of the sealed record).

### **Automatic Expunction of Criminal History Records of Minors**

CS/SB 488 amends s. 943.0515, F.S., to require all records maintained by FDLE related to minors that are not classified as serious or habitual juvenile offenders to be automatically expunged when the minor reaches the age of 21, so long as one of the following exceptions does not apply:

- A person 18 years of age or older is charged with or convicted of a forcible felony and the person's criminal history record as a minor has not yet been destroyed;
- At any time, a minor is adjudicated as an adult for a forcible felony; or
- The record relates to a minor who was adjudicated delinquent for a violation committed on or after July 1, 2007, as provided in s. 943.0435(1)(a)1.d., F.S.<sup>22</sup>

The automatic expunction of records related to juveniles who are classified as serious or habitual juvenile offenders remains at 26 years of age.

### **SB 1612 Public Records Exemptions for and Technical Amendments to CS/SB 488**

SB 1612 provides public records exemptions for CS/SB 488. SB 1612 also makes some technical changes related to the placement of language in CS/SB 488.

#### ***Public Records Exemption for Non-Judicial Expunctions:***

SB 1612 provides that the criminal history records of an adult or minor who is eligible for nonjudicial expunction under CS/SB 488 are made confidential and exempt from public disclosure. There are no exceptions to this exemption so a court order will be necessary to release records related to nonjudicial expunction.

#### ***Public Records Exemptions for Court Ordered Expunctions:***

SB 1612 also makes confidential and exempt court expunctions that have been court ordered as provided for in CS/SB 488. A criminal justice agency is permitted to retain a notation that it has complied with the court order to expunge. Information relating to the existence of an expunged criminal history is also confidential and exempt; however, the existence of such records may be

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disclosed to certain agencies for licensing purposes, those seeking expunction for human trafficking violations or sealing of criminal history records, those seeking to be a guardian, and to criminal justice agencies. Unlawful release of the existence of an expunged criminal history is a first degree misdemeanor.

***Public Records Exemption for Non-judicial Sealing of Criminal History Records:***

SB 1612 makes confidential and exempt the criminal history record of adults or minors who are eligible to have their criminal records sealed under SB/CS 488. Those records can be released to the following people: the subject of the record, a criminal justice agency and, a judge. The records may also be released for certain licensing purposes. The information relating to the existence of a sealed criminal history is also confidential and exempt. Unlawful disclosure of the existence of a sealed criminal history is a first degree misdemeanor.

All of these exemptions are subject to review according to the OGSR and will repeal on October 2, 2020, unless saved from repeal through reenactment.

SB 1612 takes effect on the same date as SB 488 or similar legislation takes effect. As filed, SB 488 takes effect on 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 and expands public record exemptions for sealed and expunged criminal records; 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 bill creates a public record exemption for expunged criminal record and it includes a public necessity statement. The public necessity statement provides that an adult whose prosecution has been abandoned, were found not guilty after a jury trial or who have completed any sanctions find it difficult to find employment. The presence of the criminal history record creates unnecessary barriers and the Legislature finds that it is in the best interest of the public that a person become a contributing member of society.

**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 makes confidential and exempt limited types of criminal records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**C. Trust Funds Restrictions:**

None.

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

More persons will be eligible to have their criminal history records sealed or expunged under the bill, resulting in a potentially positive economic benefit to them as they look for employment.

**C. Government Sector Impact:**

FDLE will have to expend resources to train staff on when and to whom records may be released for each of these new exemptions.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 943.0585 and 943.059 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.)

None.

**B. Amendments:**

None.

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

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By Senator Detert

28-02504-15

20151612\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 943.0584, F.S., relating to nonjudicial expunction of  
 4 criminal history records; providing an exemption from  
 5 public records requirements for specified records that  
 6 have been approved for nonjudicial expunction;  
 7 amending s. 943.0585, F.S., relating to court-ordered  
 8 expunction of criminal history records; providing an  
 9 exemption from public records requirements for  
 10 criminal history records related to a withhold of  
 11 adjudication that have been expunged; amending s.  
 12 943.059, F.S., relating to nonjudicial sealing of  
 13 criminal history records; providing an exemption from  
 14 public records requirements for a record related to a  
 15 withhold of adjudication or nonviolent misdemeanor  
 16 conviction that has been approved for a nonjudicial  
 17 sealing; providing for future legislative review and  
 18 repeal of the exemptions; providing a statement of  
 19 public necessity; providing a contingent effective  
 20 date.

21  
 22 Be It Enacted by the Legislature of the State of Florida:

23  
 24 Section 1. Subsection (6) of section 943.0584, Florida  
 25 Statutes, as created by SB 488 of the 2015 Regular Session, is  
 26 amended to read:

27 943.0584 Nonjudicial expunction of criminal history  
 28 records.—

29 (6) EFFECT OF NONJUDICIAL EXPUNCTION.—

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

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30 (a) A criminal history record of an adult or a minor  
 31 eligible for expunction under subsection (2) which is approved  
 32 for nonjudicial expunction by the department pursuant to this  
 33 section is confidential and exempt from s. 119.07(1) and s.  
 34 24(a), Art. I of the State Constitution.

35 (b) A confidential and exempt criminal history record  
 36 expunged under this section has the same effect, and such record  
 37 may be disclosed by the department in the same manner, as a  
 38 record expunged under s. 943.0585.

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

43 Section 2. Present paragraphs (b), (c), and (d) of  
 44 subsection (7) of section 943.0585, Florida Statutes, as amended  
 45 by SB 488, are redesignated as paragraphs (c), (d), and (f),  
 46 respectively, and new paragraphs (b) and (e) are added to that  
 47 subsection, to read:

48 943.0585 Court-ordered expunction of criminal history  
 49 records.—

50 (7) EFFECT OF EXPUNCTION.—

51 (b)1. A criminal history record that is ordered expunged  
 52 under this section and that is retained by the department is  
 53 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 54 of the State Constitution and is not available to any person or  
 55 entity except upon order of a court of competent jurisdiction. A  
 56 criminal justice agency may retain a notation indicating  
 57 compliance with an order to expunge.

58 2. This paragraph is subject to the Open Government Sunset

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59 Review Act in accordance with s. 119.15 and shall stand repealed  
 60 on October 2, 2020, unless reviewed and saved from repeal  
 61 through reenactment by the Legislature.

62 (e)1. Information relating to the existence of an expunged  
 63 criminal history record which is provided in accordance with  
 64 paragraph (c) is confidential and exempt from s. 119.07(1) and  
 65 s. 24(a), Art. I of the State Constitution.

66 2. The existence of a confidential and exempt criminal  
 67 history record expunged under this section may be disclosed by  
 68 the department to the entities set forth in subparagraphs (c)1.,  
 69 4., 5., 6., 7., and 8. for their respective licensing, access  
 70 authorization, and employment purposes, and to criminal justice  
 71 agencies for their respective criminal justice purposes. It is  
 72 unlawful for any employee of an entity set forth in subparagraph  
 73 (c)1., subparagraph (c)4., subparagraph (c)5., subparagraph  
 74 (c)6., subparagraph (c)7., or subparagraph (c)8. to disclose  
 75 information relating to the existence of an expunged criminal  
 76 history record of a person seeking employment, access  
 77 authorization, or licensure with such entity or contractor,  
 78 except to the person to whom the criminal history record relates  
 79 or to persons having direct responsibility for employment,  
 80 access authorization, or licensure decisions.

81 3. A person who violates this paragraph commits a  
 82 misdemeanor of the first degree, punishable as provided in s.  
 83 775.082 or s. 775.083.

84 4. This paragraph is subject to the Open Government Sunset  
 85 Review Act in accordance with s. 119.15 and shall stand repealed  
 86 on October 2, 2020, unless reviewed and saved from repeal  
 87 through reenactment by the Legislature.

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88 Section 3. Present paragraphs (a), (b), and (c) of  
 89 subsection (6) of section 943.059, Florida Statutes, as amended  
 90 by SB 488 of the 2015 Regular Session, are redesignated as  
 91 paragraphs (b), (c), and (e), respectively, and new paragraphs  
 92 (a) and (d) are added to that subsection, to read:

93 943.059 Nonjudicial sealing of criminal history records.—

94 (6) EFFECT OF SEALING.—

95 (a)1. Any criminal history record of an adult or a minor  
 96 described in paragraph (2)(a) which is approved for nonjudicial  
 97 sealing by the department pursuant to this section is  
 98 confidential and exempt from of s. 119.07(1) and s. 24(a), Art.  
 99 I of the State Constitution.

100 2. A confidential and exempt criminal history record may be  
 101 disclosed by the department to:

102 a. The person who is the subject of the record or to the  
 103 subject's attorney.

104 b. A criminal justice agency in the furtherance of its  
 105 lawful duties and responsibilities, which include conducting a  
 106 criminal history background check for approval of firearms  
 107 purchases or transfers as authorized by state or federal law.

108 c. A judge in the state courts system for the purpose of  
 109 assisting in case-related decisionmaking responsibilities as set  
 110 forth in s. 943.053(5).

111 d. Those entities set forth in subparagraphs (b)1., 4., 5.,  
 112 6., 8., 9., and 10. for their respective licensing, access  
 113 authorization, and employment purposes.

114 3. This paragraph is subject to the Open Government Sunset  
 115 Review Act in accordance with s. 119.15 and shall stand repealed  
 116 on October 2, 2020, unless reviewed and saved from repeal

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117 through reenactment by the Legislature.

118 (d) Information relating to the existence of a sealed  
 119 criminal history record which is provided in accordance with  
 120 paragraph (b) is confidential and exempt from s. 119.07(1) and  
 121 s. 24(a), Art. I of the State Constitution, except that the  
 122 department shall disclose the sealed criminal history record to  
 123 the entities set forth in subparagraphs (b)1., 4., 5., 6., 8.,  
 124 9., and 10. for their respective licensing, access  
 125 authorization, and employment purposes and to criminal justice  
 126 agencies for their respective criminal justice purposes. It is  
 127 unlawful for any employee of an entity set forth in subparagraph  
 128 (b)1., subparagraph (b)4., subparagraph (b)5., subparagraph  
 129 (b)6., subparagraph (b)8., subparagraph (b)9., or subparagraph  
 130 (b)10. to disclose information relating to the existence of a  
 131 sealed criminal history record of a person seeking employment,  
 132 access authorization, or licensure with such entity or  
 133 contractor, except to the person to whom the criminal history  
 134 record relates or to persons having direct responsibility for  
 135 employment, access authorization, or licensure decisions. A  
 136 person who violates this paragraph commits a misdemeanor of the  
 137 first degree, punishable as provided in s. 775.082 or s.  
 138 775.083.

139 Section 4. The Legislature finds that it is a public  
 140 necessity that the criminal history records of an adult or minor  
 141 that have been expunged or sealed pursuant to s. 943.0584, s.  
 142 943.0585, or s. 943.059, Florida Statutes, be made confidential  
 143 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
 144 Article I of the State Constitution. Many people whose  
 145 prosecutions have been abandoned, who were found not guilty

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146 subsequent to a jury trial, or who have completed any sanctions  
 147 imposed by the court in the criminal or juvenile justice system  
 148 find it difficult to obtain employment. The presence of a  
 149 criminal history record in these individuals' past creates an  
 150 unnecessary barrier to becoming productive members of society  
 151 and may jeopardize their ability to achieve a safe livelihood.  
 152 The Legislature therefore finds that it is in the best interest  
 153 of the public that persons be given the opportunity to become  
 154 contributing members of society.

155 Section 5. This act shall take effect on the same date that  
 156 SB 488 or similar legislation relating to expunging and sealing  
 157 of criminal history records takes effect, if such legislation is  
 158 adopted in the same legislative session or an extension thereof  
 159 and becomes a law.

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The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** April 2, 2015

---

I respectfully request that **Senate Bill #1612**, relating to Public Records/Criminal History Records, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy C. Detert".

---

Senator Nancy C. Detert  
Florida Senate, District 28

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15  
Meeting Date

SB 1612  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender

Address Bob Dillinger

Phone 727 464-6516

Street Clearwater 71 33734  
City State Zip

Email pd16@wearethehops.org

Speaking:  For  Against  Information

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

Representing PD Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

April 7<sup>th</sup>  
Meeting Date

1612  
Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Colleen Mackin

Job Title Constituency Services

Address 411 S. Magnolia Drive

Phone 7272441032

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 The Children's Campaign

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: CS/CS/SB 564

INTRODUCER: Governmental Oversight and Accountability Committee; Commerce and Tourism  
Committee and Senator Richter

SUBJECT: Trade Secrets

DATE: April 8, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/CS/SB 564 expands the definition of the term “trade secret,” as provided in s. 812.081, F.S., to expressly include financial information.

An individual who steals, copies without authorization, or misappropriates a trade secret is subject to a third degree felony under s. 812.081, F.S.

**II. Present Situation:**

**Trade Secret**

Section 812.081, F.S., defines a “trade secret” as information<sup>1</sup> used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, and adopted by Florida courts,<sup>2</sup> requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret’s owner to have access thereto, and be:

- Secret;
- Of value;

---

<sup>1</sup> A trade secret may manifest as any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Section 812.081, F.S.

<sup>2</sup> See, e.g., *Sepro Corp. v. Dep’t. of Env’t. Prot.*, 839 So. 2d 781 (Fla. 1<sup>st</sup> DCA 2003).

- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.<sup>3</sup>

### Penalties

Florida law criminalizes the disclosure or theft of trade secrets. For example:

- Section 815.04, F.S., makes it a third degree felony<sup>4</sup> for a person to willfully, knowingly, and without authorization disclose or take data, programs, or supporting documentation that are trade secrets that reside or exist internal or external to a computer, computer system, computer network, or electronic device.<sup>5</sup>
- Section 812.081, F.S., makes it a third degree felony for a person to steal, embezzle, or copy without authorization an article that represents a trade secret, when done with an intent to:
  - Deprive or withhold from the trade secret's owner the control of a trade secret, or
  - Appropriate a trade secret to his or her own use or to the use of another.
- Section 581.199, F.S., makes it unlawful for a designated employee, inspector, or collaborator of the Florida Department of Agriculture and Consumer Services' Division of Plant Industry or the United States Department of Agriculture who, in an official capacity obtains under ch. 581, F.S., any information entitled to protection as a trade secret, to use such information for personal gain or to reveal it to an unauthorized person.

A number of statutes also provide non-criminal protections for trade secrets. The majority of these statutes provide public record exemptions for trade secrets,<sup>6</sup> but others provide procedural safeguards or civil remedies instead.<sup>7</sup>

### Related Definitions and Law

The federal Freedom of Information Act exempts "trade secrets and commercial or financial information" from public disclosure.<sup>8</sup> In order to withhold financial or commercial information from public review, it must be shown that the release of the information is likely to (1) impair the government's ability to obtain necessary information in the future; or (2) cause substantial harm to the competitive position of the person from whom the information was obtained.<sup>9</sup> "Substantial harm" may manifest as the disclosure of a company's assets, profits, losses, and market shares.<sup>10</sup>

Florida law also defines "trade secret" in the Florida Uniform Trade Secrets Act<sup>11</sup> as a "formula, pattern, compilation, program, device, method, technique, or process" that derives actual or

<sup>3</sup> Section 812.081(1)(c), F.S.

<sup>4</sup> A third degree felony is punishable by up to 5 years imprisonment and a \$5,000 fine. (ss. 775.082 and 775.083, F.S.)

<sup>5</sup> The offense is a second degree felony if committed for the purpose of creating or executing any scheme or artifice to defraud or to obtain property.

<sup>6</sup> Sections 119.071(1)(f), 125.0104(9)(d), 288.1226(8), 331.326, 365.174, 381.83, 403.7046(2)-(3), 403.73, 499.012(g), (m), 499.0121(7), 499.051(7), 499.931, 502.222, 570.48(3), 573.123(2), 581.199, 601.10(8)(a), 601.15(7)(d), 601.152(8)(c), 601.76, and 815.045, F.S.

<sup>7</sup> Sections 721.071 and 812.035, F.S.

<sup>8</sup> 5 USC §552(b)(4).

<sup>9</sup> 110 Am. Jur, Trials 367, Pt. 3 (February 2015).

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

<sup>11</sup> Section 688.002(4), F.S.

potential economic independent economic value from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use when it is the subject of reasonable efforts under the circumstances to maintain its secrecy.

### III. Effect of Proposed Changes:

**Section 1** adds financial information to protected information classified as a trade secret, which is exempt from public records disclosure requirements.<sup>12</sup>

**Section 2** provides an effective date of October 1, 2015.

### IV. Constitutional Issues:

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

None.

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

This bill expands the definition of trade secrets as found in s. 812.081, F.S.. The companion, SB 564, addresses the impact of this expansion on public records and open meetings.

#### C. Trust Funds Restrictions:

None.

### V. Fiscal Impact Statement:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

Businesses previously hesitant to enter into contracts with the state because of fear of release of their trade secrets may now feel more secure entering into such contracts.

#### C. Government Sector Impact:

The Criminal Justice Impact Conference (CJIC) met March 11, 2015, and determined that HB 91, which is substantively identical to this committee substitute, will have a positive insignificant impact on state prison beds. This means CJIC estimates that this bill may increase the department's prison bed population by less than 10 inmates annually.

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<sup>12</sup> Section 119.07 and s. 24(a), Art. I, Fla. Const.

In response to public records requests, state agencies will be required to interpret what constitutes a financial information trade secret. In turn, agencies may incur costs related to litigation regarding its determination to protect a document as trade secret or provide it as a public record.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The bill does not define what type of documents constitute “financial information.”

**VIII. Statutes Affected:**

This bill substantially amends section 812.081, of the Florida Statutes.

**IX. Additional Information:**

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

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

**CS by Governmental Oversight and Accountability on April 7, 2015:**

The CS modifies “or financial information” to “including financial information”

**CS by Commerce and Tourism on March 30, 2015:**

The committee substitute deletes Section 2 of the bill, which unnecessarily reenacted s. 499.931, F.S., requiring trade secret information submitted to the Department of Business and Professional Regulation in the administration and enforcement of medical gas to be maintained as required by s. 499.051, F.S. CS/SB 566’s amendment to s. 499.051, F.S. provides the necessary update to the definition of “trade secret” in s. 499.931, F.S.

**B. Amendments:**

None.



172444

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 30 - 31  
and insert:  
scientific, technical, or commercial information, including  
financial information, and includes ~~including~~ any design,  
process, procedure, list of suppliers,

By the Committee on Commerce and Tourism; and Senator Richter

577-03104-15

2015564c1

1 A bill to be entitled  
 2 An act relating to trade secrets; amending s. 812.081,  
 3 F.S.; including financial information in provisions  
 4 prohibiting the theft, embezzlement, or unlawful  
 5 copying of trade secrets; providing criminal  
 6 penalties; providing an effective date.  
 7  
 8 Be It Enacted by the Legislature of the State of Florida:  
 9  
 10 Section 1. Section 812.081, Florida Statutes, is amended to  
 11 read:  
 12 812.081 Trade secrets; theft, embezzlement; unlawful  
 13 copying; definitions; penalty.—  
 14 (1) As used in this section, the term:  
 15 (a) "Article" means any object, device, machine, material,  
 16 substance, or composition of matter, or any mixture or copy  
 17 thereof, whether in whole or in part, including any complete or  
 18 partial writing, record, recording, drawing, sample, specimen,  
 19 prototype model, photograph, microorganism, blueprint, map, or  
 20 copy thereof.  
 21 (b) "Representing" means completely or partially  
 22 describing, depicting, embodying, containing, constituting,  
 23 reflecting, or recording.  
 24 (c) "Trade secret" means the whole or any portion or phase  
 25 of any formula, pattern, device, combination of devices, or  
 26 compilation of information which is for use, or is used, in the  
 27 operation of a business and which provides the business an  
 28 advantage, or an opportunity to obtain an advantage, over those  
 29 who do not know or use it. The term "~~Trade secret~~" includes any

Page 1 of 3

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

577-03104-15

2015564c1

30 scientific, technical, ~~or~~ commercial, or financial information,  
 31 including any design, process, procedure, list of suppliers,  
 32 list of customers, business code, or improvement thereof.  
 33 Irrespective of novelty, invention, patentability, the state of  
 34 the prior art, and the level of skill in the business, art, or  
 35 field to which the subject matter pertains, a trade secret is  
 36 considered to be:  
 37 1. Secret;  
 38 2. Of value;  
 39 3. For use or in use by the business; and  
 40 4. Of advantage to the business, or providing an  
 41 opportunity to obtain an advantage, over those who do not know  
 42 or use it  
 43  
 44 when the owner thereof takes measures to prevent it from  
 45 becoming available to persons other than those selected by the  
 46 owner to have access thereto for limited purposes.  
 47 (d) "Copy" means any facsimile, replica, photograph, or  
 48 other reproduction in whole or in part of an article and any  
 49 note, drawing, or sketch made of or from an article or part or  
 50 portion thereof.  
 51 (2) Any person who, with intent to deprive or withhold from  
 52 the owner thereof the control of a trade secret, or with an  
 53 intent to appropriate a trade secret to his or her own use or to  
 54 the use of another, steals or embezzles an article representing  
 55 a trade secret or without authority makes or causes to be made a  
 56 copy of an article representing a trade secret commits is guilty  
 57 ~~of~~ a felony of the third degree, punishable as provided in s.  
 58 775.082 or s. 775.083.

Page 2 of 3

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

577-03104-15

2015564c1

59 (3) In a prosecution for a violation of ~~the provisions of~~  
60 this section, the fact it is no defense that the person so  
61 charged returned or intended to return the article so stolen,  
62 embezzled, or copied is not a defense.

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





# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Banking and Insurance, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Regulated Industries  
Rules

## SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

April 7, 2015

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

Dear Chairman Ring:

Thank you for the opportunity to present CSSB 564 related to Trade Secrets, CSSB 566 related to Public Records for Trade Secrets and SB 1582 related to Public Records/High-pressure well Stimulation Chemical Disclosure Registry.

Unfortunately, I will be presenting a bill in another committee and there is a possibility I will be unable to personally present these bills. I am requesting that my aides, Michael Nacheff and Becky Kokkinos be allowed to present the bills on my behalf should I be unable to attend the meeting.

Thank you for your consideration,

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

Garrett Richter

cc: Joe McVaney Staff Director

**REPLY TO:**

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

04/07/15  
Meeting Date

564  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Cynthia Henderson

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

Address 108 E. Jefferson St. Ste. A  
Street

Phone 850 559 0855

Tallahassee FL 32303  
City State Zip

Email Cyhenderson@me.com

Speaking:  For  Against  Information

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

Representing Linebarger

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)

4/17/15

Meeting Date

564,566  
Bill Number (if applicable)

Topic Trade Secrets

Amendment Barcode (if applicable)

Name Kelly Burnette

Job Title Partner

Address 8130 Baymeadows Cir. W.

Phone 904-448-2800

Street

JACKSONVILLE

City

FL

State

32256

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Linbarger Grogan Blair & Simpson, LLP

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**  
**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 Committee

---

BILL: CS/CS/SB 566

INTRODUCER: Governmental Oversight and Accountability Committee; Commerce and Tourism Committee and Senator Richter

SUBJECT: Public Records/Trade Secrets

DATE: April 8, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Harmsen</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 566 expands several public records exemptions of trade secret information to conform to the definition of trade secret proposed in CS/SB 564, which expressly includes financial information in the definition of “trade secret” in s. 812.081, F.S. This expanded exemption allows state agencies to refuse to disclose financial information as a trade secret if there is a public records request.

The bill provides that the public record exemptions are 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. It also provides a public necessity statement as required by the Florida Constitution.

Because this bill expands public records and meetings exemption, it will require a two-thirds vote of each house in order to pass.

**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.<sup>1</sup> 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.<sup>2</sup> The Legislature's meetings must also be open and noticed to the public, unless there is an exception provided by the constitution.<sup>3</sup>

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 Act<sup>4</sup> guarantees every person's right to inspect and copy any state or local government public record.<sup>5</sup> The Sunshine Law<sup>6</sup> 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.<sup>7</sup>

The Legislature may create an exemption to public records or open meetings requirements.<sup>8</sup> An exemption must specifically state the public necessity justifying the exemption<sup>9</sup> and must be tailored to accomplish the stated purpose of the law.<sup>10</sup>

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

The Open Government Sunset Review Act ("OGSR Act") prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>11</sup> The

---

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

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

<sup>3</sup> FLA. CONST., art. I, s. 24(b).

<sup>4</sup> Chapter 119, F.S.

<sup>5</sup> Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." 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 s. 11.0431, F.S.

<sup>6</sup> Section 286.011, F.S.

<sup>7</sup> 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, s. 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.

<sup>8</sup> FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential* and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *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).

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

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

<sup>11</sup> 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 Act 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.

OGSR Act provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>12</sup>

The OGSR Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>13</sup> 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;<sup>14</sup>
- 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;<sup>15</sup> or
- It protects trade or business secrets.<sup>16</sup>

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.<sup>17</sup>

The OGSR Act also requires specified questions to be considered during the review process.<sup>18</sup> In examining an exemption, the OGSR Act 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.<sup>19</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>20</sup>

## Trade Secrets

A "trade secret" in accordance with s. 812.081(1)(c), F.S., is "any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of

<sup>12</sup> Section 119.15(3), F.S.

<sup>13</sup> Section 119.15(6)(b), F.S.

<sup>14</sup> Section 119.15(6)(b)1., F.S.

<sup>15</sup> Section 119.15(6)(b)2., F.S.

<sup>16</sup> Section 119.15(6)(b)3., F.S.

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

<sup>18</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>19</sup> FLA. CONST., art. I, s. 24(c).

<sup>20</sup> Section 119.15(7), F.S.

customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains.”

Section 812.081, F.S., further defines a “trade secret” as information used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret’s owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.<sup>21</sup>

Courts similarly use this factor test to determine whether a document is trade secret subject to protection from public records laws. In *Sepro v. Department of Environmental Protection*,<sup>22</sup> the court held that a document was subject to disclosure because the business failed the first prong of the test (that the document be secret) because it had not actively protected or held out the document as a trade secret.

Florida law contains a variety of provisions making trade secret information exempt or confidential and exempt from public records requirements. The following sections of the Florida Statutes exempt from public disclosure trade secrets as defined by s. 812.081, F.S.:

- Section 119.071(1)(f), F.S., exempts data processing software obtained by an agency under a licensing agreement that prohibits its disclosure where the software is trade secret;
- Section 125.0104(9)(d), F.S., exempts trade secrets held by a county tourism promotion agency;
- Section 288.1226(8), F.S., exempts trade secrets relating to projects conducted by the Florida Tourism Industry Marketing Corporation (Visit Florida);
- Section 331.326, F.S., makes trade secrets held by Space Florida confidential and exempt; makes portions of meetings in which trade secrets are discussed exempt from open meetings requirements; recordings of closed meetings are confidential and exempt;<sup>23</sup>
- Section 365.174(3), F.S., makes trade secret business information submitted to the E911 Board or the Department of Management Services confidential and exempt;
- Section 381.83, F.S., makes trade secret information obtained by the Department of Health confidential and exempt;

<sup>21</sup> Section 812.081(1)(c), F.S.

<sup>22</sup> 839 So. 2d 781 (Fla. 1<sup>st</sup> DCA 2003).

<sup>23</sup> Records designated as exempt from public record requirements by the Legislature are distinct from those deemed confidential and exempt. Exempt records may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). Confidential and exempt records may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

- Sections 403.7046(2) and (3) and 403.73, F.S., make trade secret information reported to the Department of Environmental Protection pursuant to specified regulations confidential and exempt;
- Section 499.012(8)(g) and (m), F.S., makes trade secret information provided to the Department of Business and Professional Regulation (DBPR) in a prescription drug permit application confidential and exempt;
- Section 499.0121(7), F.S., makes trade secret information reported to DBPR in a list of prescription drug wholesalers confidential and exempt;
- Section 499.051(7), F.S., makes trade secret information obtained by DBPR during an investigation of a permit holder confidential and exempt;
- Section 499.931, F.S., makes trade secrets related to the regulation of medical gases that are submitted to DBPR by an applicant or permit holder confidential and exempt.
- Section 502.222, F.S., makes trade secret information of a dairy industry business held by the Department of Agriculture and Consumer Services (DACS) confidential and exempt;
- Section 570.48(3), F.S., makes records containing trade secrets held by DACS' Division of Fruit and Vegetables confidential and exempt;
- Section 573.123(2), F.S., makes records containing trade secrets provided to DACS by specified persons confidential and exempt;
- Section 601.10(8)(a), F.S., makes any information held by the Department of Citrus that contains trade secrets confidential and exempt;
- Section 601.15(7)(d), F.S., makes trade secret information that is provided by noncommodity advertising and promotional program participants to Department of Citrus confidential and exempt;
- Section 601.152(8)(c), F.S., makes trade secret information provided by citrus handlers to Department of Citrus confidential and exempt;
- Section 601.76, F.S., makes formulas containing trade secrets that are submitted to DACS confidential and exempt; and
- Section 815.04(3), makes trade secret information that is held by an agency and exists internal or external to a computer, computer system, computer network, or electronic device confidential and exempt.

### III. Effect of Proposed Changes:

The bill conforms and reenacts provisions that make trade secrets confidential and exempt to the new definition of trade secret proposed by SB 564, which adds “financial information” into the current definition.

By adding “financial information” to the definition of trade secrets, all the public records exemptions which cite to s. 812.081, F.S. are also expanded. Some trade secret exemptions were enacted before the Florida Constitution was amended in 2002. The constitutional amendment made the records of all three branches of state government public record but still preserved any public records exemption which existed before the constitutional amendment was enacted.<sup>24</sup> This bill amends the older statutes to make them exempt from the public records requirements of the Florida Constitution.

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<sup>24</sup> FLA. CONST. art. 1 s. 24.



This bill expands public records exemption for Space Florida meetings in which the trade secrets are discussed and closed to the public.<sup>25</sup>

The expansion of an exemption makes the exemptions subject to review and repeal on October 2, 2020, unless the Legislature continues the exemptions, pursuant to the OGSR.

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

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

None.

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

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

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

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

Section 24(c) of Article I of the Florida Constitution requires a public necessity statement for a newly created or expanded public-records or public-meetings exemption. The Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement for this bill provides that financial information be made confidential and exempt from s. 119.07(1), F.S. and Article I, section 24(a) of the Florida Constitution. This bill also includes an exemption for public meetings discussing trade secrets, and makes those meeting exempt from the requirements of s. 286.011, F.S. and Article I, section 24(b) of the Florida Constitution. This public necessity statement provides that disclosure of financial information would be detrimental to businesses.

###### **Breadth of Exemption**

Section 24(c) of Article I of the Florida Constitution requires a public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill expands public record exemptions to include financial information. Generally, the exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

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

None.

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<sup>25</sup> Section 286.011, F.S. and FLA. CONST. art. 1 s. 24(b).

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

None.

**B. Private Sector Impact:**

Businesses previously hesitant to enter into contracts with the state because of fear of release of their financial trade secrets may now attempt to enter that marketplace.

**C. Government Sector Impact:**

Government entities will have to train their staff on excluding trade secret financial information from public disclosure.

In response to public records requests, state agencies will be required to interpret what constitutes a financial information trade secret. In turn, agencies may incur costs related to litigation regarding its determination to protect a document as trade secret or provide it as a public record.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

State agencies must balance this exemption against the general policy that “all state, county, and municipal records shall be open for personal inspection by any person.”<sup>26</sup> This may prove difficult because what constitutes “financial information” under the bill may entail a highly fact-specific determination based on, e.g., the business’ treatment of the information as secret and the value of the information to the business. This may result in the same type of information being classified as trade secret for one business, but not another.

**VIII. Statutes Affected:**

This bill substantially amends sections 119.071, 125.0104, 288.1226, 331.326, 365.174, 381.83, 403.7046, 403.73, 499.051, 502.222, 570.48, 573.123, 601.10, 601.15, 601.152, 601.76, and 815.04 of the Florida Statutes.

This bill reenacts sections 499.012 and 499.0121 of the Florida Statutes.

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<sup>26</sup> Section 119.01(1), F.S.

**IX. Additional Information:**

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

**CS/CS by Governmental Oversight and Accountability on April 7, 2015:**

- The CS adds s. 499.931, F.S., which deals with trade secrets given to DBPR because of its regulation of medical gases.
- The CS adds public meetings to the public necessity statement.

**CS by Commerce and Tourism on March 30, 2015:**

- The committee substitute reenacts s. 499.0121(7), F.S., which makes trade secret the information reported to the DBPR in a list of prescription drug wholesalers confidential and exempt; and
- Clarifies the public necessity statement.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 423 - 628

and insert:

Section 12. Section 499.931, Florida Statutes, is amended  
to read:

499.931 Trade secret information.—Information required to  
be submitted under this part which is a trade secret as defined  
in s. 812.081(1)(c) and designated as a trade secret by an  
applicant or permitholder must be maintained as required under



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11 s. 499.051. This section is subject to the Open Government  
12 Sunset Review Act in accordance with s. 119.15 and shall stand  
13 repealed on October 2, 2020, unless reviewed and saved from  
14 repeal through reenactment by the Legislature.

15 Section 13. Section 502.222, Florida Statutes, is amended  
16 to read:

17 502.222 Information relating to trade secrets  
18 confidential.—The records of the department regarding matters  
19 encompassed by this chapter are public records, subject to ~~the~~  
20 ~~provisions of~~ chapter 119, except that any information that  
21 ~~which~~ would reveal a trade secret, as defined in s. 812.081, of  
22 a dairy industry business is confidential and exempt from ~~the~~  
23 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
24 Constitution. If the department determines that any information  
25 requested by the public will reveal a trade secret, it shall, in  
26 writing, inform the person making the request of that  
27 determination. The determination is a final order as defined in  
28 s. 120.52. This section is subject to the Open Government Sunset  
29 Review Act in accordance with s. 119.15 and shall stand repealed  
30 on October 2, 2020, unless reviewed and saved from repeal  
31 through reenactment by the Legislature.

32 Section 14. Subsection (3) of section 570.48, Florida  
33 Statutes, is amended to read:

34 570.48 Division of Fruit and Vegetables; powers and duties;  
35 records.—The duties of the Division of Fruit and Vegetables  
36 include, but are not limited to:

37 (3) Maintaining the records of the division. The records of  
38 the division are public records; however, trade secrets as  
39 defined in s. 812.081 are confidential and exempt from ~~the~~



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40 ~~provisions of s. 119.07(1) and s. 24(a), Art. I of the State~~  
41 ~~Constitution. This subsection is subject to the Open Government~~  
42 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~  
43 ~~repealed on October 2, 2020, unless reviewed and saved from~~  
44 ~~repeal through reenactment by the Legislature. This section may~~  
45 ~~shall~~ not be construed to prohibit:

46 (a) A disclosure necessary to enforcement procedures.

47 (b) The department from releasing information to other  
48 governmental agencies. Other governmental agencies that receive  
49 confidential information from the department under this  
50 subsection shall maintain the confidentiality of that  
51 information.

52 (c) The department or other agencies from compiling and  
53 publishing appropriate data regarding procedures, yield,  
54 recovery, quality, and related matters, provided such released  
55 data do not reveal by whom the activity to which the data relate  
56 was conducted.

57 Section 15. Subsection (2) of section 573.123, Florida  
58 Statutes, is amended to read:

59 573.123 Maintenance and production of records.—

60 (2) Information that, if disclosed, would reveal a trade  
61 secret, as defined in s. 812.081, of any person subject to a  
62 marketing order is confidential and exempt from ~~the provisions~~  
63 ~~of s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~  
64 and may shall not be disclosed except to an attorney who  
65 provides legal advice to the division about enforcing a market  
66 order or by court order. A person who receives confidential  
67 information under this subsection shall maintain the  
68 confidentiality of that information. This subsection is subject



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69 to the Open Government Sunset Review Act in accordance with s.  
70 119.15 and shall stand repealed on October 2, 2020, unless  
71 reviewed and saved from repeal through reenactment by the  
72 Legislature.

73 Section 16. Subsection (8) of section 601.10, Florida  
74 Statutes, is amended to read:

75 601.10 Powers of the Department of Citrus.—The department  
76 shall have and shall exercise such general and specific powers  
77 as are delegated to it by this chapter and other statutes of the  
78 state, which powers shall include, but are not limited to, the  
79 following:

80 (8) (a) To prepare and disseminate information of importance  
81 to citrus growers, handlers, shippers, processors, and industry-  
82 related and interested persons and organizations relating to  
83 department activities and the production, handling, shipping,  
84 processing, and marketing of citrus fruit and processed citrus  
85 products. ~~Any information that constitutes a trade secret as~~  
86 ~~defined in s. 812.081(1)(c) is confidential and exempt from s.~~  
87 ~~119.07(1) and shall not be disclosed.~~ For referendum and other  
88 notice and informational purposes, the department may prepare  
89 and maintain, from the best available sources, a citrus grower  
90 mailing list. Such list shall be a public record available as  
91 other public records, but is not ~~it shall not be~~ subject to the  
92 purging provisions of s. 283.55.

93 (b) Any information provided to the department which  
94 constitutes a trade secret, as defined in s. 812.081, is  
95 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
96 of the State Constitution. This paragraph is subject to the Open  
97 Government Sunset Review Act in accordance with s. 119.15 and



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98 shall stand repealed on October 2, 2020, unless reviewed and  
99 saved from repeal through reenactment by the Legislature.

100 (c) ~~(b)~~ Any nonpublished reports or data related to studies  
101 or research conducted, caused to be conducted, or funded by the  
102 department under s. 601.13 is confidential and exempt from s.  
103 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
104 paragraph is subject to the Open Government Sunset Review Act in  
105 accordance with s. 119.15 and shall stand repealed on October 2,  
106 2017, unless reviewed and saved from repeal through reenactment  
107 by the Legislature.

108 Section 17. Paragraph (d) of subsection (7) of section  
109 601.15, Florida Statutes, is amended to read:

110 601.15 Advertising campaign; methods of conducting;  
111 assessments; emergency reserve fund; citrus research.—

112 (7) All assessments levied and collected under this chapter  
113 shall be paid into the State Treasury on or before the 15th day  
114 of each month. Such moneys shall be accounted for in a special  
115 fund to be designated as the Florida Citrus Advertising Trust  
116 Fund, and all moneys in such fund are appropriated to the  
117 department for the following purposes:

118 (d)1. The pro rata portion of moneys allocated to each type  
119 of citrus product in noncommodity programs shall be used by the  
120 department to encourage substantial increases in the  
121 effectiveness, frequency, and volume of noncommodity  
122 advertising, merchandising, publicity, and sales promotion of  
123 such citrus products through rebates and incentive payments to  
124 handlers and trade customers for these activities. The  
125 department shall adopt rules providing for the use of such  
126 moneys. The rules shall establish alternate incentive programs,





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127 including at least one incentive program for product sold under  
128 advertised brands, one incentive program for product sold under  
129 private label brands, and one incentive program for product sold  
130 in bulk. For each incentive program, the rules shall establish  
131 eligibility and performance requirements and shall provide  
132 appropriate limitations on amounts payable to a handler or trade  
133 customer for a particular season. Such limitations may relate to  
134 the amount of citrus assessments levied and collected on the  
135 citrus product handled by such handler or trade customer during  
136 a 12-month representative period.

137 2. The department may require from participants in  
138 noncommodity advertising and promotional programs commercial  
139 information necessary to determine eligibility for and  
140 performance in such programs. Any information ~~so~~ required which  
141 ~~that~~ constitutes a "trade secret," as defined in s. 812.081, is  
142 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
143 of the State Constitution. This subparagraph is subject to the  
144 Open Government Sunset Review Act in accordance with s. 119.15  
145 and shall stand repealed on October 2, 2020, unless reviewed and  
146 saved from repeal through reenactment by the Legislature.

147 Section 18. Paragraph (c) of subsection (8) of section  
148 601.152, Florida Statutes, is amended to read:

149 601.152 Special marketing orders.-

150 (8)

151 (c)1. Every handler shall, at such times as the department  
152 may require, file with the department a return, not under oath,  
153 on forms to be prescribed and furnished by the department,  
154 certified as true and correct, stating the quantity of the type,  
155 variety, and form of citrus fruit or citrus product specified in



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156 the marketing order first handled in the primary channels of  
157 trade in the state by such handler during the period of time  
158 specified in the marketing order. Such returns shall contain any  
159 further information deemed by the department to be reasonably  
160 necessary to properly administer or enforce this section or any  
161 marketing order implemented under this section.

162 2. Information that, if disclosed, would reveal a trade  
163 secret, as defined in s. 812.081, of any person subject to a  
164 marketing order is confidential and exempt from s. 119.07(1) and  
165 s. 24(a), Art. I of the State Constitution. This subparagraph is  
166 subject to the Open Government Sunset Review Act in accordance  
167 with s. 119.15 and shall stand repealed on October 2, 2020,  
168 unless reviewed and saved from repeal through reenactment by the  
169 Legislature.

170 Section 19. Section 601.76, Florida Statutes, is amended to  
171 read:

172 601.76 Manufacturer to furnish formula and other  
173 information.—Any formula required to be filed with the  
174 Department of Agriculture shall be deemed a trade secret as  
175 defined in s. 812.081, is confidential and exempt from s.  
176 119.07(1) and s. 24(a), Art. I of the State Constitution, and  
177 shall ~~only~~ be divulged only to the Department of Agriculture or  
178 to its duly authorized representatives or upon court order  
179 ~~orders of a court of competent jurisdiction~~ when necessary in  
180 the enforcement of this law. A person who receives such a  
181 formula from the Department of Agriculture under this section  
182 shall maintain the confidentiality of the formula. This section  
183 is subject to the Open Government Sunset Review Act in  
184 accordance with s. 119.15 and shall stand repealed on October 2,



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185 2020, unless reviewed and saved from repeal through reenactment  
186 by the Legislature.

187 Section 20. Subsections (3) and (6) of section 815.04,  
188 Florida Statutes, are amended to read:

189 815.04 Offenses against intellectual property; public  
190 records exemption.—

191 (3) Data, programs, or supporting documentation that is a  
192 trade secret as defined in s. 812.081, that is held by an agency  
193 as defined in chapter 119, and that resides or exists internal  
194 or external to a computer, computer system, computer network, or  
195 electronic device is confidential and exempt from ~~the provisions~~  
196 ~~of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

197 (6) Subsection ~~Subsections (3) and (4) is are~~ subject to  
198 the Open Government Sunset Review Act in accordance with s.  
199 119.15, and shall stand repealed on October 2, 2019, unless  
200 reviewed and saved from repeal through reenactment by the  
201 Legislature. Subsection (3) is subject to the Open Government  
202 Sunset Review Act in accordance with s. 119.15, and shall stand  
203 repealed on October 2, 2020, unless reviewed and saved from  
204 repeal through reenactment by the Legislature.

205 Section 21. The Legislature finds that it is a public  
206 necessity that financial information comprising a trade secret  
207 as defined in s. 812.081, Florida Statutes, be made exempt or  
208 confidential and exempt from s. 119.07(1), Florida Statutes, and  
209 s. 24(a), Article I of the State Constitution. The Legislature  
210 also finds that it is a public necessity that any portion of a  
211 meeting in which a trade secret, as defined in s. 812.081,  
212 Florida Statutes, is discussed be made exempt from s. 286.011,  
213 Florida Statutes and s. 24(b), Article I of the State



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214 Constitution. The Legislature recognizes that in many instances,  
215 businesses are required to provide financial information for  
216 regulatory or other purposes to governmental entities and that  
217 disclosure of such information to competitors of those  
218 businesses would be detrimental to the businesses. The  
219 Legislature's intent is to protect trade secret information of a  
220 confidential nature that includes, but is not limited to, a  
221 formula, a pattern, a device, a combination of devices, or a  
222 compilation of information used to protect or further a business  
223 advantage over those who do not know or use the information, the  
224 disclosure of which would injure the affected business in the  
225 marketplace. Therefore, the Legislature finds that the need to  
226 protect trade secret financial information is sufficiently  
227 compelling to override this state's public policy of open  
228 government and that the protection of such information cannot be  
229 accomplished without these exemptions.

230  
231 ===== T I T L E   A M E N D M E N T =====

232 And the title is amended as follows:

233       Delete lines 2 - 45

234 and insert:

235       An act relating to public records and meetings;  
236       amending ss. 119.071, 125.0104, 288.1226, 331.326,  
237       365.174, 381.83, 403.7046, 403.73, 499.012, 499.0121,  
238       499.051, 499.931, 502.222, 570.48, 573.123, 601.10,  
239       601.15, 601.152, 601.76, and 815.04, F.S.; expanding  
240       public records exemptions for certain data processing  
241       software obtained by an agency, certain information  
242       held by a county tourism promotion agency, information



243 related to trade secrets held by the Florida Tourism  
244 Industry Marketing Corporation, information related to  
245 trade secrets held by Space Florida, proprietary  
246 confidential business information submitted to the  
247 Department of Revenue, trade secret information held  
248 by the Department of Health, trade secret information  
249 reported or submitted to the Department of  
250 Environmental Protection, trade secret information in  
251 an application for a permit for a prescription drug  
252 wholesale distributor or an out-of-state prescription  
253 drug wholesale distributor, trade secret information  
254 contained in an application for a permit for a  
255 secondary wholesale distributor, trade secret  
256 information contained in the prescription drug  
257 purchase list, trade secret information relating to  
258 medical gas submitted to the Department of Business  
259 and Professional Regulation, trade secret information  
260 contained in a complaint and any investigatory  
261 documents held by the Department of Business and  
262 Professional Regulation, trade secret information of a  
263 dairy industry business held by the Department of  
264 Agriculture and Consumer Services, trade secret  
265 information held by the Division of Fruits and  
266 Vegetables of the Department of Agriculture and  
267 Consumer Services, trade secret information of a  
268 person subject to a marketing order held by the  
269 Department of Agriculture and Consumer Services, trade  
270 secret information provided to the Department of  
271 Citrus, trade secret information of noncommodity



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272 advertising and promotional program participants held  
273 by the Department of Citrus, trade secret information  
274 contained in a citrus handler's return filed with the  
275 Department of Citrus, a manufacturer's formula filed  
276 with the Department of Agriculture and Consumer  
277 Services, and specified data, programs, or supporting  
278 documentation held by an agency, respectively, to  
279 incorporate the amendment made to the definition of  
280 the term "trade secret" in s. 812.081, F.S., by SB  
281 564; amending s. 331.326, F.S.; expanding a public  
282 meetings exemption for any meeting or portion of a  
283 meeting of Space Florida's board at which trade  
284 secrets are discussed to incorporate the amendment  
285 made to the definition of the term "trade secret" in  
286 s. 812.081, F.S., by SB 564; providing for future  
287 legislative review and

By the Committee on Commerce and Tourism; and Senator Richter

577-03105-15

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1 A bill to be entitled  
 2 An act relating to public records; amending ss.  
 3 119.071, 125.0104, 288.1226, 331.326, 365.174, 381.83,  
 4 403.7046, 403.73, 499.012, 499.0121, 499.051, 502.222,  
 5 570.48, 573.123, 601.10, 601.15, 601.152, 601.76, and  
 6 815.04, F.S.; expanding public records exemptions for  
 7 certain data processing software obtained by an  
 8 agency, certain information held by a county tourism  
 9 promotion agency, information related to trade secrets  
 10 held by the Florida Tourism Industry Marketing  
 11 Corporation, information related to trade secrets held  
 12 by Space Florida, proprietary confidential business  
 13 information submitted to the Department of Revenue,  
 14 trade secret information held by the Department of  
 15 Health, trade secret information reported or submitted  
 16 to the Department of Environmental Protection, trade  
 17 secret information in an application for a permit for  
 18 a prescription drug wholesale distributor or an out-  
 19 of-state prescription drug wholesale distributor,  
 20 trade secret information contained in an application  
 21 for a permit for a secondary wholesale distributor,  
 22 trade secret information contained in the prescription  
 23 drug purchase list, trade secret information contained  
 24 in a complaint and any investigatory documents held by  
 25 the Department of Business and Professional  
 26 Regulation, trade secret information of a dairy  
 27 industry business held by the Department of  
 28 Agriculture and Consumer Services, trade secret  
 29 information held by the Division of Fruits and

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

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30 Vegetables of the Department of Agriculture and  
 31 Consumer Services, trade secret information of a  
 32 person subject to a marketing order held by the  
 33 Department of Agriculture and Consumer Services, trade  
 34 secret information provided to the Department of  
 35 Citrus, trade secret information of noncommodity  
 36 advertising and promotional program participants held  
 37 by the Department of Citrus, trade secret information  
 38 contained in a citrus handler's return filed with the  
 39 Department of Citrus, a manufacturer's formula filed  
 40 with the Department of Agriculture and Consumer  
 41 Services, and specified data, programs, or supporting  
 42 documentation held by an agency, respectively, to  
 43 incorporate the amendment made to the definition of  
 44 the term "trade secret" in s. 812.081, F.S., by SB  
 45 564; providing for future legislative review and  
 46 repeal of the exemptions; making editorial and  
 47 technical changes; providing a statement of public  
 48 necessity; providing a contingent effective date.

49  
 50 Be It Enacted by the Legislature of the State of Florida:

51  
 52 Section 1. Paragraph (f) of subsection (1) of section  
 53 119.071, Florida Statutes, is amended to read:  
 54 119.071 General exemptions from inspection or copying of  
 55 public records.—  
 56 (1) AGENCY ADMINISTRATION.—  
 57 (f) Data processing software obtained by an agency under a  
 58 licensing agreement that prohibits its disclosure and which

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59 software is a trade secret, as defined in s. 812.081, and  
 60 agency-produced data processing software that is sensitive are  
 61 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 62 Constitution. The designation of agency-produced software as  
 63 sensitive ~~does shall~~ not prohibit an agency head from sharing or  
 64 exchanging such software with another public agency. This  
 65 paragraph is subject to the Open Government Sunset Review Act in  
 66 accordance with s. 119.15 and shall stand repealed on October 2,  
 67 2020, unless reviewed and saved from repeal through reenactment  
 68 by the Legislature.

69 Section 2. Paragraph (d) of subsection (9) of section  
 70 125.0104, Florida Statutes, is amended to read:

71 125.0104 Tourist development tax; procedure for levying;  
 72 authorized uses; referendum; enforcement.—

73 (9) COUNTY TOURISM PROMOTION AGENCIES.—In addition to any  
 74 other powers and duties provided for agencies created for the  
 75 purpose of tourism promotion by a county levying the tourist  
 76 development tax, such agencies are authorized and empowered to:

77 (d) Undertake marketing research and advertising research  
 78 studies and provide reservations services and convention and  
 79 meetings booking services consistent with the authorized uses of  
 80 revenue as set forth in subsection (5).

81 1. Information given to a county tourism promotion agency  
 82 which, if released, would reveal the identity of persons or  
 83 entities who provide data or other information as a response to  
 84 a sales promotion effort, an advertisement, or a research  
 85 project or whose names, addresses, meeting or convention plan  
 86 information or accommodations or other visitation needs become  
 87 booking or reservation list data, is exempt from s. 119.07(1)

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88 and from s. 24(a), Art. I of the State Constitution.

89 2. The following information, when held by a county tourism  
 90 promotion agency, is exempt from s. 119.07(1) and ~~from~~ s. 24(a),  
 91 Art. I of the State Constitution:

92 a. ~~A trade secret, as defined in s. 812.081.~~

93 ~~b.~~ Booking business records, as defined in s. 255.047.

94 ~~b.e.~~ Trade secrets and commercial or financial information  
 95 gathered from a person and privileged or confidential, as  
 96 defined and interpreted under 5 U.S.C. s. 552(b)(4), or any  
 97 amendments thereto.

98 3. A trade secret, as defined in s. 812.081, held by a  
 99 county tourism agency is exempt from s. 119.07(1) and s. 24(a),  
 100 Art. I of the State Constitution. This subparagraph is subject  
 101 to the Open Government Sunset Review Act in accordance with s.  
 102 119.15 and shall stand repealed on October 2, 2020, unless  
 103 reviewed and saved from repeal through reenactment by the  
 104 Legislature.

105 Section 3. Subsection (8) of section 288.1226, Florida  
 106 Statutes, is amended to read:

107 288.1226 Florida Tourism Industry Marketing Corporation;  
 108 use of property; board of directors; duties; audit.—

109 (8) PUBLIC RECORDS EXEMPTION.—The identity of any person  
 110 who responds to a marketing project or advertising research  
 111 project conducted by the corporation in the performance of its  
 112 duties on behalf of Enterprise Florida, Inc., or trade secrets  
 113 as defined by s. 812.081 obtained pursuant to such activities,  
 114 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 115 Constitution. This subsection is subject to the Open Government  
 116 Sunset Review Act in accordance with s. 119.15 and shall stand

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117 repealed on October 2, 2020, unless reviewed and saved from  
 118 repeal through reenactment by the Legislature.

119 Section 4. Section 331.326, Florida Statutes, is amended to  
 120 read:

121 331.326 Information relating to trade secrets  
 122 confidential.—The records of Space Florida regarding matters  
 123 encompassed by this act are public records subject to ~~the~~  
 124 ~~provisions of~~ chapter 119. Any information held by Space Florida  
 125 which is a trade secret, as defined in s. 812.081, including  
 126 trade secrets of Space Florida, any spaceport user, or the space  
 127 industry business, is confidential and exempt from ~~the~~  
 128 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 129 Constitution and may not be disclosed. If Space Florida  
 130 determines that any information requested by the public will  
 131 reveal a trade secret, it shall, in writing, inform the person  
 132 making the request of that determination. The determination is a  
 133 final order as defined in s. 120.52. Any meeting or portion of a  
 134 meeting of Space Florida's board is exempt from ~~the provisions~~  
 135 ~~of~~ s. 286.011 and s. 24(b), Art. I of the State Constitution  
 136 when the board is discussing trade secrets. Any public record  
 137 generated during the closed portions of the meetings, such as  
 138 minutes, tape recordings, and notes, is confidential and exempt  
 139 from ~~the provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the  
 140 State Constitution. This section is subject to the Open  
 141 Government Sunset Review Act in accordance with s. 119.15 and  
 142 shall stand repealed on October 2, 2020, unless reviewed and  
 143 saved from repeal through reenactment by the Legislature.

144 Section 5. Subsection (2) of section 365.174, Florida  
 145 Statutes, is amended to read:

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146 365.174 Proprietary confidential business information.—

147 (2) (a) All proprietary confidential business information  
 148 submitted by a provider to the Department of Revenue, as an  
 149 agent of the board, is confidential and exempt from s. 119.07(1)  
 150 and s. 24(a), Art. I of the State Constitution.

151 (b) The Department of Revenue may provide information  
 152 relative to s. 365.172(9) to the Secretary of Management  
 153 Services, or his or her authorized agent, or to the E911 Board  
 154 established in s. 365.172(5) for use in the conduct of the  
 155 official business of the Department of Management Services or  
 156 the E911 Board.

157 (c) This subsection is subject to the Open Government  
 158 Sunset Review Act in accordance with s. 119.15 and shall stand  
 159 repealed on October 2, 2020 ~~2019~~, unless reviewed and saved from  
 160 repeal through reenactment by the Legislature.

161 Section 6. Section 381.83, Florida Statutes, is amended to  
 162 read:

163 381.83 Trade secrets; confidentiality.—

164 (1) Records, reports, or information obtained from any  
 165 person under this chapter, unless otherwise provided by law,  
 166 shall be available to the public, except upon a showing  
 167 satisfactory to the department by the person from whom the  
 168 records, reports, or information is obtained that such records,  
 169 reports, or information, or a particular part thereof, contains  
 170 trade secrets as defined in s. 812.081(1) ~~(e)~~. Such trade secrets  
 171 are ~~shall be~~ confidential and ~~are~~ exempt from ~~the provisions of~~  
 172 s. 119.07(1) and s. 24(a), Art. I of the State Constitution. The  
 173 person submitting such trade secret information to the  
 174 department must request that it be kept confidential and must

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175 inform the department of the basis for the claim of trade  
 176 secret. The department shall, subject to notice and opportunity  
 177 for hearing, determine whether the information, or portions  
 178 thereof, claimed to be a trade secret is or is not a trade  
 179 secret. Such trade secrets may be disclosed, however, to  
 180 authorized representatives of the department or, pursuant to  
 181 request, to other governmental entities in order for them to  
 182 properly perform their duties, or when relevant in any  
 183 proceeding under this chapter. Authorized representatives and  
 184 other governmental entities receiving such trade secret  
 185 information shall retain its confidentiality. Those involved in  
 186 any proceeding under this chapter, including a hearing officer  
 187 or judge or justice, shall retain the confidentiality of any  
 188 trade secret information revealed at such proceeding.

189 (2) This section is subject to the Open Government Sunset  
 190 Review Act in accordance with s. 119.15 and shall stand repealed  
 191 on October 2, 2020, unless reviewed and saved from repeal by  
 192 reenactment by the Legislature.

193 Section 7. Subsection (2) and paragraph (b) of subsection  
 194 (3) of section 403.7046, Florida Statutes, are amended to read:

195 403.7046 Regulation of recovered materials.-

196 (2) Information reported pursuant to the requirements of  
 197 this section or any rule adopted pursuant to this section which,  
 198 if disclosed, would reveal a trade secret, as defined in s.  
 199 812.081(1)(c), is confidential and exempt from ~~the provisions of~~  
 200 s. 119.07(1) and s. 24(a), Art. I of the State Constitution. For  
 201 reporting or information purposes, however, the department may  
 202 provide this information in such form that the names of the  
 203 persons reporting such information and the specific information

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204 reported are not revealed. This subsection is subject to the  
 205 Open Government Sunset Review Act in accordance with s. 119.15  
 206 and shall stand repealed on October 2, 2020, unless reviewed and  
 207 saved from repeal through reenactment by the Legislature.

208 (3) Except as otherwise provided in this section or  
 209 pursuant to a special act in effect on or before January 1,  
 210 1993, a local government may not require a commercial  
 211 establishment that generates source-separated recovered  
 212 materials to sell or otherwise convey its recovered materials to  
 213 the local government or to a facility designated by the local  
 214 government, nor may the local government restrict such a  
 215 generator's right to sell or otherwise convey such recovered  
 216 materials to any properly certified recovered materials dealer  
 217 who has satisfied the requirements of this section. A local  
 218 government may not enact any ordinance that prevents such a  
 219 dealer from entering into a contract with a commercial  
 220 establishment to purchase, collect, transport, process, or  
 221 receive source-separated recovered materials.

222 (b)1. Before engaging in business within the jurisdiction  
 223 of the local government, a recovered materials dealer must  
 224 provide the local government with a copy of the certification  
 225 provided for in this section. In addition, the local government  
 226 may establish a registration process whereby a recovered  
 227 materials dealer must register with the local government before  
 228 engaging in business within the jurisdiction of the local  
 229 government. Such registration process is limited to requiring  
 230 the dealer to register its name, including the owner or operator  
 231 of the dealer, and, if the dealer is a business entity, its  
 232 general or limited partners, its corporate officers and

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233 directors, its permanent place of business, evidence of its  
 234 certification under this section, and a certification that the  
 235 recovered materials will be processed at a recovered materials  
 236 processing facility satisfying the requirements of this section.  
 237 The local government may not use the information provided in the  
 238 registration application to compete unfairly with the recovered  
 239 materials dealer until 90 days after receipt of the application.  
 240 All counties, and municipalities whose population exceeds 35,000  
 241 according to the population estimates determined pursuant to s.  
 242 186.901, may establish a reporting process that ~~which~~ shall be  
 243 limited to the regulations, reporting format, and reporting  
 244 frequency established by the department pursuant to this  
 245 section, which shall, at a minimum, include requiring the dealer  
 246 to identify the types and approximate amount of recovered  
 247 materials collected, recycled, or reused during the reporting  
 248 period; the approximate percentage of recovered materials  
 249 reused, stored, or delivered to a recovered materials processing  
 250 facility or disposed of in a solid waste disposal facility; and  
 251 the locations where any recovered materials were disposed of as  
 252 solid waste. ~~Information reported under this subsection which,  
 253 if disclosed, would reveal a trade secret, as defined in s.  
 254 812.081(1)(c), is confidential and exempt from the provisions of  
 255 s. 24(a), Art. I of the State Constitution and s. 119.07(1).~~ The  
 256 local government may charge the dealer a registration fee  
 257 commensurate with and no greater than the cost incurred by the  
 258 local government in operating its registration program.  
 259 Registration program costs are limited to those costs associated  
 260 with the activities described in this paragraph. Any reporting  
 261 or registration process established by a local government with

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262 regard to recovered materials shall be governed by ~~the~~  
 263 ~~provisions of~~ this section and department rules adopted pursuant  
 264 thereto.

265 2. Information reported under this subsection which, if  
 266 disclosed, would reveal a trade secret, as defined in s.  
 267 812.081, is confidential and exempt from s. 119.07(1) and s.  
 268 24(a), Art. I of the State Constitution. This subparagraph is  
 269 subject to the Open Government Sunset Review Act in accordance  
 270 with s. 119.15 and shall stand repealed on October 2, 2020,  
 271 unless reviewed and saved from repeal through reenactment by the  
 272 Legislature.

273 Section 8. Section 403.73, Florida Statutes, is amended to  
 274 read:

275 403.73 Trade secrets; confidentiality.—

276 (1) Records, reports, or information obtained from any  
 277 person under this part, unless otherwise provided by law, shall  
 278 be available to the public, except upon a showing satisfactory  
 279 to the department by the person from whom the records, reports,  
 280 or information is obtained that such records, reports, or  
 281 information, or a particular part thereof, contains trade  
 282 secrets as defined in s. 812.081(1)(c). Such trade secrets are  
 283 shall be confidential and are exempt from the provisions of s.  
 284 119.07(1) and s. 24(a), Art. I of the State Constitution. The  
 285 person submitting such trade secret information to the  
 286 department must request that it be kept confidential and must  
 287 inform the department of the basis for the claim of trade  
 288 secret. The department shall, subject to notice and opportunity  
 289 for hearing, determine whether the information, or portions  
 290 thereof, claimed to be a trade secret is or is not a trade

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291 secret. Such trade secrets may be disclosed, however, to  
 292 authorized representatives of the department or, pursuant to  
 293 request, to other governmental entities in order for them to  
 294 properly perform their duties, or when relevant in any  
 295 proceeding under this part. Authorized representatives and other  
 296 governmental entities receiving such trade secret information  
 297 shall retain its confidentiality. Those involved in any  
 298 proceeding under this part, including an administrative law  
 299 judge, a hearing officer, or a judge or justice, shall retain  
 300 the confidentiality of any trade secret information revealed at  
 301 such proceeding.

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

306 Section 9. Paragraphs (g) and (m) of subsection (8) of  
 307 section 499.012, Florida Statutes, are amended to read:

308 499.012 Permit application requirements.—

309 (8) An application for a permit or to renew a permit for a  
 310 prescription drug wholesale distributor or an out-of-state  
 311 prescription drug wholesale distributor submitted to the  
 312 department must include:

313 (g)1. For an application for a new permit, the estimated  
 314 annual dollar volume of prescription drug sales of the  
 315 applicant, the estimated annual percentage of the applicant's  
 316 total company sales that are prescription drugs, the applicant's  
 317 estimated annual total dollar volume of purchases of  
 318 prescription drugs, and the applicant's estimated annual total  
 319 dollar volume of prescription drug purchases directly from

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320 manufacturers.

321 2. For an application to renew a permit, the total dollar  
 322 volume of prescription drug sales in the previous year, the  
 323 total dollar volume of prescription drug sales made in the  
 324 previous 6 months, the percentage of total company sales that  
 325 were prescription drugs in the previous year, the total dollar  
 326 volume of purchases of prescription drugs in the previous year,  
 327 and the total dollar volume of prescription drug purchases  
 328 directly from manufacturers in the previous year.

329 3. Such portions of the information required pursuant to  
 330 this paragraph which are a trade secret, as defined in s.  
 331 812.081, shall be maintained by the department as trade secret  
 332 information is required to be maintained under s. 499.051. This  
 333 subparagraph is subject to the Open Government Sunset Review Act  
 334 in accordance with s. 119.15 and shall stand repealed on October  
 335 2, 2020, unless reviewed and saved from repeal through  
 336 reenactment by the Legislature.

337 (m) For an applicant that is a secondary wholesale  
 338 distributor, each of the following:

339 1. A personal background information statement containing  
 340 the background information and fingerprints required pursuant to  
 341 subsection (9) for each person named in the applicant's response  
 342 to paragraphs (k) and (l) and for each affiliated party of the  
 343 applicant.

344 2. If any of the five largest shareholders of the  
 345 corporation seeking the permit is a corporation, the name,  
 346 address, and title of each corporate officer and director of  
 347 each such corporation; the name and address of such corporation;  
 348 the name of such corporation's resident agent, such

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349 corporation's resident agent's address, and such corporation's  
350 state of its incorporation; and the name and address of each  
351 shareholder of such corporation that owns 5 percent or more of  
352 the stock of such corporation.

353 3.a. The name and address of all financial institutions in  
354 which the applicant has an account which is used to pay for the  
355 operation of the establishment or to pay for drugs purchased for  
356 the establishment, together with the names of all persons that  
357 are authorized signatories on such accounts.

358 b. The portions of the information required pursuant to  
359 this subparagraph which are a trade secret, as defined in s.  
360 812.081, shall be maintained by the department as trade secret  
361 information is required to be maintained under s. 499.051. This  
362 sub-subparagraph is subject to the Open Government Sunset Review  
363 Act in accordance with s. 119.15 and shall stand repealed on  
364 October 2, 2020, unless reviewed and saved from repeal through  
365 reenactment by the Legislature.

366 4. The sources of all funds and the amounts of such funds  
367 used to purchase or finance purchases of prescription drugs or  
368 to finance the premises on which the establishment is to be  
369 located.

370 5. If any of the funds identified in subparagraph 4. were  
371 borrowed, copies of all promissory notes or loans used to obtain  
372 such funds.

373 Section 10. Subsection (7) of section 499.0121, Florida  
374 Statutes, is amended to read:

375 499.0121 Storage and handling of prescription drugs;  
376 recordkeeping.-The department shall adopt rules to implement  
377 this section as necessary to protect the public health, safety,

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378 and welfare. Such rules shall include, but not be limited to,  
379 requirements for the storage and handling of prescription drugs  
380 and for the establishment and maintenance of prescription drug  
381 distribution records.

382 (7) PRESCRIPTION DRUG PURCHASE LIST.-

383 (a) Each wholesale distributor, except for a manufacturer,  
384 shall annually provide the department with a written list of all  
385 wholesale distributors and manufacturers from whom the wholesale  
386 distributor purchases prescription drugs. A wholesale  
387 distributor, except a manufacturer, shall notify the department  
388 not later than 10 days after any change to either list.

389 (b) Such portions of the information required pursuant to  
390 this subsection which are a trade secret, as defined in s.  
391 812.081, shall be maintained by the department as trade secret  
392 information is required to be maintained under s. 499.051. This  
393 paragraph is subject to the Open Government Sunset Review Act in  
394 accordance with s. 119.15 and shall stand repealed on October 2,  
395 2020, unless reviewed and saved from repeal through reenactment  
396 by the Legislature.

397 Section 11. Subsection (7) of section 499.051, Florida  
398 Statutes, is amended to read:

399 499.051 Inspections and investigations.-

400 (7) (a) The complaint and all information obtained pursuant  
401 to the investigation by the department are confidential and  
402 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
403 Constitution until the investigation and the enforcement action  
404 are completed.

405 (b) Information that constitutes a ~~However,~~ trade secret,  
406 as defined in s. 812.081, ~~information~~ contained in the complaint

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407 ~~therein as defined by s. 812.081(1)(e)~~ shall remain confidential  
 408 and exempt from ~~the provisions of~~ s. 119.07(1) and s. 24(a),  
 409 Art. I of the State Constitution, as long as the information is  
 410 retained by the department. This paragraph is subject to the  
 411 Open Government Sunset Review Act in accordance with s. 119.15  
 412 and shall stand repealed on October 2, 2020, unless reviewed and  
 413 saved from repeal through reenactment by the Legislature.

414 (c) This subsection does not prohibit the department from  
 415 using such information for regulatory or enforcement proceedings  
 416 under this chapter or from providing such information to any law  
 417 enforcement agency or any other regulatory agency. However, the  
 418 receiving agency shall keep such records confidential and exempt  
 419 as provided in this subsection. In addition, this subsection is  
 420 not intended to prevent compliance with ~~the provisions of~~ s.  
 421 499.01212, and the pedigree papers required in that section are  
 422 ~~shall~~ not be deemed a trade secret.

423 Section 12. Section 502.222, Florida Statutes, is amended  
 424 to read:

425 502.222 Information relating to trade secrets  
 426 confidential.—The records of the department regarding matters  
 427 encompassed by this chapter are public records, subject to ~~the~~  
 428 ~~provisions of~~ chapter 119, except that any information that  
 429 ~~which~~ would reveal a trade secret, as defined in s. 812.081, of  
 430 a dairy industry business is confidential and exempt from ~~the~~  
 431 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 432 Constitution. If the department determines that any information  
 433 requested by the public will reveal a trade secret, it shall, in  
 434 writing, inform the person making the request of that  
 435 determination. The determination is a final order as defined in

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436 s. 120.52. This section is subject to the Open Government Sunset  
 437 Review Act in accordance with s. 119.15 and shall stand repealed  
 438 on October 2, 2020, unless reviewed and saved from repeal  
 439 through reenactment by the Legislature.

440 Section 13. Subsection (3) of section 570.48, Florida  
 441 Statutes, is amended to read:

442 570.48 Division of Fruit and Vegetables; powers and duties;  
 443 records.—The duties of the Division of Fruit and Vegetables  
 444 include, but are not limited to:

445 (3) Maintaining the records of the division. The records of  
 446 the division are public records; however, trade secrets as  
 447 defined in s. 812.081 are confidential and exempt from ~~the~~  
 448 ~~provisions of~~ s. 119.07(1) and s. 24(a), Art. I of the State  
 449 Constitution. This subsection is subject to the Open Government  
 450 Sunset Review Act in accordance with s. 119.15 and shall stand  
 451 repealed on October 2, 2020, unless reviewed and saved from  
 452 repeal through reenactment by the Legislature. This section may  
 453 ~~shall~~ not be construed to prohibit:

454 (a) A disclosure necessary to enforcement procedures.

455 (b) The department from releasing information to other  
 456 governmental agencies. Other governmental agencies that receive  
 457 confidential information from the department under this  
 458 subsection shall maintain the confidentiality of that  
 459 information.

460 (c) The department or other agencies from compiling and  
 461 publishing appropriate data regarding procedures, yield,  
 462 recovery, quality, and related matters, provided such released  
 463 data do not reveal by whom the activity to which the data relate  
 464 was conducted.

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465 Section 14. Subsection (2) of section 573.123, Florida  
466 Statutes, is amended to read:

467 573.123 Maintenance and production of records.—

468 (2) Information that, if disclosed, would reveal a trade  
469 secret, as defined in s. 812.081, of any person subject to a  
470 marketing order is confidential and exempt from ~~the provisions~~  
471 ~~of s. 119.07(1) and s. 24(a), Art. I of the State Constitution~~  
472 ~~and may shall~~ not be disclosed except to an attorney who  
473 provides legal advice to the division about enforcing a market  
474 order or by court order. A person who receives confidential  
475 information under this subsection shall maintain the  
476 confidentiality of that information. This subsection is subject  
477 to the Open Government Sunset Review Act in accordance with s.  
478 119.15 and shall stand repealed on October 2, 2020, unless  
479 reviewed and saved from repeal through reenactment by the  
480 Legislature.

481 Section 15. Subsection (8) of section 601.10, Florida  
482 Statutes, is amended to read:

483 601.10 Powers of the Department of Citrus.—The department  
484 shall have and shall exercise such general and specific powers  
485 as are delegated to it by this chapter and other statutes of the  
486 state, which powers shall include, but are not limited to, the  
487 following:

488 (8) (a) To prepare and disseminate information of importance  
489 to citrus growers, handlers, shippers, processors, and industry-  
490 related and interested persons and organizations relating to  
491 department activities and the production, handling, shipping,  
492 processing, and marketing of citrus fruit and processed citrus  
493 products. ~~Any information that constitutes a trade secret as~~

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494 ~~defined in s. 812.081(1)(c) is confidential and exempt from s.~~  
495 ~~119.07(1) and shall not be disclosed.~~ For referendum and other  
496 notice and informational purposes, the department may prepare  
497 and maintain, from the best available sources, a citrus grower  
498 mailing list. Such list shall be a public record available as  
499 other public records, but is not it shall not be subject to the  
500 purging provisions of s. 283.55.

501 (b) Any information provided to the department which  
502 constitutes a trade secret, as defined in s. 812.081, is  
503 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
504 of the State Constitution. This paragraph is subject to the Open  
505 Government Sunset Review Act in accordance with s. 119.15 and  
506 shall stand repealed on October 2, 2020, unless reviewed and  
507 saved from repeal through reenactment by the Legislature.

508 ~~(c)(b)~~ Any nonpublished reports or data related to studies  
509 or research conducted, caused to be conducted, or funded by the  
510 department under s. 601.13 is confidential and exempt from s.  
511 119.07(1) and s. 24(a), Art. I of the State Constitution. This  
512 paragraph is subject to the Open Government Sunset Review Act in  
513 accordance with s. 119.15 and shall stand repealed on October 2,  
514 2017, unless reviewed and saved from repeal through reenactment  
515 by the Legislature.

516 Section 16. Paragraph (d) of subsection (7) of section  
517 601.15, Florida Statutes, is amended to read:

518 601.15 Advertising campaign; methods of conducting;  
519 assessments; emergency reserve fund; citrus research.—

520 (7) All assessments levied and collected under this chapter  
521 shall be paid into the State Treasury on or before the 15th day  
522 of each month. Such moneys shall be accounted for in a special

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523 fund to be designated as the Florida Citrus Advertising Trust  
 524 Fund, and all moneys in such fund are appropriated to the  
 525 department for the following purposes:

526 (d)1. The pro rata portion of moneys allocated to each type  
 527 of citrus product in noncommodity programs shall be used by the  
 528 department to encourage substantial increases in the  
 529 effectiveness, frequency, and volume of noncommodity  
 530 advertising, merchandising, publicity, and sales promotion of  
 531 such citrus products through rebates and incentive payments to  
 532 handlers and trade customers for these activities. The  
 533 department shall adopt rules providing for the use of such  
 534 moneys. The rules shall establish alternate incentive programs,  
 535 including at least one incentive program for product sold under  
 536 private label brands, one incentive program for product sold under  
 537 in bulk. For each incentive program, the rules shall establish  
 538 eligibility and performance requirements and shall provide  
 539 appropriate limitations on amounts payable to a handler or trade  
 540 customer for a particular season. Such limitations may relate to  
 541 the amount of citrus assessments levied and collected on the  
 542 citrus product handled by such handler or trade customer during  
 543 a 12-month representative period.

545 2. The department may require from participants in  
 546 noncommodity advertising and promotional programs commercial  
 547 information necessary to determine eligibility for and  
 548 performance in such programs. Any information ~~se~~ required which  
 549 ~~that~~ constitutes a "trade secret," as defined in s. 812.081, is  
 550 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I  
 551 of the State Constitution. This subparagraph is subject to the

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552 Open Government Sunset Review Act in accordance with s. 119.15  
 553 and shall stand repealed on October 2, 2020, unless reviewed and  
 554 saved from repeal through reenactment by the Legislature.

555 Section 17. Paragraph (c) of subsection (8) of section  
 556 601.152, Florida Statutes, is amended to read:  
 557 601.152 Special marketing orders.—

558 (8)  
 559 (c)1. Every handler shall, at such times as the department  
 560 may require, file with the department a return, not under oath,  
 561 on forms to be prescribed and furnished by the department,  
 562 certified as true and correct, stating the quantity of the type,  
 563 variety, and form of citrus fruit or citrus product specified in  
 564 the marketing order first handled in the primary channels of  
 565 trade in the state by such handler during the period of time  
 566 specified in the marketing order. Such returns shall contain any  
 567 further information deemed by the department to be reasonably  
 568 necessary to properly administer or enforce this section or any  
 569 marketing order implemented under this section.

570 2. Information that, if disclosed, would reveal a trade  
 571 secret, as defined in s. 812.081, of any person subject to a  
 572 marketing order is confidential and exempt from s. 119.07(1) and  
 573 s. 24(a), Art. I of the State Constitution. This subparagraph is  
 574 subject to the Open Government Sunset Review Act in accordance  
 575 with s. 119.15 and shall stand repealed on October 2, 2020,  
 576 unless reviewed and saved from repeal through reenactment by the  
 577 Legislature.

578 Section 18. Section 601.76, Florida Statutes, is amended to  
 579 read:

580 601.76 Manufacturer to furnish formula and other

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581 information.—Any formula required to be filed with the  
 582 Department of Agriculture shall be deemed a trade secret as  
 583 defined in s. 812.081, is confidential and exempt from s.  
 584 119.07(1) and s. 24(a), Art. I of the State Constitution, and  
 585 shall ~~only~~ be divulged only to the Department of Agriculture or  
 586 to its duly authorized representatives or upon court order  
 587 ~~orders of a court of competent jurisdiction~~ when necessary in  
 588 the enforcement of this law. A person who receives such a  
 589 formula from the Department of Agriculture under this section  
 590 shall maintain the confidentiality of the formula. This section  
 591 is subject to the Open Government Sunset Review Act in  
 592 accordance with s. 119.15 and shall stand repealed on October 2,  
 593 2020, unless reviewed and saved from repeal through reenactment  
 594 by the Legislature.

595 Section 19. Subsections (3) and (6) of section 815.04,  
 596 Florida Statutes, are amended to read:

597 815.04 Offenses against intellectual property; public  
 598 records exemption.—

599 (3) Data, programs, or supporting documentation that is a  
 600 trade secret as defined in s. 812.081, that is held by an agency  
 601 as defined in chapter 119, and that resides or exists internal  
 602 or external to a computer, computer system, computer network, or  
 603 electronic device is confidential and exempt from ~~the provisions~~  
 604 ~~of~~ s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

605 (6) ~~Subsection (3) and (4)~~ Subsections (3) and (4) ~~is~~ are subject to  
 606 the Open Government Sunset Review Act in accordance with s.  
 607 119.15, and shall stand repealed on October 2, 2019, unless  
 608 reviewed and saved from repeal through reenactment by the  
 609 Legislature. Subsection (3) is subject to the Open Government

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610 Sunset Review Act in accordance with s. 119.15, and shall stand  
 611 repealed on October 2, 2020, unless reviewed and saved from  
 612 repeal through reenactment by the Legislature.

613 Section 20. The Legislature finds that it is a public  
 614 necessity that financial information comprising a trade secret  
 615 as defined in s. 812.081, Florida Statutes, be made exempt or  
 616 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 617 s. 24(a), Article I of the State Constitution. The Legislature  
 618 recognizes that in many instances, businesses are required to  
 619 provide financial information for regulatory or other purposes  
 620 to governmental entities and that disclosure of such information  
 621 to competitors of those businesses would be detrimental to the  
 622 businesses. The Legislature's intent is to protect trade secret  
 623 information of a confidential nature concerning entities,  
 624 including, but not limited to, a formula, pattern, device,  
 625 combination of devices, or compilation of information used to  
 626 protect or further a business advantage over those who do not  
 627 know or use it, the disclosure of which would injure the  
 628 affected entity in the marketplace.

629 Section 21. This act shall take effect on the same date  
 630 that SB 564 or similar legislation relating to trade secrets  
 631 takes effect, if such legislation is adopted in the same  
 632 legislative session or an extension thereof and becomes a law.



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** March 31, 2015

---

Dear Chair Ring,

I respectfully request that **Committee Substitute for Senate Bill #566**, relating to Public Records/Trade Secrets, be placed on the Governmental Oversight and Accountability agenda at your earliest possible convenience.

The Committee on Governmental Oversight and Accountability is CS/SB # 566's second committee of reference. If you have any questions regarding this legislation, please contact me or my office.

Thank you in advance for your consideration.

A handwritten signature in blue ink, appearing to read "Garrett Richter", written over a horizontal line.

Senator Garrett Richter  
Florida Senate, District 23

cc: Joe McVaney, Staff Director  
Allison Rudd, Committee Administrative Assistant



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Banking and Insurance, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Regulated Industries  
Rules

## SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

April 7, 2015

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

Dear Chairman Ring:

Thank you for the opportunity to present CSSB 564 related to Trade Secrets, CSSB 566 related to Public Records for Trade Secrets and SB 1582 related to Public Records/High-pressure well Stimulation Chemical Disclosure Registry.

Unfortunately, I will be presenting a bill in another committee and there is a possibility I will be unable to personally present these bills. I am requesting that my aides, Michael Nacheff and Becky Kokkinos be allowed to present the bills on my behalf should I be unable to attend the meeting.

Thank you for your consideration,

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

Garrett Richter

cc: Joe McVaney Staff Director

REPLY TO:

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

04/7/15  
Meeting Date

566  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Cynthia Henderson

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

Address 108 E. Jefferson St. Suite A

Phone 850 559 0855

Tallahassee FL  
City State

32303 Cynthiahenderson@me.com  
Zip Email

Speaking:  For  Against  Information

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

Representing Linebarger

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)

4/17/15  
Meeting Date

564,566  
Bill Number (if applicable)

Topic Trade Secrets

Amendment Barcode (if applicable)

Name Kelly Burnette

Job Title Partner

Address 8130 Baymeadows Cir. W.

Phone 904-448-2800

Street

JACKSONVILLE

City

FL

State

32256

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Linbarger Grogan Blair & Sampson, LLP

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/CS/SB 1324

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

SUBJECT: Public Records/Agency Personnel Information

DATE: April 8, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</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>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 1324 creates and expands exemptions from the Public Records laws for personal identifying and location information of public defenders, conflict counsel, capital collateral counsel, prosecutors, law enforcement officers and other investigatory personnel, as well as their siblings, parents, and cohabitants.

The information that is exempted for attorneys, law enforcement officers and other personnel is expanded to include:

- Residential addresses;
- Personal e-mail addresses;
- License plate numbers; and
- Banking and financial information.

Additionally, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of those attorneys, officers and personnel are exempt under the bill.

The bill creates an exemption for the home address, telephone number dates of birth as well as other identifying information for the spouses and children of capital collateral regional counsel.

The public necessity for the bill is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person.

The bill requires a two-thirds vote of the members present and voting for final passage of a newly created and expanded public record exemption.

The bill becomes effective on July 1, 2015. The exemptions created by the bill will be repealed on October 2, 2020, unless reviewed and reenacted by the Legislature.

## II. Present Situation:

### Threats to and Harassment of Law Enforcement and Other Government Personnel

Events that occur in people's lives as a result of criminal cases or civil actions involving alleged child abuse or neglect, for example, tend to raise anxiety or anger. Law enforcement officers and others who work in and around the court system sometimes find that they are targeted for violence, threats, and different forms of harassment by people they come into contact with in these volatile situations.

In recent years, law enforcement has become aware of a loosely organized group of people referred to as "sovereign citizens." According to reports, the group believes the government has no authority over them. A September 2011 FBI Law Enforcement Bulletin reported that since 2000, lone-offender "sovereign citizen extremists" have killed six law enforcement officers.<sup>1</sup> A recent Homeland Security intelligence assessment, produced in coordination with the FBI, counts 24 violent attacks related to the sovereign citizen movement. Because law enforcement officers and other government authority figures enforce the laws and regulations, the report indicates that they will remain the primary target of violence by this extremist group.<sup>2</sup>

The murders of an assistant district attorney as he walked to the courthouse, and just a few weeks later, the District Attorney and his wife in their home in Kaufman County, Texas shocked the community in 2013. Reports indicate that the killings were planned and carried out by a local public official as revenge for his prosecution for theft of public property.<sup>3</sup>

In 2011, one man was sentenced to 30 months in prison after pleading guilty to filing false liens against federal law enforcement employees in Florida. His targets were people involved in investigating and prosecuting him for tax fraud. He filed false liens against the property of the prosecutors, investigators, and court personnel falsely claiming that he was owed \$48,489 billion from each individual.<sup>4</sup>

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<sup>1</sup> Federal Bureau of Investigation Law Enforcement Bulletin, *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement*, September 2011. <http://leb.fbi.gov/2011/september> (site visited March 18, 2015).

<sup>2</sup> <http://www.cnn.com/2015/02/19/politics/terror-threat-homeland-security/> (site visited March 19, 2015).

<sup>3</sup> <http://crimeblog.dallasnews.com/2013/05/suspect-in-kaufman-county-da-murders-waives-oral-arguments-in-appeal-of-case-law-enforcement-cites-as-motive-for-killings.html/>

<sup>4</sup> See Marie Yeung, *Man Sentenced for False Liens in Florida*, The Epoch Times, Oct. 3, 2011, <http://www.theepochtimes.com/n2/united-states/man-sentenced-for-false-liens-in-florida-62333.html> (last visited March 20, 2015).

A Tallahassee man first met Officer Annette Garrett in April 2007 during a trespass investigation that lasted until May 2007.<sup>5</sup> According to court documents, the man found Officer Garrett to be very rude, abusive, and unprofessional during the investigation.<sup>6</sup> He filed several complaints with the Tallahassee Police Department regarding Officer Garrett's conduct.<sup>7</sup> He was not satisfied with the department's response to his complaints.<sup>8</sup> In 2008, the man posted personal information about Officer Garrett on a website, Ratemycop.com.<sup>9</sup> The information about the officer was publicly available. The information posted on the website included the officer's marital status, number of children, home address, estimated value of her home, cell phone number, and e-mail address.<sup>10</sup>

### Public Records

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>11</sup> The records of the legislative, executive, and judicial branches are specifically included in the Constitution.<sup>12</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>13</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>14</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>15</sup>

Only the Legislature may create an exemption to public records requirements.<sup>16</sup> This exemption must be created by general law and must specifically state the public necessity justifying the

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<sup>5</sup> Taken from Complaint for Declaratory and Injunctive Relief in *Brayshaw v. City of Tallahassee*, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373.

<sup>6</sup> *Id.*

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

<sup>8</sup> *Id.*

<sup>9</sup> A privately owned company in Los Angeles, California, that "allows registered users to leave written feedback about their interactions with police officers, and rank the officer's service based on three criteria: Professionalism, Fairness and Satisfaction." See [http://ratemycop.com/index.php?option=com\\_content&task=view&id=58&Itemid=148](http://ratemycop.com/index.php?option=com_content&task=view&id=58&Itemid=148); from Complaint for Declaratory and Injunctive Relief in *Brayshaw v. City of Tallahassee*, United States District Court Northern District Of Florida, Tallahassee Division, No. 4:09-cv-373

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

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

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

<sup>13</sup> Chapter 119, F.S.

<sup>14</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "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).

<sup>15</sup> Section 119.07(1)(a), F.S.

<sup>16</sup> FLA. CONST., art. I, s. 24(c). 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. *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla.



exemption.<sup>17</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions<sup>18</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>19</sup>

### **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.<sup>20</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>21</sup>

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.<sup>22</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>23</sup>
- 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;<sup>24</sup> or
- It protects trade or business secrets.<sup>25</sup>

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

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

<sup>17</sup> FLA. CONST., art. I, s. 24(c).

<sup>18</sup> However, the bill may contain multiple exemptions that relate to one subject.

<sup>19</sup> FLA. CONST., art. I, s. 24(c).

<sup>20</sup> 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.

<sup>21</sup> Section 119.15(3), F.S.

<sup>22</sup> Section 119.15(6)(b), F.S.

<sup>23</sup> Section 119.15(6)(b)1., F.S.

<sup>24</sup> Section 119.15(6)(b)2., F.S.

<sup>25</sup> Section 119.15(6)(b)3., F.S.

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

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?

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

### **Statutory Exemptions from Public Records Law**

Section 119.07(1)(a), F.S., provides that any person is permitted to inspect and copy any public record unless the record falls under an exemption to the general rule.

Among the general exemptions set forth in s. 119.071, F.S., are exemptions for the home addresses, telephone numbers, social security numbers, dates of birth, and photographs of the following persons:

- Active or former sworn or civilian law enforcement officers, including correctional and correctional probation officers;
- Personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities;
- Personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect;
- Personnel of the Department of Revenue or local governments whose duties include revenue collection and enforcement or child support enforcement;
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and
- Current or former public defenders, criminal conflict and civil regional counsel and their assistants.

The information exempted also includes the names, home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of the persons' spouses and children, as well as the names and locations of schools and day care facilities attended by those persons' children.<sup>29</sup>

Capital collateral regional counsel and assistant capital collateral regional counsel are not subject to any public records exemptions, unlike public defenders, assistant public defenders, criminal conflict and civil regional counsel and assistant criminal conflict and civil regional counsel. Therefore, the home addresses, telephone numbers, dates of birth and photographs of current or former capital collateral regional counsel and assistant capital collateral regional counsel are currently public record. In addition, the home address, telephone number, dates of birth and places of employment of the spouses and children of capital collateral regional counsel and assistant capital collateral regional counsel are public.

- 
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
  - Is the record or meeting protected by another exemption?
  - Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

<sup>27</sup> FLA. CONST., art. I, s. 24(c).

<sup>28</sup> Section 119.15(7), F.S.

<sup>29</sup> s. 119.071(4)(d)2.a., d., and j., F.S.

### III. Effect of Proposed Changes:

This bill creates a public records exemption for capital collateral regional counsel and assistant capital collateral regional counsel by adding those positions to the existing public record exemption for public defenders, assistant public defenders, criminal conflict and civil regional counsel and assistant criminal conflict and civil regional counsel. The information made exempt for this group of attorneys includes: home addresses, telephone numbers, dates of birth and photographs of the attorneys; home addresses, telephone numbers, dates of birth and places of employment of spouses and children of the attorney; and the location of the schools and day care facilities attended by the children of the attorney.

The bill amends s. 119.071(4)(d)2.a., d., and j., F.S., to expand and create the following public records exemptions relating to the officers and personnel listed above, including capital collateral regional counsel and assistant capital collateral regional counsel:

- Residential addresses;
- Personal e-mail addresses;
- License plate numbers; and
- Banking and financial information.

Additionally, this bill creates exemptions for the home addresses, telephone numbers, photographs, dates of birth, and places of employment of the parents, siblings, and cohabitants of those officers and personnel.

The bill provides a retroactivity clause.

The bill also provides a statement of public necessity for the exemptions. The public necessity statement states that the Legislature finds that capital collateral regional counsel and assistant capital collateral regional counsel should be given the same protections as other similar attorneys and that they are in danger of harm from disgruntled individuals. The Legislature also finds that it is a public necessity to expand the information related to current personnel and officers as well as creating new exemptions for their families and cohabitants. The specific finding relevant to the public necessity is that without the exemptions the person, their parent, sibling, or cohabitant could be placed in danger of being physically and emotionally harmed or being stalked by a defendant or other person. The bill states that the Legislature further finds that the harm that may result from the release of the identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

All of the above exemptions are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

### 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 new public record exemptions and expands an existing exemptions; 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 and expands public record exemptions; thus, it includes a public necessity statement which provides that the affected individuals are in danger of physical and emotional harm.

**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. These exemptions are no broader than necessary to accomplish their stated purpose.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Agencies will have to train their staff on the new exemptions.

**VI. Technical Deficiencies:**

The public necessity statement does not address the spouses and children of capital collateral regional counsel.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

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

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

**CS/CS by Governmental Oversight and Accountability on April 7, 2015:**

- The CS added capital collateral regional counsel and their assistants and families to the list of criminal and civil attorneys who have their identifying information exempt from public records.
- The CS removes references to former residential addresses, residences in which a person frequently resides other than his or her home address, driver's license numbers and social security numbers.
- The CS clarified that personal email addresses were exempt.
- The CS provides for retroactive application of the exemptions.
- The CS conforms the public necessity statement.

**CS by Criminal Justice on March 30, 2015:**

- The CS exempts from public records the residential addresses, e-mail addresses, driver license numbers, license plate numbers, and banking and financial information of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, assistant criminal conflict and civil regional counsel, capital collateral regional counsels, and assistant capital collateral regional counsel. The home addresses, telephone numbers, social security numbers, photographs, dates of birth, and places of employment of their parents, siblings, or cohabitants are also made exempt by the CS.
- The statement of public necessity reflects the inclusion of the information listed above for the public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel and their assistants.
- References to information identifying former places of employment are eliminated by the CS.

**B. Amendments:**

None.



963608

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete lines 56 - 331  
and insert:

(IV) Residential addresses, personal e-mail addresses,  
license plate numbers, and banking and financial information of  
active or former sworn or civilian law enforcement personnel and  
the other specified agency personnel identified in sub-sub-  
subparagraph (I) and the home addresses, telephone numbers,  
photographs, dates of birth, and places of employment of the



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11 parents, siblings, and cohabitants of active or former sworn or  
12 civilian law enforcement personnel and the other specified  
13 agency personnel identified in sub-sub-subparagraph (I) are  
14 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
15 Constitution. The exemptions in this sub-sub-subparagraph apply  
16 to information held by an agency before, on, or after the  
17 effective date of the exemption. This sub-sub-subparagraph is  
18 subject to the Open Government Sunset Review Act in accordance  
19 with s. 119.15 and shall stand repealed on October 2, 2020,  
20 unless reviewed and saved from repeal through reenactment by the  
21 Legislature.

22       b. The home addresses, telephone numbers, dates of birth,  
23 and photographs of firefighters certified in compliance with s.  
24 633.408; the home addresses, telephone numbers, photographs,  
25 dates of birth, and places of employment of the spouses and  
26 children of such firefighters; and the names and locations of  
27 schools and day care facilities attended by the children of such  
28 firefighters are exempt from s. 119.07(1).

29       c. The home addresses, dates of birth, and telephone  
30 numbers of current or former justices of the Supreme Court,  
31 district court of appeal judges, circuit court judges, and  
32 county court judges; the home addresses, telephone numbers,  
33 dates of birth, and places of employment of the spouses and  
34 children of current or former justices and judges; and the names  
35 and locations of schools and day care facilities attended by the  
36 children of current or former justices and judges are exempt  
37 from s. 119.07(1).

38       d.(I) The home addresses, telephone numbers, social  
39 security numbers, dates of birth, and photographs of current or



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40 former state attorneys, assistant state attorneys, statewide  
41 prosecutors, or assistant statewide prosecutors; the home  
42 addresses, telephone numbers, social security numbers,  
43 photographs, dates of birth, and places of employment of the  
44 spouses and children of current or former state attorneys,  
45 assistant state attorneys, statewide prosecutors, or assistant  
46 statewide prosecutors; and the names and locations of schools  
47 and day care facilities attended by the children of current or  
48 former state attorneys, assistant state attorneys, statewide  
49 prosecutors, or assistant statewide prosecutors are exempt from  
50 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

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

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

59 (IV) Residential addresses, personal e-mail addresses,  
60 license plate numbers, and banking and financial information of  
61 current or former state attorneys, assistant state attorneys,  
62 statewide prosecutors, or assistant statewide prosecutors and  
63 the home addresses, telephone numbers, photographs, dates of  
64 birth, and places of employment of the parents, siblings, and  
65 cohabitants of current or former state attorneys, assistant  
66 state attorneys, statewide prosecutors, or assistant statewide  
67 prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of  
68 the State Constitution. The exemptions in this sub-sub-





963608

69 subparagraph apply to information held by an agency before, on,  
70 or after the effective date of the exemption. This sub-sub-  
71 subparagraph is subject to the Open Government Sunset Review Act  
72 in accordance with s. 119.15 and shall stand repealed on October  
73 2, 2020, unless reviewed and saved from repeal through  
74 reenactment by the Legislature.

75 e. The home addresses, dates of birth, and telephone  
76 numbers of general magistrates, special magistrates, judges of  
77 compensation claims, administrative law judges of the Division  
78 of Administrative Hearings, and child support enforcement  
79 hearing officers; the home addresses, telephone numbers, dates  
80 of birth, and places of employment of the spouses and children  
81 of general magistrates, special magistrates, judges of  
82 compensation claims, administrative law judges of the Division  
83 of Administrative Hearings, and child support enforcement  
84 hearing officers; and the names and locations of schools and day  
85 care facilities attended by the children of general magistrates,  
86 special magistrates, judges of compensation claims,  
87 administrative law judges of the Division of Administrative  
88 Hearings, and child support enforcement hearing officers are  
89 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
90 Constitution if the general magistrate, special magistrate,  
91 judge of compensation claims, administrative law judge of the  
92 Division of Administrative Hearings, or child support hearing  
93 officer provides a written statement that the general  
94 magistrate, special magistrate, judge of compensation claims,  
95 administrative law judge of the Division of Administrative  
96 Hearings, or child support hearing officer has made reasonable  
97 efforts to protect such information from being accessible



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98 through other means available to the public.

99 f. The home addresses, telephone numbers, dates of birth,  
100 and photographs of current or former human resource, labor  
101 relations, or employee relations directors, assistant directors,  
102 managers, or assistant managers of any local government agency  
103 or water management district whose duties include hiring and  
104 firing employees, labor contract negotiation, administration, or  
105 other personnel-related duties; the names, home addresses,  
106 telephone numbers, dates of birth, and places of employment of  
107 the spouses and children of such personnel; and the names and  
108 locations of schools and day care facilities attended by the  
109 children of such personnel are exempt from s. 119.07(1) and s.  
110 24(a), Art. I of the State Constitution.

111 g. The home addresses, telephone numbers, dates of birth,  
112 and photographs of current or former code enforcement officers;  
113 the names, home addresses, telephone numbers, dates of birth,  
114 and places of employment of the spouses and children of such  
115 personnel; and the names and locations of schools and day care  
116 facilities attended by the children of such personnel are exempt  
117 from s. 119.07(1) and s. 24(a), Art. I of the State  
118 Constitution.

119 h. The home addresses, telephone numbers, places of  
120 employment, dates of birth, and photographs of current or former  
121 guardians ad litem, as defined in s. 39.820; the names, home  
122 addresses, telephone numbers, dates of birth, and places of  
123 employment of the spouses and children of such persons; and the  
124 names and locations of schools and day care facilities attended  
125 by the children of such persons are exempt from s. 119.07(1) and  
126 s. 24(a), Art. I of the State Constitution, if the guardian ad



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127 litem provides a written statement that the guardian ad litem  
128 has made reasonable efforts to protect such information from  
129 being accessible through other means available to the public.

130 i. The home addresses, telephone numbers, dates of birth,  
131 and photographs of current or former juvenile probation  
132 officers, juvenile probation supervisors, detention  
133 superintendents, assistant detention superintendents, juvenile  
134 justice detention officers I and II, juvenile justice detention  
135 officer supervisors, juvenile justice residential officers,  
136 juvenile justice residential officer supervisors I and II,  
137 juvenile justice counselors, juvenile justice counselor  
138 supervisors, human services counselor administrators, senior  
139 human services counselor administrators, rehabilitation  
140 therapists, and social services counselors of the Department of  
141 Juvenile Justice; the names, home addresses, telephone numbers,  
142 dates of birth, and places of employment of spouses and children  
143 of such personnel; and the names and locations of schools and  
144 day care facilities attended by the children of such personnel  
145 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
146 Constitution.

147 j.(I) The home addresses, telephone numbers, dates of  
148 birth, and photographs of current or former public defenders,  
149 assistant public defenders, criminal conflict and civil regional  
150 counsel, ~~and~~ assistant criminal conflict and civil regional  
151 counsel, capital collateral regional counsel, and assistant  
152 capital collateral regional counsel; the home addresses,  
153 telephone numbers, dates of birth, and places of employment of  
154 the spouses and children of such defenders or counsel; and the  
155 names and locations of schools and day care facilities attended



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156 by the children of such defenders or counsel are exempt from s.  
157 119.07(1) and s. 24(a), Art. I of the State Constitution.

158 (II) The names of the spouses and children of the specified  
159 agency personnel identified in sub-sub-subparagraph (I) are  
160 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
161 Constitution. This sub-sub-subparagraph is subject to the Open  
162 Government Sunset Review Act in accordance with s. 119.15 and  
163 shall stand repealed on October 2, 2019, unless reviewed and  
164 saved from repeal through reenactment by the Legislature.

165 (III) Residential addresses, personal e-mail addresses,  
166 license plate numbers, and banking and financial information of  
167 current or former public defenders, assistant public defenders,  
168 criminal conflict and civil regional counsel, assistant criminal  
169 conflict and civil regional counsel, capital collateral regional  
170 counsel, and assistant capital collateral regional counsel, and  
171 the home addresses, telephone numbers, photographs, dates of  
172 birth, and places of employment of the parents, siblings, and  
173 cohabitants of current or former public defenders, assistant  
174 public defenders, criminal conflict and civil regional counsel,  
175 assistant criminal conflict and civil regional counsel, capital  
176 collateral regional counsel, and assistant capital collateral  
177 regional counsel are exempt from s. 24(a), Art. I of the State  
178 Constitution. The exemptions in this sub-sub-subparagraph apply  
179 to information held by an agency before, on, or after the  
180 effective date of the exemption. This sub-sub-subparagraph is  
181 subject to the Open Government Sunset Review Act in accordance  
182 with s. 119.15 and shall stand repealed on October 2, 2020,  
183 unless reviewed and saved from repeal through reenactment by the  
184 Legislature.



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

200 l. The home addresses and telephone numbers of county tax  
201 collectors; the names, home addresses, telephone numbers, and  
202 places of employment of the spouses and children of such tax  
203 collectors; and the names and locations of schools and day care  
204 facilities attended by the children of such tax collectors are  
205 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
206 Constitution if the county tax collector has made reasonable  
207 efforts to protect such information from being accessible  
208 through other means available to the public. This sub-  
209 subparagraph is subject to the Open Government Sunset Review Act  
210 in accordance with s. 119.15 and shall stand repealed on October  
211 2, 2017, unless reviewed and saved from repeal through  
212 reenactment by the Legislature.

213 m. The home addresses, telephone numbers, dates of birth,



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214 and photographs of current or former personnel of the Department  
215 of Health whose duties include, or result in, the determination  
216 or adjudication of eligibility for social security disability  
217 benefits, the investigation or prosecution of complaints filed  
218 against health care practitioners, or the inspection of health  
219 care practitioners or health care facilities licensed by the  
220 Department of Health; the names, home addresses, telephone  
221 numbers, dates of birth, and places of employment of the spouses  
222 and children of such personnel; and the names and locations of  
223 schools and day care facilities attended by the children of such  
224 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
225 the State Constitution if the personnel have made reasonable  
226 efforts to protect such information from being accessible  
227 through other means available to the public. This sub-  
228 subparagraph is subject to the Open Government Sunset Review Act  
229 in accordance with s. 119.15 and shall stand repealed on October  
230 2, 2019, unless reviewed and saved from repeal through  
231 reenactment by the Legislature.

232         3. An agency that is the custodian of the information  
233 specified in subparagraph 2. and that is not the employer of the  
234 officer, employee, justice, judge, or other person specified in  
235 subparagraph 2. shall maintain the exempt status of that  
236 information only if the officer, employee, justice, judge, other  
237 person, or employing agency of the designated employee submits a  
238 written request for maintenance of the exemption to the  
239 custodial agency.

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



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

248           Section 2. (1) The Legislature finds that it is a public  
249 necessity that the home addresses, telephone numbers, dates of  
250 birth, and photographs of current or former capital collateral  
251 regional counsel and assistant capital collateral regional  
252 counsel be exempt from s. 119.07(1) and s. 24(a), Art. I of the  
253 State Constitution. The Legislature finds that current or former  
254 capital collateral regional counsel and assistant capital  
255 collateral regional counsel are entitled to the same protections  
256 that are afforded to public defenders, assistant public  
257 defenders, criminal conflict and civil regional counsel, and  
258 assistant criminal conflict and civil regional counsel. The  
259 public disclosure of the information places current or former  
260 capital collateral regional counsel and assistant capital  
261 collateral regional counsel in danger of physical and emotional  
262 harm from disgruntled individuals who have contentious reactions  
263 to actions carried out by such counsel.

264           (2) The Legislature also finds that it is a public  
265 necessity that the residential addresses, personal e-mail  
266 addresses, license plate numbers, and banking and financial  
267 information of active or former sworn or civilian law  
268 enforcement personnel, including correctional and correctional  
269 probation officers, personnel of the Department of Children and  
270 Families whose duties include the investigation of abuse,  
271 neglect, exploitation, fraud, theft, or other criminal



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272 activities, personnel of the Department of Health whose duties  
273 are to support the investigation of child abuse or neglect,  
274 personnel of the Department of Revenue or local governments  
275 whose responsibilities include revenue collection and  
276 enforcement or child support enforcement, current or former  
277 state attorneys, assistant state attorneys, statewide  
278 prosecutors, assistant statewide prosecutors, public defenders,  
279 assistant public defenders, criminal conflict and civil regional  
280 counsel, assistant criminal conflict and civil regional counsel,  
281 capital collateral regional counsel, and assistant capital  
282 collateral regional counsel be made exempt from s. 119.07(1),  
283 Florida Statutes, and s. 24(a), Article I of the State  
284 Constitution. The Legislature further finds that it is a public  
285 necessity that the home addresses, telephone numbers,  
286 photographs, dates of birth, and places of employment of the  
287 parents, siblings, and cohabitants of such persons be made  
288 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
289 Article I of the State Constitution. The Legislature finds that  
290 the release of such identifying and location information places  
291 the person, or a parent, sibling, or cohabitant of the person,  
292 in danger of being physically and emotionally harmed or being  
293 stalked by a defendant or other person. The Legislature finds  
294 that the harm that may result from the release of such  
295 identifying and location information outweighs any public  
296 benefit that may be derived from the disclosure of the  
297 information.

298  
299 ===== T I T L E   A M E N D M E N T =====

300 And the title is amended as follows:





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301           Delete line 14  
302 and insert:  
303           their parents, siblings, or cohabitants; providing for  
304           retroactive application; providing for



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
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The Committee on Governmental Oversight and Accountability  
(Latvala) recommended the following:

**Senate Amendment to Amendment (963608)**

Delete line 157  
and insert:  
119.07(1) and s. 24(a), Art. I of the State Constitution. This  
sub-sub-subparagraph is subject to the Open Government Sunset  
Review Act in accordance with s. 119.15 and shall stand repealed  
on October 2, 2020, unless reviewed and saved from repeal  
through reenactment by the Legislature.

By the Committee on Criminal Justice; and Senator Latvala

591-03143-15

20151324c1

1 A bill to be entitled  
 2 An act relating to public records; amending s.  
 3 119.071, F.S.; providing exemptions from public  
 4 records requirements for certain information related  
 5 to active or former sworn or civilian law enforcement  
 6 personnel and specified agency personnel, current and  
 7 former state attorneys, assistant state attorneys,  
 8 statewide prosecutors, assistant statewide  
 9 prosecutors, public defenders, assistant public  
 10 defenders, criminal conflict and civil regional  
 11 counsel, assistant criminal conflict and civil  
 12 regional counsel, capital collateral regional counsel,  
 13 and assistant capital collateral regional counsel and  
 14 their parents, siblings, or cohabitants; providing for  
 15 future legislative review and repeal of the  
 16 exemptions; providing a statement of public necessity;  
 17 providing an effective date.  
 18  
 19 Be It Enacted by the Legislature of the State of Florida:  
 20  
 21 Section 1. Paragraph (d) of subsection (4) of section  
 22 119.071, Florida Statutes, is amended to read:  
 23 119.071 General exemptions from inspection or copying of  
 24 public records.—  
 25 (4) AGENCY PERSONNEL INFORMATION.—  
 26 (d)1. For purposes of this paragraph, the term "telephone  
 27 numbers" includes home telephone numbers, personal cellular  
 28 telephone numbers, personal pager telephone numbers, and  
 29 telephone numbers associated with personal communications

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

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59 license plate numbers, and banking and financial information of  
 60 active or former sworn or civilian law enforcement personnel and  
 61 the other specified agency personnel identified in sub-sub-  
 62 subparagraph (I) and the home addresses, telephone numbers,  
 63 social security numbers, photographs, dates of birth, and places  
 64 of employment of the parents, siblings, and cohabitants of  
 65 active or former sworn or civilian law enforcement personnel and  
 66 the other specified agency personnel identified in sub-sub-  
 67 subparagraph (I) are exempt from s. 119.07(1) and s. 24(a), Art.  
 68 I of the State Constitution. This sub-sub-subparagraph is  
 69 subject to the Open Government Sunset Review Act in accordance  
 70 with s. 119.15 and shall stand repealed on October 2, 2020,  
 71 unless reviewed and saved from repeal through reenactment by the  
 72 Legislature.

73 b. The home addresses, telephone numbers, dates of birth,  
 74 and photographs of firefighters certified in compliance with s.  
 75 633.408; the home addresses, telephone numbers, photographs,  
 76 dates of birth, and places of employment of the spouses and  
 77 children of such firefighters; and the names and locations of  
 78 schools and day care facilities attended by the children of such  
 79 firefighters are exempt from s. 119.07(1).

80 c. The home addresses, dates of birth, and telephone  
 81 numbers of current or former justices of the Supreme Court,  
 82 district court of appeal judges, circuit court judges, and  
 83 county court judges; the home addresses, telephone numbers,  
 84 dates of birth, and places of employment of the spouses and  
 85 children of current or former justices and judges; and the names  
 86 and locations of schools and day care facilities attended by the  
 87 children of current or former justices and judges are exempt

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88 from s. 119.07(1).  
 89 d.(I) The home addresses, telephone numbers, social  
 90 security numbers, dates of birth, and photographs of current or  
 91 former state attorneys, assistant state attorneys, statewide  
 92 prosecutors, or assistant statewide prosecutors; the home  
 93 addresses, telephone numbers, social security numbers,  
 94 photographs, dates of birth, and places of employment of the  
 95 spouses and children of current or former state attorneys,  
 96 assistant state attorneys, statewide prosecutors, or assistant  
 97 statewide prosecutors; and the names and locations of schools  
 98 and day care facilities attended by the children of current or  
 99 former state attorneys, assistant state attorneys, statewide  
 100 prosecutors, or assistant statewide prosecutors are exempt from  
 101 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  
 102 (II) The names of the spouses and children of current or  
 103 former state attorneys, assistant state attorneys, statewide  
 104 prosecutors, or assistant statewide prosecutors are exempt from  
 105 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.  
 106 (III) Sub-sub-subparagraph (II) is subject to the Open  
 107 Government Sunset Review Act in accordance with s. 119.15, and  
 108 shall stand repealed on October 2, 2018, unless reviewed and  
 109 saved from repeal through reenactment by the Legislature.  
 110 (IV) Residential addresses, including former residences and  
 111 residences in which the person frequently resides other than the  
 112 person's home address, e-mail addresses, driver license numbers,  
 113 license plate numbers, and banking and financial information of  
 114 current or former state attorneys, assistant state attorneys,  
 115 statewide prosecutors, or assistant statewide prosecutors and  
 116 the home addresses, telephone numbers, social security numbers,

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117 photographs, dates of birth, and places of employment of the  
 118 parents, siblings, and cohabitants of current or former state  
 119 attorneys, assistant state attorneys, statewide prosecutors, or  
 120 assistant statewide prosecutors are exempt from s. 119.07(1) and  
 121 s. 24(a), Art. I of the State Constitution. This sub-sub-  
 122 subparagraph is subject to the Open Government Sunset Review Act  
 123 in accordance with s. 119.15 and shall stand repealed on October  
 124 2, 2020, unless reviewed and saved from repeal through  
 125 reenactment by the Legislature.

126 e. The home addresses, dates of birth, and telephone  
 127 numbers of general magistrates, special magistrates, judges of  
 128 compensation claims, administrative law judges of the Division  
 129 of Administrative Hearings, and child support enforcement  
 130 hearing officers; the home addresses, telephone numbers, dates  
 131 of birth, and places of employment of the spouses and children  
 132 of general magistrates, special magistrates, judges of  
 133 compensation claims, administrative law judges of the Division  
 134 of Administrative Hearings, and child support enforcement  
 135 hearing officers; and the names and locations of schools and day  
 136 care facilities attended by the children of general magistrates,  
 137 special magistrates, judges of compensation claims,  
 138 administrative law judges of the Division of Administrative  
 139 Hearings, and child support enforcement hearing officers are  
 140 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 141 Constitution if the general magistrate, special magistrate,  
 142 judge of compensation claims, administrative law judge of the  
 143 Division of Administrative Hearings, or child support hearing  
 144 officer provides a written statement that the general  
 145 magistrate, special magistrate, judge of compensation claims,

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146 administrative law judge of the Division of Administrative  
 147 Hearings, or child support hearing officer has made reasonable  
 148 efforts to protect such information from being accessible  
 149 through other means available to the public.

150 f. The home addresses, telephone numbers, dates of birth,  
 151 and photographs of current or former human resource, labor  
 152 relations, or employee relations directors, assistant directors,  
 153 managers, or assistant managers of any local government agency  
 154 or water management district whose duties include hiring and  
 155 firing employees, labor contract negotiation, administration, or  
 156 other personnel-related duties; the names, home addresses,  
 157 telephone numbers, dates of birth, and places of employment of  
 158 the spouses and children of such personnel; and the names and  
 159 locations of schools and day care facilities attended by the  
 160 children of such personnel are exempt from s. 119.07(1) and s.  
 161 24(a), Art. I of the State Constitution.

162 g. The home addresses, telephone numbers, dates of birth,  
 163 and photographs of current or former code enforcement officers;  
 164 the names, home addresses, telephone numbers, dates of birth,  
 165 and places of employment of the spouses and children of such  
 166 personnel; and the names and locations of schools and day care  
 167 facilities attended by the children of such personnel are exempt  
 168 from s. 119.07(1) and s. 24(a), Art. I of the State  
 169 Constitution.

170 h. The home addresses, telephone numbers, places of  
 171 employment, dates of birth, and photographs of current or former  
 172 guardians ad litem, as defined in s. 39.820; the names, home  
 173 addresses, telephone numbers, dates of birth, and places of  
 174 employment of the spouses and children of such persons; and the

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175 names and locations of schools and day care facilities attended  
 176 by the children of such persons are exempt from s. 119.07(1) and  
 177 s. 24(a), Art. I of the State Constitution, if the guardian ad  
 178 litem provides a written statement that the guardian ad litem  
 179 has made reasonable efforts to protect such information from  
 180 being accessible through other means available to the public.

181 i. The home addresses, telephone numbers, dates of birth,  
 182 and photographs of current or former juvenile probation  
 183 officers, juvenile probation supervisors, detention  
 184 superintendents, assistant detention superintendents, juvenile  
 185 justice detention officers I and II, juvenile justice detention  
 186 officer supervisors, juvenile justice residential officers,  
 187 juvenile justice residential officer supervisors I and II,  
 188 juvenile justice counselors, juvenile justice counselor  
 189 supervisors, human services counselor administrators, senior  
 190 human services counselor administrators, rehabilitation  
 191 therapists, and social services counselors of the Department of  
 192 Juvenile Justice; the names, home addresses, telephone numbers,  
 193 dates of birth, and places of employment of spouses and children  
 194 of such personnel; and the names and locations of schools and  
 195 day care facilities attended by the children of such personnel  
 196 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 197 Constitution.

198 j.(I) The home addresses, telephone numbers, dates of  
 199 birth, and photographs of current or former public defenders,  
 200 assistant public defenders, criminal conflict and civil regional  
 201 counsel, and assistant criminal conflict and civil regional  
 202 counsel; the home addresses, telephone numbers, dates of birth,  
 203 and places of employment of the spouses and children of such

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204 defenders or counsel; and the names and locations of schools and  
 205 day care facilities attended by the children of such defenders  
 206 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 207 the State Constitution.

208 (II) The names of the spouses and children of the specified  
 209 agency personnel identified in sub-sub-subparagraph (I) are  
 210 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 211 Constitution. This sub-sub-subparagraph is subject to the Open  
 212 Government Sunset Review Act in accordance with s. 119.15 and  
 213 shall stand repealed on October 2, 2019, unless reviewed and  
 214 saved from repeal through reenactment by the Legislature.

215 (III) Residential addresses, including former residences  
 216 and residences in which the person frequently resides other than  
 217 the person's home address, e-mail addresses, driver license  
 218 numbers, license plate numbers, and banking and financial  
 219 information of current or former public defenders, assistant  
 220 public defenders, criminal conflict and civil regional counsel,  
 221 assistant criminal conflict and civil regional counsel, capital  
 222 collateral regional counsel, and assistant capital collateral  
 223 regional counsel, and the home addresses, telephone numbers,  
 224 social security numbers, photographs, dates of birth, and places  
 225 of employment of the parents, siblings, and cohabitants of  
 226 current or former public defenders, assistant public defenders,  
 227 criminal conflict and civil regional counsel, assistant criminal  
 228 conflict and civil regional counsel, capital collateral regional  
 229 counsel, and assistant capital collateral regional counsel are  
 230 exempt from s. 24(a), Art. I of the State Constitution. This  
 231 sub-sub-subparagraph is subject to the Open Government Sunset  
 232 Review Act in accordance with s. 119.15 and shall stand repealed

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233 on October 2, 2020, unless reviewed and saved from repeal  
 234 through reenactment by the Legislature.

235 k. The home addresses, telephone numbers, and photographs  
 236 of current or former investigators or inspectors of the  
 237 Department of Business and Professional Regulation; the names,  
 238 home addresses, telephone numbers, and places of employment of  
 239 the spouses and children of such current or former investigators  
 240 and inspectors; and the names and locations of schools and day  
 241 care facilities attended by the children of such current or  
 242 former investigators and inspectors are exempt from s. 119.07(1)  
 243 and s. 24(a), Art. I of the State Constitution if the  
 244 investigator or inspector has made reasonable efforts to protect  
 245 such information from being accessible through other means  
 246 available to the public. This sub-subparagraph is subject to the  
 247 Open Government Sunset Review Act in accordance with s. 119.15  
 248 and shall stand repealed on October 2, 2017, unless reviewed and  
 249 saved from repeal through reenactment by the Legislature.

250 l. The home addresses and telephone numbers of county tax  
 251 collectors; the names, home addresses, telephone numbers, and  
 252 places of employment of the spouses and children of such tax  
 253 collectors; and the names and locations of schools and day care  
 254 facilities attended by the children of such tax collectors are  
 255 exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 256 Constitution if the county tax collector has made reasonable  
 257 efforts to protect such information from being accessible  
 258 through other means available to the public. This sub-  
 259 subparagraph is subject to the Open Government Sunset Review Act  
 260 in accordance with s. 119.15 and shall stand repealed on October  
 261 2, 2017, unless reviewed and saved from repeal through

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262 reenactment by the Legislature.

263 m. The home addresses, telephone numbers, dates of birth,  
 264 and photographs of current or former personnel of the Department  
 265 of Health whose duties include, or result in, the determination  
 266 or adjudication of eligibility for social security disability  
 267 benefits, the investigation or prosecution of complaints filed  
 268 against health care practitioners, or the inspection of health  
 269 care practitioners or health care facilities licensed by the  
 270 Department of Health; the names, home addresses, telephone  
 271 numbers, dates of birth, and places of employment of the spouses  
 272 and children of such personnel; and the names and locations of  
 273 schools and day care facilities attended by the children of such  
 274 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of  
 275 the State Constitution if the personnel have made reasonable  
 276 efforts to protect such information from being accessible  
 277 through other means available to the public. This sub-  
 278 subparagraph is subject to the Open Government Sunset Review Act  
 279 in accordance with s. 119.15 and shall stand repealed on October  
 280 2, 2019, unless reviewed and saved from repeal through  
 281 reenactment by the Legislature.

282 3. An agency that is the custodian of the information  
 283 specified in subparagraph 2. and that is not the employer of the  
 284 officer, employee, justice, judge, or other person specified in  
 285 subparagraph 2. shall maintain the exempt status of that  
 286 information only if the officer, employee, justice, judge, other  
 287 person, or employing agency of the designated employee submits a  
 288 written request for maintenance of the exemption to the  
 289 custodial agency.

290 4. The exemptions in this paragraph apply to information

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291 held by an agency before, on, or after the effective date of the  
292 exemption.

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

298 Section 2. The Legislature finds that it is a public  
299 necessity that the residential addresses, e-mail addresses,  
300 driver license numbers, license plate numbers, and banking and  
301 financial information of active or former sworn or civilian law  
302 enforcement personnel, including correctional and correctional  
303 probation officers, personnel of the Department of Children and  
304 Families whose duties include the investigation of abuse,  
305 neglect, exploitation, fraud, theft, or other criminal  
306 activities, personnel of the Department of Health whose duties  
307 are to support the investigation of child abuse or neglect,  
308 personnel of the Department of Revenue or local governments  
309 whose responsibilities include revenue collection and  
310 enforcement or child support enforcement, current or former  
311 state attorneys, assistant state attorneys, statewide  
312 prosecutors, assistant statewide prosecutors, public defenders,  
313 assistant public defenders, criminal conflict and civil regional  
314 counsel, assistant criminal conflict and civil regional counsel,  
315 capital collateral regional counsel, and assistant capital  
316 collateral regional counsel be made exempt from s. 119.07(1),  
317 Florida Statutes, and s. 24(a), Article I of the State  
318 Constitution. The Legislature further finds that it is a public  
319 necessity that the home addresses, telephone numbers, social

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320 security numbers, photographs, dates of birth, and places of  
321 employment of the parents, siblings, and cohabitants of such  
322 persons be made exempt from s. 119.07(1), Florida Statutes, and  
323 s. 24(a), Article I of the State Constitution. The Legislature  
324 finds that the release of such identifying and location  
325 information could place the person, or a parent, sibling, or  
326 cohabitant of the person, in danger of being physically and  
327 emotionally harmed or being stalked by a defendant or other  
328 person. The Legislature finds that the harm that may result from  
329 the release of such identifying and location information  
330 outweighs any public benefit that may be derived from the  
331 disclosure of the information.

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





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Appropriations Subcommittee on  
Transportation, Tourism, and Economic  
Development, *Chair*  
Appropriations  
Commerce and Tourism  
Governmental Oversight and Accountability  
Regulated Industries  
Rules

**SENATOR JACK LATVALA**

20th District

March 31, 2015

The Honorable Jeremy Ring, Chairman  
Senate Committee on Governmental Oversight & Accountability  
525 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Chairman Ring:

I respectfully request consideration of Senate Bill 1324/Public Records/Agency Personnel Information by the Senate Committee on Governmental Oversight & Accountability at your earliest convenience. The bill was referred favorably by the Senate Criminal Justice Committee on March 30th.

This bill would provide a public records exemption for information relating to law enforcement personnel, state attorneys, statewide prosecutors, and others and includes their parents, siblings, or cohabitants. Release of such information could place the person or family member in danger of being harmed or stalked by a defendant or others.

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

Sincerely,

A handwritten signature in black ink that reads "Jack".

Jack Latvala  
State Senator  
District 20

Cc: Joe McVaney, Staff Director; Allison Rudd, Administrative Assistant

**REPLY TO:**

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

April 7, 2015

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

1324

Meeting Date

Bill Number (if applicable)

Topic Public Records/Agency Personnel Information

Amendment Barcode (if applicable)

Name Bernadette Howard

Job Title Professional Development Assistant

Address 924 N. Gadsden Street

Phone 219-3631

Street

Tallahassee FL 32303

Email bhoward@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.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/2015

Meeting Date

1324

Bill Number (if applicable)

Topic Public Records / Agency Personnel

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard Street

Phone 850-222-3329

Street

Tallahassee

City

FL

State

32301

Zip

Email N/A

Speaking:  For  Against  Information

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

Representing Florida Police Benevolent Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

1324  
464

April 7, 2015

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

Meeting Date

Bill Number (if applicable)

Topic Public Records Exemption-Public Defenders

Amendment Barcode (if applicable)

Name Bob Dillinger

Job Title Public Defender, 6th Judicial Circuit

Address 14250 49th Street North

Phone 727.464.6516

Street

Clearwater

Florida

33762

Email bdilling@weararethehope.org

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Public Defender Association, Inc.

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)

04-07-15 Meeting Date

1324 Bill Number (if applicable)

Topic Public Records / Agency Personnel Info

Amendment Barcode (if applicable)

Name Erik Eagan

Job Title Captain

Address PO Box 569

Phone 386-547-5260

Deland FL 32721

Email eeagan@vcs0.us

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

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

Representing Florida Sheriff's Assoc. / Volusia County SO

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

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

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

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

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

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

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

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BILL: CS/SB 1536

INTRODUCER: Criminal Justice Committee and Senator Flores

SUBJECT: Public Records/Florida RICO Act Investigations

DATE: April 7, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<b>Fav/CS</b>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	<u>                    </u>	<u>                    </u>	<u>AP</u>	<u>                    </u>

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 1536 makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO (Racketeer Influenced and Corrupt Organization) Act. Because the bill creates a new public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.

The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.

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 also provides a statement of public necessity for the exemption.

## II. Present Situation:

### Florida RICO Act

The “Florida RICO Act” is the short title for ss. 895.01-895.06, F.S. “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.<sup>1</sup>

Section 895.04, F.S., punishes as a first degree felony:

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt<sup>2</sup> to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;<sup>3</sup>
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.<sup>4</sup>

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.<sup>5</sup>

### Investigative Subpoenas

Under s. 895.06, F.S., an investigative agency<sup>6</sup> may, during the course of an investigation into civil violations of the act, subpoena witnesses and material if the agency has reason to believe that a person or other enterprise has engaged in conduct that violates the RICO Act. “The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred.”<sup>7</sup> An investigative

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<sup>1</sup> Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. § 1961(1).

<sup>2</sup> Section 895.02(2), F.S., defines an “unlawful debt” as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

<sup>3</sup> Section 895.02(3), F.S., defines “enterprise” as any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

<sup>4</sup> Section 895.03(4), F.S.

<sup>5</sup> Section 895.05(2), F.S.

<sup>6</sup> Section 895.02(7), F.S., defines “investigative agency” as the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

<sup>7</sup> *Check 'N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001), *review denied* 817 So.2d 845 (Fla. 2002).

agency may apply ex parte to a circuit court for an order directing that a person or entity who has been subpoenaed not disclose the existence of the subpoena for a period of 90 days to anyone except for the attorney for the subpoenaed person or entity.<sup>8</sup> The 90-day time limit may be extended by the court for good cause shown by the investigative agency.<sup>9</sup>

### Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>10</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>11</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>12</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>13</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>14</sup>

Only the Legislature may create an exemption to public records requirements.<sup>15</sup> This exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>16</sup> Relevant to the bill, 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.<sup>17</sup> 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.<sup>18</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill

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<sup>8</sup> Section 895.06(3), F.S.

<sup>9</sup> *Id.*

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

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

<sup>12</sup> Chapter 119, F.S.

<sup>13</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "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.

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

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

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

<sup>17</sup> 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 1994), *review denied* 651 So.2d 1192 (Fla. 1995); and *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). See also Attorney General Opinion 85-62 (August 1, 1985).

<sup>18</sup> See *WFTV, Inc. v. The School Board of Seminole*, *supra*, and *Wait v. Florida Power and Light Co.*, 372 So.2d 420 (Fla. 1979).



enacting an exemption may not contain other substantive provisions<sup>19</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>20</sup>

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

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>21</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>22</sup>

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.<sup>23</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>24</sup>
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals;<sup>25</sup> or
- Protects trade or business secrets.<sup>26</sup>

The OGSR also requires specified questions to be considered during the review process. In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. The specified questions are:<sup>27</sup>

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

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<sup>19</sup> FLA. CONST. art. I, s. 24. However, the bill may contain multiple exemptions that relate to one subject.

<sup>20</sup> FLA. CONST., art. I, s. 24(c).

<sup>21</sup> 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.

<sup>22</sup> Section 119.15(3), F.S.

<sup>23</sup> Section 119.15(6)(b), F.S.

<sup>24</sup> Section 119.15(6)(b)1., F.S.

<sup>25</sup> Section 119.15(6)(b)2., F.S. If this public purpose is cited as the basis of an exemption, only personal identifying information is exempt. *Id.*

<sup>26</sup> Section 119.15(6)(b)3., F.S.

<sup>27</sup> Section 119.15(6)(a)1.-6., F.S.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>28</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>29</sup>

### III. Effect of Proposed Changes:

The bill makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO Act. Because the bill creates a new public record exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.

The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

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 also provides a statement of public necessity for the exemption.

This bill is linked to SB 1514, which makes substantial changes to civil enforcement provisions of the Florida RICO Act. Relevant to SB 1536, SB 1514 amends s. 895.06, F.S., to make an investigative subpoena issued pursuant to the Florida RICO Act automatically confidential for 120 days after the date of its issuance, unless this period is extended by the court upon a showing of good cause by the investigating agency. SB 1514 also prohibits a subpoenaed person or entity from disclosing the existence of the subpoena to any person or entity other than the attorney of the subpoenaed person or entity during the period in which the subpoena is confidential.

CS/SB 1536 provides a statement of public necessity for the exemption, which includes the following findings:

- Because a Florida RICO Act investigation conducted by an investigative agency may lead to the filing of a civil action, the premature release of the information held by such investigative agency could frustrate or thwart the investigation and impair the ability of the investigative agency to effectively and efficiently administer its duties under the act;
- The exemption protects the reputation of the potential defendant in the event the investigation is closed without the filing of a civil action; and

---

<sup>28</sup> FLA. CONST., art. I, s. 24(c).

<sup>29</sup> Section 119.15(7), F.S.

- Without the exemption, a potential defendant under the Florida RICO Act may learn of the investigation and dissipate his or her assets and thwart any future enforcement action under the act.

#### **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. The bill includes a public necessity statement.

###### **Breadth of Exemption**

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

The bill makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of the Florida RICO Act. However, the information only remains confidential and exempt until all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

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

None.

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

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

Like any other public records exemption, the bill may lead to a minimal fiscal impact on the affected portions of the government (the Department of Legal Affairs and law enforcement agencies). Staff responsible for complying with public record requests may require training related to the expansion of the public record exemption, and court and clerk offices may incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, should be absorbed, as they are part of the day-to-day responsibilities of the agencies.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 895.06 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 Criminal Justice on March 30, 2015:**

Rewords and restructures the bill but does not make any substantive changes except for deleting a finding in the statement of public necessity and correcting a deficient effective date.

**B. Amendments:**

None.

By the Committee on Criminal Justice; and Senator Flores

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1 A bill to be entitled  
 2 An act relating to public records; amending s. 895.06,  
 3 F.S.; providing an exemption from public records  
 4 requirements for certain documents and information  
 5 held by an investigative agency pursuant to an  
 6 investigation relating to an activity prohibited under  
 7 the Florida RICO Act; authorizing disclosure of such  
 8 documents and information under certain conditions;  
 9 providing for future legislative review and repeal of  
 10 the exemption; providing a statement of public  
 11 necessity; providing a contingent effective date.  
 12  
 13 Be It Enacted by the Legislature of the State of Florida:  
 14  
 15 Section 1. Subsection (7) is added to section 895.06,  
 16 Florida Statutes, to read:  
 17 895.06 Civil investigative subpoenas; public records  
 18 exemption.—  
 19 (7) (a) Information held by an investigative agency pursuant  
 20 to an investigation of a violation of s. 895.03 is confidential  
 21 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
 22 Constitution.  
 23 (b) Information made confidential and exempt under  
 24 paragraph (a) may be disclosed by the investigative agency to:  
 25 1. A government entity in the performance of its official  
 26 duties.  
 27 2. A court or tribunal.  
 28 (c) Information made confidential and exempt under  
 29 paragraph (a) is no longer confidential and exempt once all

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30 investigations to which the information pertains are completed,  
 31 unless the information is otherwise protected by law.  
 32 (d) For purposes of this subsection, an investigation is  
 33 considered complete once the investigative agency either files  
 34 an action or closes its investigation without filing an action.  
 35 (e) This subsection is subject to the Open Government  
 36 Sunset Review Act in accordance with s. 119.15 and shall stand  
 37 repealed on October 2, 2020, unless reviewed and saved from  
 38 repeal through reenactment by the Legislature.  
 39 Section 2. The Legislature finds that it is a public  
 40 necessity that the information held by an investigative agency  
 41 pursuant to an investigation of a violation of s. 895.03,  
 42 Florida Statutes, relating to an activity prohibited under the  
 43 Florida RICO Act, be made confidential and exempt from s.  
 44 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 45 State Constitution. Because a Florida RICO Act investigation  
 46 conducted by an investigative agency may lead to the filing of a  
 47 civil action, the premature release of the information held by  
 48 such investigative agency could frustrate or thwart the  
 49 investigation and impair the ability of the investigative agency  
 50 to effectively and efficiently administer its duties under the  
 51 Florida RICO Act, ss. 895.01-895.09, Florida Statutes. This  
 52 exemption also protects the reputation of the potential  
 53 defendant in the event that the investigation is closed without  
 54 the filing of a civil action. Further, without this exemption, a  
 55 potential defendant under the Florida RICO Act may learn of the  
 56 investigation and dissipate his or her assets and thwart any  
 57 future enforcement action under the act. Therefore, the  
 58 Legislature finds that it is a public necessity that the

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591-03144-15

20151536c1

59 documents and information held by the investigative agency  
60 pursuant to an investigation of a violation of s. 895.03,  
61 Florida Statutes, relating to an activity prohibited under the  
62 Florida RICO Act, be made confidential and exempt from public  
63 records requirements.

64 Section 3. This act shall take effect on the same date that  
65 SB 1514 or similar legislation relating to offenses concerning  
66 racketeering and illegal debts takes effect, if such legislation  
67 is enacted in the same legislative session or an extension  
68 thereof and becomes law.



The Florida Senate

## Committee Agenda Request

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

**Subject:** Committee Agenda Request

**Date:** April 1, 2015

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I respectfully request that **Senate Bill #1536**, relating to Public Record/Florida RICO Act Investigations, be placed on the:

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

*Anitere Flores*

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Senator Anitere Flores  
Florida Senate, District 37

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/4/15

Meeting Date

1536

Bill Number (if applicable)

Topic Public Records/Civil RICO

Amendment Barcode (if applicable)

Name Andrew Fay

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Speaking: [ ] For [ ] Against [ ] Information

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

Representing

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**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 1582

INTRODUCER: Senator Richter

SUBJECT: Public Records/High-pressure Well Stimulation Chemical Disclosure Registry

DATE: April 8, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Gudeman</u>	<u>Uchino</u>	<u>EP</u>	<b>Favorable</b>
2.	<u>Peacock</u>	<u>McVaney</u>	<u>GO</u>	<b>Favorable</b>
3.	_____	_____	<u>AP</u>	_____

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**I. Summary:**

SB 1582 creates a new public records exemption for proprietary business information as defined in s. 377.24075(1)(a)-(e), F.S., and related to the high pressure well stimulation chemical disclosure registry or chemical disclosure submitted to the Department of Environmental Protection (DEP) as part of a permit for high pressure well stimulation. This information is confidential and exempt from s. 119.071(1), F.S., and Article I, section 24(a) of the Florida Constitution.

Under current law, if someone requests information that is “labelled” trade secret, the requestor must sue in circuit court based on the denial of the public records. Under this bill, if someone request the otherwise presumed proprietary business information, including trade secrets, the owner of such information must sue in circuit court to ensure the information is not released. The bill provides certain exemptions and noticing requirements for a person who files an action in a circuit court.

The bill provides for repeal of the exemption on October 2, 2020, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

**II. Present Situation:**

**Hydraulic Fracturing**

Hydraulic fracturing is a technique that involves stimulating the well in order to extract oil and gas. Large amounts of fluid under pressure are injected into a wellbore to create and extend

fractures in the rock formation. The fractures are held open by a slurry mixture which allows natural gas to flow from the fractures into the production well.<sup>1</sup>

The injected fluid is composed of water, proppants, and chemical additives. The composition of the injected fluid varies between rock formations but the majority of the fluid, 98 to 99.5 percent, is water. The proppants are made of sand, ceramic pellets, or other small incompressible particles that hold the fractures open. The chemical additives include bactericides, buffers, stabilizers, fluid-loss additives, and surfactants that improve the effectiveness of the fracturing process and prevent damage to the rock formation.<sup>2</sup>

The injection of the fracturing fluid is sequenced and the blend and proportions of the additives used vary depending on the characteristics of the rock formation; however, all of the additives are used during the fracturing process. The acid stage consists of several thousand gallons of water mixed with hydrochloric acid or muriatic acid that work to clear cement debris and create an open path for the fracturing fluids. The pad stage consists of approximately 100,000 gallons of “slick-water,” which is a friction reducing agent that reduces the pressure needed to pump fluid into the wellbore and facilitate the flow and placement of the proppant material. The prop sequence stage, which may include several sub-stages, uses several hundred thousand gallons of water mixed with varying sized particulates that keep the fractures open. Finally, there is a flushing stage that consists of enough water to adequately flush the excess proppant from the wellbore.<sup>3</sup>

### **Oil and Gas Regulation in Florida**

The Oil and Gas Program in the DEP is the permitting authority for oil and gas wells under Part I of ch. 377, F.S. Section 377.22, F.S., directs the DEP to establish rules for the oil and gas program that ensure human health, public safety, and the environment are protected from the exploration phase to well completion and abandonment phase. The DEP is also responsible for monitoring and reporting the well drilling and production activities from exploration to well abandonment.<sup>4</sup>

The DEP adopted Rules 62C-25 through 30, F.A.C., to implement Part I of ch. 377, F.S. The rules include permitting procedures, bonding requirements, well spacing, well construction, production, injection, workovers, and well abandonment. The rule also requires each operator to submit a spill prevention and cleanup plan pursuant to Rule 62C-28.004(2), F.A.C. The plan must include the potential spill source, the protective measures to prevent a spill, and the location of emergency equipment in the event of a spill.

The requirements and procedures for well stimulation technology is not provided for in rule or statute; however, hydraulic fracturing, acidizing, or other chemical treatments of a well are activities that may be approved in a workover. A workover includes a variety of remedial operations that are conducted in order to increase well production. Rule 62C-25.002(61), F.A.C.,

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<sup>1</sup>FracFocus Chemical Disclosure Registry, *Hydraulic Fracturing: The Process*, <http://fracfocus.org/hydraulic-fracturing-how-it-works/hydraulic-fracturing-process>. (Last visited Mar. 29, 2015).

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

<sup>3</sup> *Id.*

<sup>4</sup> Section 377.21, F.S.

defines a “work over” as “an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates.” An operator is required to notify the DEP prior to commencing a workover procedure, unless it is for an emergency operation in which case the operator must notify the DEP during the operation or immediately thereafter.<sup>5</sup> The operator must submit a revised Well Record to the DEP within 30 days of the workover.<sup>6</sup>

### **Emergency Planning and Community Right to Know Act**

In 1986, Congress enacted the Emergency Planning and Community Right-to-Know Act (EPCRA), which requires federal, local and state governments to report hazardous and toxic chemicals in order to increase the public’s knowledge and access to information on chemicals at individual facilities. The EPCRA includes the Toxic Release Inventory (TRI), which is a publicly available database that contains information on chemical releases and waste management reported by certain industries. The U.S. Environmental Protection Agency (EPA) has not included oil and gas extraction as an industry that must report under the TRI because the EPA determined the oil and gas extraction industry is not a high priority for reporting. The decision is based on the fact that most of the information that the TRI requires is already reported by oil and gas providers to the individual state agencies and reporting for the hundreds and thousands of oil and gas sites would overwhelm the system.<sup>7</sup>

In March 2015, the Bureau of Land Management (BLM) published the final rule that would require companies that conduct hydraulic fracturing on lands managed by the BLM to disclose the composition of the fracturing fluid. Congress has also proposed legislation requiring the disclosure of chemicals under the Fracturing Responsibility and Awareness of Chemicals Act.<sup>8</sup>

To date, federal legislation has not been implemented to require the disclosure of chemicals used in hydraulic fracturing; therefore, many states have taken steps to develop their own chemical disclosure laws. The disclosure requirements that have been established in certain states include the information about the chemical additives and whether the disclosures are made to state agencies or available to the public, the composition of the chemicals, the protections provided in trade secrets, and when the disclosure of the chemicals is to take place in relation to the fracturing process.<sup>9</sup>

### **FracFocus Chemical Disclosure Registry**

FracFocus is a national hydraulic fracturing chemical registry operated by the Ground Water Protection Council and the Interstate Oil and Gas Compact Commission. The registry provides public access to reported chemicals used for hydraulic fracturing. FracFocus does not replace

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<sup>5</sup> Fla. Admin. Code R. 62C-29.006 (1996).

<sup>6</sup> The Well Record is the DEP Oil and Gas Form 8.

<sup>7</sup> Pub. Law No. 99-499, H.R. 2005, 99th Cong. (Oct. 17, 1986).

<sup>8</sup> Fracturing Responsibility and Awareness of Chemicals Act, Final Rule, 80 Fed. Reg. 16128-16222 (Mar. 26, 2015)(to be codified at 43 C.F.R. pt. 3).

<sup>9</sup> Congressional Research Service, *Hydraulic Fracturing: Chemical Disclosure Requirements*, 2 (June 19, 2012), available at <http://www.fas.org/sgp/crs/misc/R42461.pdf> (last visited Mar. 29, 2015).

state governmental information systems but is used by ten states as the primary means of state chemical disclosure. Currently there are approximately 95,000 well sites registered with the database.<sup>10</sup>

### Public Records Law

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.<sup>11</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>12</sup>

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act<sup>13</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>14</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>15</sup>

Only the Legislature may create an exemption to public records requirements.<sup>16</sup> This exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>17</sup> Relevant to the bill, 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.<sup>18</sup> 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.<sup>19</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill

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<sup>10</sup> *Supra* note 2.

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

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

<sup>13</sup> Chapter 119, F.S.

<sup>14</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean "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.

<sup>15</sup> Section 119.07(1)(a), F.S.

<sup>16</sup> FLA. CONST., art. I, s. 24(c).

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

<sup>18</sup> 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 1994), *review denied* 651 So.2d 1192 (Fla. 1995); and *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). See also Attorney General Opinion 85-62 (August 1, 1985).

<sup>19</sup> See *WFTV, Inc. v. The School Board of Seminole*, *supra*, and *Wait v. Florida Power and Light Co.*, 372 So.2d 420 (Fla. 1979).

enacting an exemption may not contain other substantive provisions<sup>20</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>21</sup>

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

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>22</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>23</sup>

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.<sup>24</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- Allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>25</sup>
- Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals;<sup>26</sup> or
- Protects trade or business secrets.<sup>27</sup>

The OGSR also requires specified questions to be considered during the review process. In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption. The specified questions are:<sup>28</sup>

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

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<sup>20</sup> FLA. CONST. art. I, s. 24. However, the bill may contain multiple exemptions that relate to one subject.

<sup>21</sup> FLA. CONST., art. I, s. 24(c).

<sup>22</sup> 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.

<sup>23</sup> Section 119.15(3), F.S.

<sup>24</sup> Section 119.15(6)(b), F.S.

<sup>25</sup> Section 119.15(6)(b)1., F.S.

<sup>26</sup> Section 119.15(6)(b)2., F.S. If this public purpose is cited as the basis of an exemption, only personal identifying information is exempt. *Id.*

<sup>27</sup> Section 119.15(6)(b)3., F.S.

<sup>28</sup> Section 119.15(6)(a)1.-6., F.S.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>29</sup> If the exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>30</sup>

### Trade Secrets

A “trade secret” in accordance with s. 812.081(1)(c), F.S., is “any scientific, technical, or commercial information, including any design, process, procedure, list of suppliers, list of customers, business code, or improvement thereof. Irrespective of novelty, invention, patentability, the state of the prior art, and the level of skill in the business, art, or field to which the subject matter pertains.”

Section 812.081, F.S., further defines a “trade secret” as information used in the operation of a business, which provides the business an advantage or an opportunity to obtain an advantage, over those who do not know or use it. The test provided for in statute, requires that a trade secret be actively protected from loss or public availability to any person not selected by the secret’s owner to have access thereto, and be:

- Secret;
- Of value;
- For use or in use by the business; and
- Of advantage to the business, or providing an opportunity to obtain an advantage, over those who do not know or use it.<sup>31</sup>

Courts similarly use this factor test to determine whether a document is trade secret subject to protection from public records laws. In *Sepro Corp. v. Department of Environmental Protection*,<sup>32</sup> the court held that a document was subject to disclosure because the business failed the first prong of the test (that the document be secret) because it had not actively protected or held out the document as a trade secret.

The term “trade secret” is also defined in s. 688.002(4), F.S., of the Uniform Trade Secrets Act as:

[I]nformation, including a formula, pattern, compilation, program, device, method, technique, or process that:

- (a) Derives independent economic value, actual or potential, from not being generally known, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

<sup>29</sup> FLA. CONST., art. I, s. 24(c).

<sup>30</sup> Section 119.15(7), F.S.

<sup>31</sup> Section 812.081(1)(c), F.S.

<sup>32</sup> 839 So. 2d 781 (Fla. 1<sup>st</sup> DCA 2003). The court noted that “[i]t is of no consequence that [a party furnishing information] wishes to maintain the privacy of particular materials filed with the department, unless such materials fall within a legislatively created exemption to Ch. 119, F.S.” *Id.* at 784.

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Section 815.045, F.S., provides that trade secret information as defined in s. 812.081, F.S., and as provided for in s. 815.04(3), F.S., is confidential and exempt from the public records.

Currently, a trade secret owner who provides trade secret information to a state agency must take measures to maintain the secrecy, i.e., designate/label in writing that such documents/information are a trade secret and should not be disclosed. If this information is requested through a public records request, the agency must not release the information; however, the person or entity requesting such information may file a lawsuit upon denial of the request for a court to determine whether or not the information is a trade secret and should be released.

### **Proprietary Business Information**

Section 377.24075, F.S., provides that proprietary business information held by the DEP pursuant to its duties with respect to an application for a natural gas storage facility permit is confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution. The term “proprietary business information,” means information that:<sup>33</sup>

- Is owned or controlled by the applicant or person affiliated with the applicant;
- Is intended to be private and is treated by the applicant as private because disclosure would harm the applicant or the applicant’s business operations;
- Has not been disclosed except as required by law or private agreement that provides that the information will not be released to the public;
- Is not publicly available or otherwise readily ascertainable through proper means from another source in the same configuration as requested by the DEP;
- Includes trade secrets as defined in s. 688.002, F.S.(See previous discussion);
- Includes leasing plans, real property acquisition plans, exploration budgets, or marketing studies; and
- Includes competitive interests, which may include well design or completion plans, geologic or engineering studies related to storage reservoir performance characteristics, or field utilization strategies or operating plans, the disclosure of which would impair the competitive business of the applicant providing the information.

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

**Section 1** amends s. 377.45, F.S., as created by SB 1468 (2015 Regular Session). The bill specifies that proprietary business information as defined in s. 377.24075(1)(a)-(e), F.S., relating to the high pressure well stimulation chemical disclosure registry, or submitted to the DEP as part of a permit for high pressure well stimulation is confidential and exempt from s. 119.071(1), F.S., and Article I, section 24(a) of the Florida Constitution. A person submitting the information to the DEP must request the proprietary business information be kept confidential and exempt, inform the DEP of the basis for the claim of proprietary business information, and clearly mark each page of the document as “proprietary business information” to maintain the exemption.

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<sup>33</sup> Section 377.24075(1)(a)-(e), F.S.

The bill requires the DEP to notify the person who submitted a document marked “proprietary business information” if a public records request is made for the document. It provides the person 30 days after receipt of the notice to file an action in circuit court seeking a determination as to whether the document contains proprietary business information and an order barring public disclosure of the document. The DEP may not release the information if the action was timely filed until the pending legal action is concluded. The failure to timely file an action constitutes a waiver of any claim of confidentiality, and the DEP must release the information as requested.

The bill specifies proprietary business information may be disclosed:

- To another governmental entity that agrees in writing to maintain the confidential and exempt status of the information and verifies in writing that it has legal authority to do so; and
- When relevant in any proceeding under this section, a person involved in any proceeding under this section, including, but not limited to, an administrative law judge, a hearing officer, or a judge or justice, must maintain the confidentiality of information revealed at the proceeding.

The bill specifies the public records exemption created by the bill is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and expires on October 2, 2020, unless reenacted by the Legislature.

**Section 2** creates an undesignated section of law to provide legislative findings. The bill finds it is a public necessity that proprietary business information related to high pressure well stimulations provided to the DEP by the applicant or held by the DEP in connection with the online high pressure well stimulation chemical disclosure registry be made confidential and exempt from s 119.15, F.S, and Article I, section 24(a) of the Florida Constitution. The bill further specifies the information must remain confidential to avoid providing an unfair advantage to competitors and to prevent other entities from using the information without compensating or reimbursing the entity whose information was not made confidential and exempt.

**Section 3** provides the act will take effect on the same date that SB 1468 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

#### **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. The bill includes a public necessity statement.

**Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public record exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt from public disclosure proprietary business information relating to high pressure well stimulations, submitted to DEP as part of a permit application or held by the DEP in connection with the online high pressure well stimulation chemical disclosure registry.

**C. Trust Funds Restrictions:**

None.

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

None.

**B. Private Sector Impact:**

The bill protects proprietary business information, which may provide a financial benefit to private companies engaged in high pressure well stimulation.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 377.24075, F.S., makes confidential and exempt “proprietary business information” relating to the application for a natural gas storage facility. The definition of “proprietary

business information” in s. 377.24075(1)(a)-(e), F.S., is for proprietary business information with respect to an application for a natural gas storage facility permit. Certain parts of the definition may not apply to proprietary business information with respect to high pressure well stimulation.

**VIII. Statutes Affected:**

This bill substantially amends section 377.45 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By Senator Richter

23-01893A-15

20151582\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s. 377.45,  
 3 F.S.; providing an exemption from public records  
 4 requirements for proprietary business information  
 5 relating to high pressure well stimulations obtained  
 6 by the Department of Environmental Protection in  
 7 connection with the department's online high pressure  
 8 well stimulation chemical disclosure registry;  
 9 providing procedures and requirements with respect to  
 10 the granting of confidential and exempt status;  
 11 providing for disclosure under specified  
 12 circumstances; providing for future legislative review  
 13 and repeal of the exemption under the Open Government  
 14 Sunset Review Act; providing a statement of public  
 15 necessity; providing a contingent effective date.  
 16  
 17 Be It Enacted by the Legislature of the State of Florida:  
 18  
 19 Section 1. Subsection (4) is added to section 377.45,  
 20 Florida Statutes, as created by SB 1468, 2015 Regular Session,  
 21 to read:  
 22 377.45 High pressure well stimulation chemical disclosure  
 23 registry.—  
 24 (4) (a) Proprietary business information, as defined in s.  
 25 377.24075(1) (a)-(e) and relating to high pressure well  
 26 stimulations, submitted to the department as part of a permit  
 27 application or held by the department in connection with the  
 28 online high pressure well stimulation chemical disclosure  
 29 registry, is confidential and exempt from s. 119.07(1) and s.

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

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30 24(a), Art. I of the State Constitution if the person submitting  
 31 such proprietary business information to the department:  
 32 1. Requests that the proprietary business information be  
 33 kept confidential and exempt;  
 34 2. Informs the department of the basis for the claim of  
 35 proprietary business information; and  
 36 3. Clearly marks each page of a document or specific  
 37 portion of a document containing information claimed to be  
 38 proprietary business information as "proprietary business  
 39 information."  
 40 (b) If the department receives a public records request for  
 41 a document that is marked proprietary business information under  
 42 this section, the department must promptly notify the person who  
 43 submitted the information as proprietary business information.  
 44 The notice must inform the person that he or she has 30 days  
 45 after receipt of the notice to file an action in circuit court  
 46 seeking a determination as to whether the document in question  
 47 contains proprietary business information and an order barring  
 48 public disclosure of the document. If the person files an action  
 49 within 30 days after receipt of notice of the public records  
 50 request, the department may not release the document pending the  
 51 outcome of the legal action. The failure to file an action  
 52 within 30 days constitutes a waiver of any claim of  
 53 confidentiality, and the department shall release the document  
 54 as requested.  
 55 (c) Confidential and exempt proprietary business  
 56 information may be disclosed:  
 57 1. To another governmental entity if the receiving entity  
 58 agrees in writing to maintain the confidential and exempt status

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59 of the information and has verified in writing its legal  
 60 authority to maintain such confidentiality; or  
 61 2. When relevant in any proceeding under this part. A  
 62 person involved in any proceeding under this section, including,  
 63 but not limited to, an administrative law judge, a hearing  
 64 officer, or a judge or justice, must maintain the  
 65 confidentiality of any proprietary business information revealed  
 66 at such proceeding.  
 67 (d) This subsection is subject to the Open Government  
 68 Sunset Review Act in accordance with s. 119.15 and shall stand  
 69 repealed on October 2, 2020, unless reviewed and saved from  
 70 repeal through reenactment by the Legislature.  
 71 Section 2. The Legislature finds that it is a public  
 72 necessity that proprietary business information, as defined in  
 73 s. 377.24075(1)(a)-(e), Florida Statutes, and relating to high  
 74 pressure well stimulations, submitted to the Department of  
 75 Environmental Protection as part of a permit application or held  
 76 by the department in connection with the online high pressure  
 77 well stimulation chemical disclosure registry, be made  
 78 confidential and exempt from s. 119.07(1), Florida Statutes, and  
 79 s. 24(a), Article I of the State Constitution. Proprietary  
 80 business information must be held confidential and exempt from  
 81 public records requirements because the disclosure of such  
 82 information would create an unfair competitive advantage for  
 83 persons receiving such information and would adversely impact  
 84 the service company, chemical supplier, or well owner or  
 85 operator that provides chemical ingredients for a well on which  
 86 high pressure well stimulations are performed. If such  
 87 confidential and exempt information regarding proprietary

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88 business information were released pursuant to a public records  
 89 request, others would be allowed to take the benefit of the  
 90 proprietary business information without compensation or  
 91 reimbursement to the service company, chemical supplier, or well  
 92 owner or operator.  
 93 Section 3. This act shall take effect on the same date that  
 94 SB 1468 or similar legislation takes effect, if such legislation  
 95 is adopted in the same legislative session or an extension  
 96 thereof and becomes a law.

Page 4 of 4

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



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Ethics and Elections, *Chair*  
Banking and Insurance, *Vice Chair*  
Appropriations  
Appropriations Subcommittee on Health  
and Human Services  
Commerce and Tourism  
Regulated Industries  
Rules

## SENATOR GARRETT RICHTER

*President Pro Tempore*  
23rd District

March 31, 2015

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

Dear Chairman Ring:

Senate Bill 1582 relating to Public Records/High Pressure Well Stimulation Chemical Disclosure Registry, has passed out of the Environmental Preservation and Conservation, and has been referred to your committee. I would appreciate your consideration to place this bill on your committee's agenda at the earliest opportunity.

Sincerely,

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

Garrett Richter

cc: Joe McVaney Staff Director

REPLY TO:

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# Tampa Bay Times

 WINNER OF 10 PULITZER PRIZES

## Column: New rules put more toxins in our water

By Dick Batchelor, special to the Times

Wednesday, April 10, 2013 4:30am

How well does the state maintain its waters? We're aware of too much pollution, not enough oversight, lots of finger-pointing and too few hands that are willing to do the heavy lifting, politically speaking. But we don't often consider the potentially lethal consequences of politically expedient decisions.

Now, Gov. Rick Scott's Department of Environmental Protection is proposing more pollution-friendly changes to our water quality standards. These would adversely affect drinking water sources, the fish that we consume and the lakes and rivers in which we swim.

As a former member of Florida's environmental rulemaking body, the Environmental Regulation Commission, I know the existing standards were not arrived at easily or casually. They were debated for many months, with all affected parties invited to contribute their ideas and concerns — and believe me, they did contribute. The new changes would be significant because many are less stringent than the bare minimum recommended by EPA.

The proposal to weaken the rule that governs against human health-based toxins would not adequately protect Floridians' health. Most at risk would be children, pregnant women and those who enjoy eating a significant amount of local fish and seafood.

Every three years, the state must review the quality of all Florida waters. (This is a requirement of the federal Clean Water Act.) It is alarming that these proposed changes ignore such toxins as dioxin, arsenic and mercury, and they are contradictory to boot. After all, Florida has been concerned about the amount of mercury in our fish for some time.

Carcinogenic toxins — an allowable, safe level in water for drinking, shellfishing, fishing and swimming — would mostly increase. Florida's existing formula for toxic criteria, also followed by most states, is based on the same one used by the EPA, which uses a national average for fish consumption.

Naturally, Floridians eat far more fish than the national average, studies find. Even with that knowledge, the state has the audacity to propose changes that would weaken current protection of our water from toxic chemicals, including: benzene, chlordane, PCBs, chloroform, carbon-tetrachloride, bromoform, tetrachloroethene, chlordane and dieldrin.

Many other toxics would be regulated in Florida for the first time but at levels that are significantly less stringent than recommended by the federal EPA. Those are scary chemicals. Why would citizens — and I am concerned not only about my health but also the health of family and friends — tolerate the state's audacity to even propose such changes?

In the same sweeping revisions, Florida proposes to shift the number of water samples taken to detect pollutants. Annual *averaging* samples would be used for many of these toxins — making it easier to mask problems. I'm suspicious, aren't you? Does the state intend to make it easier to mask problems?

Then consider tourism, a core strength of Florida's economy. The state and businesses (think of beachside resorts, hotels, car rental companies — the list is endless) spend big bucks to lure vacationers here. These visitors would be exposed, too, but we'd never know the effects of such exposure. Should we tell them in our ads that Florida waters and fish may be hazardous to their health?

More cancer-causing chemicals in our waters will not build a stronger economy. It will not improve our tarnished image. It will not provide a safe and healthy environment for our children. Allowing more carcinogens to be dumped in our rivers and bays essentially amounts to an involuntary cancer lottery for anyone who eats local fish and seafood and for all of our wildlife.

I share the state's goal of maintaining a business-friendly environment. But shouldn't a business-friendly environment square with public health and healthy wildlife, rivers and estuaries? A recent University of Florida survey revealed that 93 percent of respondents rated clean drinking water as their top concern.

I share that concern. In fact, I am alarmed. The six ERC members will vote on these changes April 23. Whey they do, they should not weaken a benchmark of water quality.

*Dick Batchelor, the president of a business-development consulting firm in Orlando, is a former member of the Florida House of Representatives, and Environmental Regulation Commission chair, 1991-97. He wrote this exclusively for the Tampa Bay Times.*

**Column: New rules put more toxins in our water 04/10/13**  
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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)

4/7/15  
Meeting Date

1582  
Bill Number (if applicable)

Topic SB 1582

Amendment Barcode (if applicable)

Name Jennifer Rubiello

Job Title Organizer <sup>campaign</sup>, Environment Florida

Address 3118 1st Ave N, St 2K Phone \_\_\_\_\_  
Street

St Petersburg, FL 33713 Email jennifer@environmentflorida.org  
City State Zip

Speaking:  For  Against  Information

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

Representing ENVIRONMENT 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)

4/7/15

Meeting Date

SB 1582

Bill Number (if applicable)

Topic FRACKING REGULATIONS

Amendment Barcode (if applicable)

Name BRIAN LUPIANI

Job Title (RETIRED)

Address 607 McDANIEL ST

Phone 850-273-1028

Street

TALLAHASSEE FL 32303

Email BRIANLUPIANI@YAHOO.COM

City

State

Zip

Speaking:  For  Against  Information

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

Representing SELF

I will not be able to attend the meeting. Brian Lupiani

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/15

Meeting Date

1582

Bill Number (if applicable)

Topic

Fracking Regulation

Amendment Barcode (if applicable)

Name

Ann Paquette

Job Title

Address

Street

Greenville

City

State

32331

Zip

Phone

857 94 83215

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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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4-7-15  
Meeting Date

SE 1582  
Bill Number (if applicable)

Topic Ftacking Regulations

Amendment Barcode (if applicable)

Name Jungare Miller

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

Address 916 SW CR 360

Phone \_\_\_\_\_

Street

Madison FL 32348

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Garden Clubs - 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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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/7/15  
Meeting Date

1582  
Bill Number (if applicable)

Topic FRACKING REGULATIONS

Amendment Barcode (if applicable)

Name ERIC ROLLINGS

Job Title CHAIR ORANGE SOIL + WATER CONSERVATION DISTRICT

Address 139 E. MURIEL ST  
Street

Phone 407-256-2470

ORLANDO FL 32806  
City State Zip

Email ERIC@VONNREULESTATE.COM

Speaking:  For  Against  Information

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

Representing MYSELF

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)

4/7/15

Meeting Date

1582

Bill Number (if applicable)

Topic SB 1582

Amendment Barcode (if applicable)

Name Andrew Ketchel

Job Title Director of legislative Affairs

Address 3700 Commonwealth Blvd

Phone

Street

Tallahassee

FL

32399

Email

City

State

Zip

Speaking:  For  Against  Information

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

Representing DEP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4-7-15

Meeting Date

SB 1582

Bill Number (if applicable)

Topic ~~Public Disclosure~~ Public disclosure

Amendment Barcode (if applicable)

Name Debbie Harrison Rumberger

Job Title Legislative Lobbyist

Address 540 Zeebly Court

Phone

Street

City

Tallahassee

State

Zip

Email

Speaking:  For  Against  Information

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

Representing Florida League of Women Voters

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)

04-07-2015  
Meeting Date

1582  
Bill Number (if applicable)

Topic FRACKING - use of secret chemicals

Amendment Barcode (if applicable)

Name GALE DICKERT

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

Address 193 NW Hamilton Ave  
Street  
MADISON, FL  
City State Zip

Phone 850.973.3699

Email johnw512@yahoo.com

Speaking:  For  Against  Information

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

Representing The Fed Garden Club & Boys & Girls Clubs of America

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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4/7/15  
Meeting Date

1582  
Bill Number (if applicable)

Topic Pub. Rec - High Pressure Well Sum.

Amendment Barcode (if applicable)

Name DAVID CULLEN

Job Title

Address 1674 UNIVERSITY AVE  
Street  
SARASOTA FL 34243  
City State Zip

Phone 941-323-2464

Email cullen@senate.fl.com

Speaking:  For  Against  Information

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

Representing Slick Club Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15

Meeting Date

SB 1582

Bill Number (if applicable)

Topic Public Records/High-pressure Well stimulation

Amendment Barcode (if applicable)

Name Mary-Lynn Colley

Job Title Legislative Liaison

Address 11674 University Pkwy.

Street

Phone 941-928-0278

Sarasota

Fl.

34243

City

State

Zip

Email archildren@aob.com

Speaking:  For  Against  Information

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

Representing Advocacy Institute For Children

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

4/07/2015

SB 1582

*Meeting Date*

*Bill Number (if applicable)*

Topic Public Records/High Pressure Well ---/Chemical Disclosure Registry

*Amendment Barcode (if applicable)*

Name John Dickert

Job Title Retired Professional Engineer

Address 193 NW Hamilton Ave.

Phone 850-973-3699

*Street*

Madison

FL

32340

Email johnw512@yahoo.com

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Myself and the people of Madison County who want clean water.

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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4/7/2015  
Meeting Date

1582  
Bill Number (if applicable)

Topic Fracking Regs

Amendment Barcode (if applicable)

Name Donna MacIver

Job Title retired

Address 4096 SW US 221

Phone 850-371-0013

Greenville FL 32331

Street City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing myself

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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APRIL 7, 2015  
Meeting Date

\_\_\_\_\_  
Bill Number (if applicable)

Topic 1582

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

Name JENNIFER HECKER

Job Title DIR. OF NAT RES. POLICY

Address 1450 MERRIHUE DR  
Street

Phone (239) 961 1900

NAPLES FL 34102  
City State Zip

Email jenniferh@conservancy.org

Speaking:  For  Against  Information  
*w/ AMENDMENTS*

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

Representing CONSERVANCY OF SOUTHWEST FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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Meeting Date \_\_\_\_\_

1582  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Kim Ross

Job Title President, ReThink Energy Florida

Address 565 East Tennessee St  
Street

Phone 850-888-2505

Tallahassee  
City

FL  
State

32302  
Zip

Email kim@rethinkenergyflorida.org

Speaking:  For  Against  Information

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

Representing ReThink Energy Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/7/15  
Meeting Date

SB 1582  
Bill Number (if applicable)

Topic SB 1582

Amendment Barcode (if applicable)

Name Brian Lee

Job Title Soil & Water Conservation Supervisor

Address 1603 Savils ST

Phone 950-266-7309

Tallahassee FL 32308  
City State Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Leon Soil and Water Conservation District

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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4/7/15

Meeting Date

1582  
Bill Number (if applicable)

Topic SB 1582

Amendment Barcode (if applicable)

Name Dr. Ron Saff

Job Title Physician

Address 3500 Centerville Rd

Phone \_\_\_\_\_

Street

Tallahassee FL 32308

City

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing PSR / Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

4-7-15

Meeting Date

SB 1582

Bill Number (if applicable)

Topic fracking Regulations

Amendment Barcode (if applicable)

Name Merrilee Malwitz-Jipson

Job Title

Address 2070 SW County Rd 138

Phone 352-222-8893

Street

Fort White FL 32038

Email

City

State

Zip

Speaking: For [ ] Against [X] 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)

4/7/15  
Meeting Date

1582  
Bill Number (if applicable)

Topic FRACKING REGULATIONS

Amendment Barcode (if applicable)

Name LAURA DAILEY

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

Address 414 SW WASHINGTON AVE  
Street

Phone 386-497-2571

FORT WHITE FL 32038  
City State Zip

Email ReeldeLaura@gmail.com

Speaking:  For  Against  Information

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

Representing THREE RIVERS ESTATES

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)

04-07-15

Meeting Date

SB 1582

Bill Number (if applicable)

Topic Regulations on fracking

Amendment Barcode (if applicable)

Name Edith Karcher

Job Title Citizen

Address 10916 SW Cumberland St

Phone 386/497-2413

Fort White, FL 32038  
Street City State Zip

Email Karcher1us6@uphar

Speaking:  For  Against  Information

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

Representing Our Santa Fe River

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)

4-7-15  
Meeting Date

1582  
Bill Number (if applicable)

Topic Trade secrets

Amendment Barcode (if applicable)

Name Herb Shelton

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

Address 2115 Longview DR.

Phone \_\_\_\_\_

Street  
Tallahassee FL 32303  
City State Zip

Email herbie\_323@yahoo.com

Speaking:  For  Against  Information

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

Representing Environmental Groups

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

4/7/15

Meeting Date

1582

Bill Number (if applicable)

Topic Trade Secrets

Amendment Barcode (if applicable)

Name Paula Cobb

Job Title Deputy Secretary of Regulatory Affairs

Address 3900 Commonwealth Blvd.

Phone \_\_\_\_\_

Street

Tallahassee

City

FL

State

32303

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing DEP

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

4-7-15

Meeting Date

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

SB 1582

Bill Number (if applicable)

Topic PUBLIC RECORDS/HIGH PRESSURE WAVE STRM. CHEMICAL DISSENSURE

Amendment Barcode (if applicable)

Name RAY BELLAMY

Job Title PHYSICIAN

Address 509 VINNEDGE RIDE

Phone 850-668-7967

TALLAHASSEE FLA 32303

City

State

Zip

Email RAY.BELLAMY@YAHOO.COM

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

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

Representing PHYSICIANS FOR SOCIAL RESPONSIBILITY

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

Lobbyist registered with Legislature: [ ] Yes [X] 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)

4/7

Meeting Date

1582

Bill Number (if applicable)

Topic Petroleum Exploration & Production

Amendment Barcode (if applicable)

Name DAVID MICA

Job Title DIRECTOR

Address 215 S. MOORE ST Ste 800

Phone 561-6300

Street

TALLAHASSEE FL 32301

City

State

Zip

Email MICA.D@APLORRY

Speaking:  For  Against  Information

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

Representing FLORIDA PETROLEUM COUNCIL

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)

4-7-15

Meeting Date

SB 1582

Bill Number (if applicable)

Topic Fucking - Public Records

Amendment Barcode (if applicable)

Name Amy Datz

Job Title Retired Environmental Scientist

Address 1130 Westview Ave

Phone 850 322-7599

Street

Jalohassee FL 32303

City

State

Zip

Email amalie.datz@gmail.com

Speaking:  For  Against  Information

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

Representing Environmental Caucus of FL

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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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)

4/7/2015  
Meeting Date

1582  
Bill Number (if applicable)

Topic HIGH PRESSURE WELLS

Amendment Barcode (if applicable)

Name BAIL MARIE FERRY

Job Title CHAIR

Address Po Box 1766

Phone 954 835 4033

Pompano Beach FL 33061  
Street City State Zip

Email worship@b@potmail.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.

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

S-001 (10/14/14)



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

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

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

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BILL: CS/CS/SB 360

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

SUBJECT: Public Records/Claim Settlement on Behalf of a Ward or Minor

DATE: April 8, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</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>RC</u>	<u>                    </u>

---

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

COMMITTEE SUBSTITUTE - Technical Changes

---

**I. Summary:**

CS/CS/SB 360 creates an exemption from public records requirements relating to the settlement of a claim on behalf of a ward or minor. Any document associated with the settlement is confidential and exempt from the public records provisions of s. 119.07(1), F.S., and Article I, section 24(a) of the Florida Constitution. The court may order partial or full disclosure of the confidential and exempt record to specified individuals upon a showing of good cause.

The bill provides a statement of public necessity as required by the State Constitution. Because the bill creates a new public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage.

The fiscal impact of the bill on state and local government is expected to be minimal.

**II. Present Situation:**

**Settlements in Guardianship Cases**

Litigation settlement agreements routinely include a provision that the terms will be held in confidence by all parties. Because an adult may settle a lawsuit without court approval, those confidentiality clauses are effective and enforceable.

However, a minor cannot settle a case valued in excess of \$15,000 without court approval.<sup>1</sup> The court approval process requires a petition setting forth the terms of the settlement and an order is eventually entered that also may contain the terms of settlement, or may refer to the petition.<sup>2</sup> The petition and the order are part of a court file, and therefore, are a matter of public record and open for inspection under current law.

### **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.<sup>3</sup> The records of the legislative, executive, and judicial branches are specifically included.<sup>4</sup>

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records. The Public Records Act<sup>5</sup> guarantees every person's right to inspect and copy any state or local government public record<sup>6</sup> at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.<sup>7</sup>

Only the Legislature may create an exemption to public records requirements.<sup>8</sup> Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.<sup>9</sup> Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other

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<sup>1</sup> Section 744.301(2), F.S.

<sup>2</sup> Section 744.387, F.S.

<sup>3</sup> FLA. CONST. art. I, s. 24(a).

<sup>4</sup> *Id.*

<sup>5</sup> Chapter 119, F.S.

<sup>6</sup> Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency." Chapter 119, F.S., does not apply to legislative or judicial records. See *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). The Legislature's records are public pursuant to section 11.0431, F.S.

<sup>7</sup> Section 119.07(1)(a), F.S.

<sup>8</sup> FLA. CONST. art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (see *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004), review denied 892 So. 2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So. 2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991), review denied 575 So.2d 683 (Fla. 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 Op. Att'y Gen. Fla. 85-62 (1985).

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

substantive provisions<sup>10</sup> and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.<sup>11</sup>

The Open Government Sunset Review Act prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>12</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>13</sup>

### **Court Records**

Florida courts have consistently held that the judiciary is not an “agency” for purposes of ch. 119, F.S.<sup>14</sup> However, the Florida Supreme Court found that “both civil and criminal proceedings in Florida are public events” and that the court will “adhere to the well-established common law right of access to court proceedings and records.”<sup>15</sup> There is a Florida constitutional guarantee of access to judicial records.<sup>16</sup> The constitutional provision provides for public access to judicial records, except for those records expressly exempted by the State Constitution, Florida law in effect on July 1, 1993, court rules in effect on November 3, 1992, or by future acts of the legislature in accordance with the Constitution.<sup>17</sup>

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

**Section 1** amends s. 744.3701, F.S., to provide that any court record relating to the settlement of a ward’s or minor’s claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized.

Because the record is made confidential and exempt, it may not be disclosed except as provided in law. Current law allows the court, the clerk of court, the guardian, the guardian’s attorney, the ward, unless the ward is a minor or has been determined to be totally incapacitated, and the ward’s attorney to review the guardianship court file. The bill amends s. 744.3701, F.S., to provide that the guardianship report or any court record relating to the settlement of a claim may also be disclosed to the guardian ad litem, if one has been appointed, related to the settlement, to the ward if he or she is 14 years of age or older and has not been declared totally incapacitated, the minor if he or she is at least 14 years of age, and to the attorney representing the minor. The record may also be disclosed as ordered by the court.

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<sup>10</sup> *Id.* The bill, however, may contain multiple exemptions that relate to one subject.

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

<sup>12</sup> Section 119.15, F.S.

<sup>13</sup> Section 119.15(3), F.S.

<sup>14</sup> See *Times Publishing Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

<sup>15</sup> See *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 116 (Fla. 1988).

<sup>16</sup> FLA. CONST. art. I, s. 24(a).

<sup>17</sup> FLA. CONST. art. I, ss. 24(c) and (d).

**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 confidential and exempt from public disclosure any court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor. The information contained in these records is of a sensitive, personal nature and its disclosure could jeopardize the physical safety and financial security of the minor or ward. In order to protect minors, wards, and others who could be at risk upon disclosure of a settlement, it is necessary to ensure that only those interested persons who are involved in settlement proceedings or the administration of the guardianship have access to reports and records.

**Section 3** provides that the bill will take effect on the same date as SB 318 or similar legislation takes effect if such legislation is adopted in the same session. As filed, SB 318 has an effective date of July 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 expands a public record exemption related to certain settlements, and therefore 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 bill expands a public record exemption related to certain settlements, and it includes a public necessity statement.

###### **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 related to certain settlements. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

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

None.

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

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The bill may lead to a minimal fiscal impact on the affected portions of the government, in this case, the court system and clerks of court. Staff responsible for complying with public record requests could require training related to expansion of the public record exemption, and court and clerk offices could incur costs associated with redacting the confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the court system and clerks. The Office of the State Courts Administrator indicates that SB 360 will require the courts to make a determination as to whether good cause exists to release a guardianship report or record related to the settlement of a claim and this may result in an increase in judicial workload. The extent of such workload increase is not known, but it is expected to be manageable within existing resources.<sup>18</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

The Open Government Sunset Review Act is not applicable to an exemption that applies solely to the State Court System.<sup>19</sup>

**VIII. Statutes Affected:**

This bill substantially amends the following s. 744.3701 of the Florida Statutes.

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

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

**CS/CS by Governmental Oversight and Accountability on April 7, 2015:**

The committee substitute amends section 3 of the bill and provides that the bill will become effective the same date that SB 318 or similar legislation takes effect.

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<sup>18</sup> Office of the State Courts Administrator 2015 Judicial Impact Statement dated April 4, 2015, on file with the Governmental Oversight and Accountability Committee.

<sup>19</sup> Section 119.15(2), F.S.

**CS by Children, Families on February 19, 2015:**

The Committee Substitute:

- Clarifies that it is the court records relating to the settlement of a ward's or minor's claim that are confidential and exempt.
- Adds the bill number of the linked bill.

**B. Amendments:**

None.

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

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201230

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/07/2015	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete line 71  
and insert:  
SB 318 or similar legislation takes effect if such legislation

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

586-01713-15

2015360c1

1 A bill to be entitled  
2 An act relating to public records; amending s.  
3 744.3701, F.S.; providing an exemption from public  
4 records requirements for records relating to the  
5 settlement of a claim on behalf of a ward or minor;  
6 authorizing a guardian ad litem, a ward, a minor, and  
7 a minor's attorney to inspect guardianship reports and  
8 court records relating to the settlement of a claim on  
9 behalf of a ward or minor upon a showing of good  
10 cause; authorizing the court to direct disclosure and  
11 recording of an amendment to a report or court records  
12 relating to the settlement of a claim on behalf of a  
13 ward or minor, in connection with real property or for  
14 other purposes; providing a statement of public  
15 necessity; providing a contingent effective date.

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

18  
19 Section 1. Section 744.3701, Florida Statutes, is amended  
20 to read:

21 744.3701 Confidentiality Inspection of report.-

22 (1) Unless otherwise ordered by the court, upon a showing  
23 of good cause, an ~~any~~ initial, annual, or final guardianship  
24 report or amendment thereto, or a court record relating to the  
25 settlement of a claim, is subject to inspection only by the  
26 court; ~~the clerk or the clerk's representative; the guardian~~  
27 and the guardian's attorney; with respect to the settlement of  
28 the claim, the guardian ad litem; ~~and the ward, if, unless~~ he  
29 or she is at least 14 years of age and has not ~~a minor or has~~

Page 1 of 3

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

586-01713-15

2015360c1

30 been determined to be totally incapacitated, and his or her ~~the~~  
31 ward's attorney; and the minor, if he or she is at least 14  
32 years of age, and the attorney representing the minor with  
33 respect to his or her claim, or as otherwise provided by this  
34 chapter.

35 (2) The court may direct disclosure and recording of parts  
36 of an initial, annual, or final report or amendment thereto, or  
37 a court record relating to the settlement of a claim, including  
38 a petition for approval of a settlement on behalf of a ward or  
39 minor, a report of a guardian ad litem relating to a pending  
40 settlement, or an order approving a settlement on behalf of a  
41 ward or minor, in connection with a ~~any~~ real property  
42 transaction or for such other purpose as the court allows, ~~in~~  
43 its discretion.

44 (3) A court record relating to the settlement of a ward's  
45 or minor's claim, including a petition for approval of a  
46 settlement on behalf of a ward or minor; a report of a guardian  
47 ad litem relating to a pending settlement; or an order approving  
48 a settlement on behalf of a ward or minor, is confidential and  
49 exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I  
50 of the State Constitution and may not be disclosed except as  
51 specifically authorized.

52 Section 2. The Legislature finds that it is a public  
53 necessity that a court record relating to the settlement of a  
54 ward's or minor's claim, including a petition for approval of a  
55 settlement on behalf of a ward or minor, a report of a guardian  
56 ad litem relating to a pending settlement, or an order approving  
57 a settlement on behalf of a ward or minor, be made confidential  
58 and exempt from s. 119.07(1), Florida Statutes, and s. 24(a),

Page 2 of 3

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



586-01713-15

2015360c1

59 Art. I of the State Constitution. The information contained in  
60 these records is of a sensitive, personal nature, and its  
61 disclosure could jeopardize the physical safety and financial  
62 security of the minor or ward. In order to protect minors,  
63 wards, and others who could be at risk upon disclosure of a  
64 settlement, it is necessary to ensure that only those interested  
65 persons who are involved in settlement proceedings or the  
66 administration of the guardianship have access to reports and  
67 records. The Legislature finds that the court retaining  
68 discretion to direct disclosure of these records is a fair  
69 alternative to public access.

70 Section 3. This act shall take effect on the same date that  
71 SB 366 or similar legislation takes effect if such legislation  
72 is adopted in the same legislative session or an extension  
73 thereof and becomes law.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

### COMMITTEES:

Higher Education, *Chair*  
Appropriations Subcommittee on Education  
Fiscal Policy  
Judiciary  
Military and Veterans Affairs, Space, and Domestic  
Security  
Regulated Industries

### JOINT COMMITTEE:

Joint Committee on Public Counsel Oversight

### SENATOR KELLI STARGEL

15th District

February 20, 2015

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

Dear Chair Ring:

I am respectfully requesting that SB 360, related to *Public Records/Claim Settlement on Behalf of a Ward or Minor*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in cursive script that reads "Kelli Stargel".

Kelli Stargel  
State Senator, District 15

Cc: Joe McVaney/ Staff Director  
Allison Rudd/ AA

#### REPLY TO:

- 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

4/7/15  
Meeting Date

SB 360  
Bill Number (if applicable)

Topic Settlement on Behalf of Ward/Minor

Amendment Barcode (if applicable)

Name Brittany Finkbeiner

Job Title

Address Street

Phone 999-4100

City

State

Zip

Email bfinkbeiner@dean  
mead.com

Speaking:  For  Against  Information

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

Representing Real Property, Probate, and Trust Law Section of the 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: SPB 7082

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Death Benefits Offered under the Florida Retirement System

DATE: April 9, 2015

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney		<b>GO Submitted as Committee Bill</b>
2.				
3.				

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**I. Summary:**

SPB 7082 makes two primary changes to the Florida Retirement System (FRS). First, the bill increases the monthly survivor benefits available to the spouses and children of FRS pension plan members in the Special Risk Class when killed in the line of duty from 50 percent of the member's monthly salary at the time of death to 100 percent of the member's monthly salary at the time of death. These new benefits are funded through additional employer-paid contributions relating to the FRS pension plan.

Second, the bill permits the surviving spouse or children of an investment plan member in the Special Risk Class when killed in the line of duty to opt into the FRS investment plan survivor benefits program in lieu of receiving normal retirement benefits under the FRS investment plan. By participating in the survivor benefits program, the surviving spouse and children are eligible to receive annuitized benefits much like the survivor benefits (described above) afforded to Special Risk Class members of the FRS pension plan. The investment plan survivor benefits program is funded by additional employer-paid contributions to the survivor benefits account of the FRS Trust Fund.

The new survivor benefits established by this bill are available to members in the Special Risk Class when killed in the line of duty on or after July 1, 2013.

The contributions paid into the FRS by employers participating in the FRS are increased by \$25 million annually.

## II. Present Situation:

### The Florida Retirement System

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a closed group.<sup>1</sup> The FRS is a contributory system, with most members contributing three percent of their salaries.<sup>2</sup>

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2014, the FRS had 622,089 active members, 363,034 annuitants, 16,137 disabled retirees, and 38,058 active participants of the Deferred Retirement Option Program (DROP).<sup>3</sup> As of June 30, 2014, the FRS consisted of 1,014 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 186 cities and 262 special districts that have elected to join the system.<sup>4</sup>

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

- The Regular Class<sup>5</sup> consists of 537,993 active members, plus 5,402 in renewed membership;
- The Special Risk Class<sup>6</sup> includes 68,593 active members;
- The Special Risk Administrative Support Class<sup>7</sup> has 84 active members;
- The Elected Officers' Class<sup>8</sup> has 2,040 active members, plus 147 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,607 members, plus 184 in renewed membership.<sup>10</sup>

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<sup>1</sup> The Florida Retirement System Pension Plan and Other State Administered Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2014, at p. 29. Available online at: [https://www.rol.frs.state.fl.us/forms/2013-14\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2013-14_CAFR.pdf).

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

<sup>3</sup> Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 112.

<sup>4</sup> *Id.*, at 146.

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

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

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

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

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

<sup>10</sup> All figures from Florida Retirement System Annual Financial Report Fiscal Year Ended June 30, 2014, at 115.

### ***Investment Plan***

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

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

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

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

### ***Pension Plan***

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

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

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<sup>11</sup> Section 121.4501(6)(a), F.S.

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

<sup>13</sup> Section 121.591, F.S.

<sup>14</sup> See s. 121.4501(16), F.S.

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

<sup>16</sup> Section 121.4501(8), F.S.

<sup>17</sup> Section 4, Art. IV, Fla. Const.

<sup>18</sup> Section 121.025, F.S.

<sup>19</sup> Section 121.021(45)(a), F.S.

<sup>20</sup> Section 121.021(45)(b), F.S.

Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.<sup>21</sup> For most members of the pension plan, normal retirement occurs at the earliest attainment of 30 years of service or age 62.<sup>22</sup> For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.<sup>23</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer vesting requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65, and members in the Special Risk classes must complete 30 years of service or attain age 60.<sup>24</sup>

### **In the Line of Duty Death Benefits Available under Chapter 121, F.S.**

The FRS currently provides death benefits for surviving spouses and/or eligible dependents of active members of the pension plan.<sup>25</sup> Death benefits may be paid for an active member of the FRS pension plan who dies before retirement due to an injury or illness.<sup>26</sup> Certain health conditions for firefighters, law enforcement, correctional and correctional probation officers are deemed accidental and suffered in the line of duty.<sup>27</sup> If the injury or illness arises out of and in the actual performance of duty required by his or her job, the member's surviving spouse and/or eligible dependent(s) are entitled to in the line of duty death benefits.

If an active FRS member (regardless of vested status) dies in the line of duty, the surviving spouse receives a monthly benefit for her lifetime equal to half the member's monthly salary at death.<sup>28</sup> If the spouse dies, the benefit continues until the member's youngest child reaches 18 or is married, whichever occurs first.<sup>29</sup> If the deceased member is entitled to a higher normal retirement benefit based on service credit, the normal retirement benefit is payable to the joint annuitant.<sup>30</sup>

For in the line of duty deaths, the surviving spouse or eligible dependent(s) may purchase credit for any service which could have been claimed by the member at the time of member's death.<sup>31</sup> If a member dies within one year of vesting, the surviving spouse or other eligible dependent may use the member's annual, sick, or compensatory leave, or purchasable service, to purchase enough service credit to vest the member posthumously.<sup>32</sup>

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<sup>21</sup> Section 121.091, F.S.

<sup>22</sup> Section 121.021(29)(a)1., F.S.

<sup>23</sup> Section 121.021(29)(b)1., F.S.

<sup>24</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>25</sup> Under the investment plan, no minimum death benefit is payable to a surviving spouse or children. Accumulations in the member's account are payable to the designated beneficiary. Section 121.591, F.S.

<sup>26</sup> Section 121.091(7), F.S.

<sup>27</sup> Section 112.18(1)(a), F.S., provides any condition of health caused by tuberculosis, heart disease or hypertension resulting in the total or partial disability or death shall be presumed to have been accidental and suffered in the line of duty.

<sup>28</sup> Section 121.091(7)(d), F.S. If vested posthumously, the surviving spouse or dependent would be entitled to a death benefit.

<sup>29</sup> *Id.*

<sup>30</sup> Section 121.091(7)(b) and (d), F.S.

<sup>31</sup> Section 121.091(7)(e), F.S.

<sup>32</sup> Section 121.091(7)(f), F.S.

The following chart notes the Special Risk Class in the line of duty death benefits for the last five years for the State of Florida and the local governmental entities participating in the FRS:<sup>33</sup>

	2009-10	2010-11	2011-12	2012-13	2013-14	Total
<b>State Count</b>	0	2	2	1	0	5
<b>State Benefits</b>	0	\$49,928	\$37,424	\$25,862	0	\$113,214
<b>Local Count</b>	5	5	4	2	1	17
<b>Local Benefits</b>	\$146,836	\$129,389	\$97,061	\$56,932	\$30,052	\$460,270

**Death Benefits Available under Chapter 112, F.S.**

Chapter 112, F.S., provides death benefits that are supplemental to the benefits afforded under ch. 121, F.S., for law enforcement officers, correctional officers, correctional probation officers, firefighters, instructional staff and school administrators under specified circumstances.<sup>34</sup> The Bureau of Crime Prevention and Training within the Department of Legal Affairs annually adjusts the statutory amounts<sup>35</sup> for price level changes in the Consumer Price Index since 2002.<sup>36</sup> The table below shows the benefit amounts currently provided.<sup>37</sup>

	Law Enforcement	Firefighters	Instructional Personnel
Accidental Death in performance of duties	\$65,773	\$65,773	None
Accidental Death in response to emergency	Additional \$65,773	Additional \$65,773	None
Death by intentional act of another	\$198,272	\$198,272	\$198,272

The payments outlined above for accidental death in performance of duties, accidental death in response to emergency and death by intentional act of another, for firefighters, law enforcement, correctional, and correctional probation officers, are made to the beneficiary designated by the firefighter or officer in writing.<sup>38</sup> If no designation is made, payments are made to the firefighter or officer’s surviving spouse and children in equal amounts.<sup>39</sup> If there is no surviving spouse or

<sup>33</sup> E-mail from Department of Management Services dated Jan. 12, 2015.

<sup>34</sup> For definitions of these terms, see ss. 112.19(1) and 112.1915(1)(b), F.S.

<sup>35</sup> Sections 112.19(2)(a), 112.191(2)(a), 112.19(2)(b), 112.19(2)(c), and 112.1915(3)(a), F.S.

<sup>36</sup> Sections 112.19(2)(j) and 112.191(2)(i), F.S.

<sup>37</sup> Conversation with Rick Nuss, Office of the Attorney General, Bureau of Criminal Justice Programs (Feb. 13, 2015).

<sup>38</sup> Sections 112.191(2)(d) and 112.19(2)(d), F.S.

<sup>39</sup> *Id.*



children, payment is made to the firefighter's or officer's parents.<sup>40</sup> If there is no surviving spouse, child or parent, payment will be made to the firefighter's or officer's estate.<sup>41</sup>

In regards to the payment concerning the death by intentional act of another for instructional personnel, if a beneficiary is not designated, the instructional staff's or school administrator's estate would receive the money.<sup>42</sup>

Other death benefits under ch. 112, F.S., which are available to law enforcement, correctional officers, correctional probation officers, firefighters and instructional staff and school administrators who are killed in the line of duty include the following:

- Funeral and burial expenses (full-time law enforcement, correctional, or correctional probation officer employed by a state agency under specified circumstances;<sup>43</sup> and instructional staff and school administrator employed by school district);<sup>44</sup>
- Surviving family health insurance premiums payment by political subdivision of the state and local school district (full-time law enforcement officer or correctional officer);<sup>45</sup> full-time firefighter;<sup>46</sup> and instructional staff and school administrator);<sup>47</sup>
- Family health insurance premium payments for catastrophic injury (full-time law enforcement, correctional, correctional probation officer,<sup>48</sup> or firefighter<sup>49</sup> employed by state or a political subdivision of state); and
- Educational expenses of surviving spouse and children (law enforcement, correctional, or correctional probation officer;<sup>50</sup> firefighter;<sup>51</sup> and instructional staff or school administrator).<sup>52</sup>

### **Death benefits available under Chapter 185, F.S.**

Chapter 185, F.S., governs municipal police pensions. If a municipal police officer dies before being eligible to retire, the officer's beneficiaries will receive:

- A refund of all contributions made by the officer to the retirement trust fund;<sup>53</sup>
- Death benefits from life insurance or annuity contract if purchased for officer, subject to limitations;<sup>54</sup> and
- Benefits payable to officer at early or normal retirement age (if officer had at least 10 years of service).<sup>55</sup>

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<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> Section 112.1915(1)(f), F.S.

<sup>43</sup> Section 112.19(2)(f), F.S.

<sup>44</sup> Section 112.1915(3)(b), F.S.

<sup>45</sup> Section 112.19(2)(g), F.S.

<sup>46</sup> Section 112.191(2)(f), F.S.

<sup>47</sup> Section 112.1915(3)(c), F.S.

<sup>48</sup> Section 112.19(2)(h), F.S.

<sup>49</sup> Section 112.191(2)(g), F.S.

<sup>50</sup> Section 112.19(3), F.S.

<sup>51</sup> Section 112.191(3), F.S.

<sup>52</sup> Section 112.1915(3)(d), F.S. (surviving children only, not spouse).

<sup>53</sup> Section 185.21(1), F.S.

<sup>54</sup> *Id.*

<sup>55</sup> Section 185.21(2), F.S.

Death benefits provided in accordance with s. 112.19, F.S., are not included in the calculation of death or retirement benefits under this chapter.<sup>56</sup>

### **Death benefits available under Chapter 175, F.S.**

Chapter 175, F.S., governs firefighter pensions. If a firefighter dies before being eligible to retire, the officer's beneficiaries will receive:<sup>57</sup>

- A refund of all contributions made by the firefighter to the pension trust fund;<sup>58</sup>
- Death benefits from life insurance or annuity contract if purchased for firefighter, subject to limitations;<sup>59</sup> and
- Benefits payable to firefighter at early or normal retirement age (if officer had at least 10 years of service).<sup>60</sup>

Death benefits provided in accordance with s. 112.191, F.S., are not included in the calculation of death or retirement benefits under this chapter.

### **Compensation for death under Chapter 440, F.S.**

The Workers' Compensation Law provides that the death of an employee of the state or one of its subdivisions, which results from an injury arising out of and in the course of employment, is a basis for a right to compensation.<sup>61</sup> When a death results within one year of an accident, or within five years following continuous disability, the employer pays:<sup>62</sup>

- Actual funeral expenses up to \$7,500;
- Compensation to enumerated dependents in the form of a percentage of the deceased employee's weekly wages, not to exceed \$150,000; and
- Payment of postsecondary student fees for the surviving spouse.

### **Survivor Death Benefits from the Public Safety Officers' Benefits Program**

The Public Safety Officers' Benefits Program (PSOB), administered by the U.S. Department of Justice, provides education benefits and a one-time death benefit to eligible survivors of federal, state or local public safety officers who die in the line of duty. The amount of the PSOB benefit is \$339,310 for eligible deaths occurring on or after October 1, 2014.<sup>63</sup>

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<sup>56</sup> *Id.*

<sup>57</sup> Section 175.201, F.S., for firefighters employed by any municipality, special fire control district, chapter plan, local law municipality, local law special fire control district, or local law plan.

<sup>58</sup> Section 175.201(1), F.S.

<sup>59</sup> *Id.*

<sup>60</sup> Section 175.201(2), F.S.

<sup>61</sup> Section 440.02, F.S.

<sup>62</sup> Section 440.16(1), F.S.

<sup>63</sup> U.S. Dep't of Justice Office of Justice Programs, *Public Safety Officers' Benefits Programs*, available at <https://www.psob.gov/index.html> (last visited Feb. 13, 2015).

### III. Effect of Proposed Changes:

Section 1 amends s. 121.091, F.S., to increase the FRS pension plan's survivor benefits available to the spouse and children of members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. Rather than receiving 50 percent of the member's salary at the time of death, the new survivor benefit is increased to 100 percent of the member's salary at the time of death. This survivor benefit is payable in lieu of the member's normal retirement benefits based on service credits and average final compensation.

The survivor benefits are payable for the life of the surviving spouse. If there is no surviving spouse or the spouse dies, the member's children will receive the benefits until the youngest child's eighteen birthday. The benefits may be extended to the 25<sup>th</sup> birthday of an unmarried child enrolled as a full time student.

These survivor benefits are payable to the surviving spouse and children and supersede any beneficiary designation made by the member.

Section 2 amends s. 121.571, F.S., to specify that the new employer-paid contribution rates must be embedded in the system-wide blended rates assessed pursuant to s. 121.71, F.S.

Section 3 amends s. 121.591, F.S., to provide survivor benefits to the spouse and children of investment plan members in the Special Risk Class when killed in the line of duty on or after July 1, 2013. The spouse and children may elect to transfer the balance of the member's investment plan account to the survivor benefits program and receive the survivor benefits described in section 1 above (100 percent of the member's salary at the time of death). In addition to the transfer of moneys from the deceased member's investment account, additional employer-paid contributions into the survivor benefit account of the FRS Trust Fund are used to pay the survivor benefits.

Section 4 creates s. 121.5912, F.S., to establish legislative intent regarding the implementation of a survivor benefit program for the spouses and children of investment plan members in the Special Risk Class when killed in the line of duty. The program is intended to meet all applicable requirements of a qualified plan under the Internal Revenue Code. If the SBA of DMS receives notification that a portion of this program will cause the FRS to be disqualified for tax purposes, that portion of the program ceases to be applicable.

Section 5 creates s. 121.735, F.S., to allocate 0.82 percentage points of the employer-paid contribution rate for investment plan members of the Special Risk Class to the survivor benefit program of the FRS investment plan. These contribution rates are applied as a percentage of the investment plan members' gross compensation for the calendar month.

Section 6 amends s. 121.75, F.S., to make a conforming change relating to the distribution of contributions paid into the FRS Trust Fund.

Section 7 increases the employer-paid contributions into the Florida Retirement System by 0.58 percentage points for the Special Risk Class and 0.06 percentage points for the Deferred Retirement Option Program.

Section 8 provides that the Legislature finds that this act fulfills an important state interest.

Section 9 provides that this bill will take effect on July 1, 2015.

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

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

Article VII, section 18(a) of the Florida Constitution provides in pertinent part that “no county or municipality shall be bound by any general law requiring such county or municipality to spend funds . . . unless the legislature has determined that such law fulfills an important state interest and unless:

- the law requiring such expenditure is approved by two-thirds of the membership in each house of the legislature; or
- the expenditure is required to comply with a law that applies to all persons similarly situated.”

This bill includes legislative findings that the bill fulfills an important state interest (see section 8), and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System with employees in the Special Risk Class and DROP), including state agencies, school boards, community colleges, counties, and municipalities. If this exception does not apply, the bill must be approved by two-thirds vote of each chamber to be binding upon the counties and municipalities participating in the FRS.

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

None.

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

None.

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

Article X, section 14 of the Florida Constitution provides:

A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

An actuarial study has been completed to comply with Art. X, section 14 of the Florida Constitution. The bill provides adjustments to contribution rates consistent with that actuarial study and concurrent with the adjustments in retirement benefits.<sup>64</sup>

**V. Fiscal Impact Statement:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Spouses and children of members in the Special Risk Class when killed in the line of duty may receive higher benefits than available under current law.

**C. Government Sector Impact:**

Employers participating the FRS whose employees are members of the Special Risk Class or DROP will incur higher retirement contributions to fund these new benefits. The aggregate employer contributions anticipated to be paid into the Florida Retirement System Trust Fund in Fiscal Year 2015-2016 will increase by approximately \$25 million when compared to the employer contributions paid in Fiscal Year 2014-2015. However, the impacts on particular employers vary significantly based on whether the employers have members in the Special Risk Class or DROP. The impacts by employer group for Fiscal Year 2015-2016 are noted below.

<b>Employer Group</b>	<b>Impact on Contributions</b>
<b>State Agencies</b>	\$5.4 m
<b>Universities</b>	\$0.2 m
<b>Colleges</b>	\$0.1 m
<b>School Boards</b>	\$0.8 m
<b>Counties</b>	\$17.2 m
<b>Other</b>	\$1.3 m
<b>Total</b>	\$25.1 m

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>64</sup> *Re: Actuarial Study – Special Risk Class In Line of Duty (ILOD) Death Benefits*, from Milliman, Inc., to Dan Drake, State Retirement Director, dated April 1, 2105. (on file with the Senate Committee on Governmental Oversight and Accountability)

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 121.091, 121.571, 121.591 and s. 121.75.

The bill creates the following sections of the Florida Statutes: 121.5912 and 121.735.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

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1 A bill to be entitled  
 2 An act relating to death benefits under the Florida  
 3 Retirement System; amending s. 121.091, F.S.;  
 4 authorizing payment of death benefits to the surviving  
 5 spouse or surviving children of a Special Risk Class  
 6 member killed in the line of duty under specified  
 7 circumstances; specifying eligibility; amending s.  
 8 121.571, F.S.; conforming provisions to changes made  
 9 by the act; amending s. 121.591, F.S.; authorizing  
 10 payment of death benefits to the surviving spouse or  
 11 surviving children of a Special Risk Class member in  
 12 the investment plan; establishing qualifications and  
 13 eligibility requirements in order to receive such  
 14 benefits; prescribing the method of calculating the  
 15 benefit; specifying circumstances under which benefit  
 16 payments are terminated; creating s. 121.5912, F.S.;  
 17 providing legislative intent; requiring the State  
 18 Board of Administration or the Division of Retirement  
 19 to take certain action upon receipt of notification of  
 20 disqualification from the Internal Revenue Service;  
 21 authorizing the state board and the Department of  
 22 Management Services to adopt rules; creating s.  
 23 121.735, F.S.; providing for allocations for death  
 24 benefits authorized by the act; amending s. 121.75,  
 25 F.S.; adding a cross-reference to conform to changes  
 26 made by the act; adjusting employer contribution rates  
 27 in order to fund changes made by the act; providing a  
 28 directive to the Division of Law Revision and  
 29 Information; declaring that the act fulfills an

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30 important state interest; providing an effective date.  
 31  
 32 Be It Enacted by the Legislature of the State of Florida:  
 33  
 34 Section 1. Paragraph (d) of subsection (7) of section  
 35 121.091, Florida Statutes, is amended, and paragraph (i) is  
 36 added to that subsection, to read:  
 37 121.091 Benefits payable under the system.—Benefits may not  
 38 be paid under this section unless the member has terminated  
 39 employment as provided in s. 121.021(39) (a) or begun  
 40 participation in the Deferred Retirement Option Program as  
 41 provided in subsection (13), and a proper application has been  
 42 filed in the manner prescribed by the department. The department  
 43 may cancel an application for retirement benefits when the  
 44 member or beneficiary fails to timely provide the information  
 45 and documents required by this chapter and the department's  
 46 rules. The department shall adopt rules establishing procedures  
 47 for application for retirement benefits and for the cancellation  
 48 of such application when the required information or documents  
 49 are not received.  
 50 (7) DEATH BENEFITS.—  
 51 (d) Notwithstanding any other provision in this chapter to  
 52 the contrary, with the exception of the Deferred Retirement  
 53 Option Program, as provided in subsection (13):  
 54 1. The surviving spouse of any member killed in the line of  
 55 duty may receive a monthly pension equal to one-half of the  
 56 monthly salary being received by the member at the time of death  
 57 for the rest of the surviving spouse's lifetime or, if the  
 58 member was vested, such surviving spouse may elect to receive a

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59 benefit as provided in paragraph (b). Benefits provided by this  
60 paragraph shall supersede any other distribution that may have  
61 been provided by the member's designation of beneficiary.

62 2. If the surviving spouse of a member killed in the line  
63 of duty dies, the monthly payments which would have been payable  
64 to such surviving spouse had such surviving spouse lived shall  
65 be paid for the use and benefit of such member's child or  
66 children under 18 years of age and unmarried until the 18th  
67 birthday of the member's youngest child. Beginning July 1, 2015,  
68 such monthly payments may be extended for a child of a member in  
69 the Special Risk Class when killed on or after July 1, 2013,  
70 until the 25th birthday of such child if the child is unmarried  
71 and enrolled as a full-time student.

72 3. If a member killed in the line of duty leaves no  
73 surviving spouse but is survived by a child or children under 18  
74 years of age, the benefits provided by subparagraph 1., normally  
75 payable to a surviving spouse, shall be paid for the use and  
76 benefit of such member's child or children under 18 years of age  
77 and unmarried until the 18th birthday of the member's youngest  
78 child. Beginning July 1, 2015, such monthly payments may be  
79 extended for a child of a member in the Special Risk Class when  
80 killed on or after July 1, 2013, until the 25th birthday of such  
81 child if the child is unmarried and enrolled as a full-time  
82 student.

83 4. The surviving spouse of a member whose benefit  
84 terminated because of remarriage shall have the benefit  
85 reinstated beginning July 1, 1993, at an amount that would have  
86 been payable had the benefit not been terminated.

87 (i) Notwithstanding any other provision in this chapter to

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88 the contrary, with the exception of the Deferred Retirement  
89 Option Program, as provided in subsection (13), for a member in  
90 the Special Risk Class when killed in the line of duty on or  
91 after July 1, 2013, the following benefits are payable in  
92 addition to the benefits provided in paragraph (d) beginning on  
93 or after July 1, 2015:

94 1. The surviving spouse may receive a monthly pension equal  
95 to one-half of the monthly salary being received by the member  
96 at the time of death for the rest of the surviving spouse's  
97 lifetime or, if the member was vested, such surviving spouse may  
98 elect to receive a benefit as provided in paragraph (b).  
99 Benefits provided by this paragraph shall supersede any other  
100 distribution that may have been provided by the member's  
101 designation of beneficiary.

102 2. If the surviving spouse dies, the monthly payments which  
103 would have been payable to such surviving spouse had such  
104 surviving spouse lived shall be paid for the use and benefit of  
105 such member's child or children until the 18th birthday of the  
106 member's youngest, unmarried child. Such monthly payments may be  
107 extended beyond this period until the 25th birthday of the  
108 member's child if the child is unmarried and enrolled as a full-  
109 time student.

110 3. If the member leaves no surviving spouse but is survived  
111 by a child or children under 18 years of age, the benefits  
112 provided by subparagraph 1., normally payable to a surviving  
113 spouse, shall be paid for the use and benefit of such member's  
114 child or children until the 18th birthday of the member's  
115 youngest, unmarried child. Such monthly payments may be extended  
116 beyond this period until the 25th birthday of the member's child



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117 if the child is unmarried and enrolled as a full-time student.

118 Section 2. Subsection (2) of section 121.571, Florida  
119 Statutes, is amended to read:

120 121.571 Contributions.—Contributions to the Florida  
121 Retirement System Investment Plan shall be made as follows:

122 (2) CONTRIBUTION RATES GENERALLY.—Contributions to fund the  
123 retirement, ~~and~~ disability, and line-of-duty death benefits  
124 provided under this part must be based on the uniform  
125 contribution rates established by s. 121.71 and on the  
126 membership class or subclass of the member. Such contributions  
127 must be allocated as provided in ss. 121.72, ~~and~~ 121.73, and  
128 121.735.

129 Section 3. Subsection (3) of section 121.591, Florida  
130 Statutes, is amended, present subsection (4) of that section is  
131 redesignated as subsection (5), and a new subsection (4) is  
132 added to that section, to read:

133 121.591 Payment of benefits.—Benefits may not be paid under  
134 the Florida Retirement System Investment Plan unless the member  
135 has terminated employment as provided in s. 121.021(39) (a) or is  
136 deceased and a proper application has been filed as prescribed  
137 by the state board or the department. Benefits, including  
138 employee contributions, are not payable under the investment  
139 plan for employee hardships, unforeseeable emergencies, loans,  
140 medical expenses, educational expenses, purchase of a principal  
141 residence, payments necessary to prevent eviction or foreclosure  
142 on an employee's principal residence, or any other reason except  
143 a requested distribution for retirement, a mandatory de minimis  
144 distribution authorized by the administrator, or a required  
145 minimum distribution provided pursuant to the Internal Revenue

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146 Code. The state board or department, as appropriate, may cancel  
147 an application for retirement benefits if the member or  
148 beneficiary fails to timely provide the information and  
149 documents required by this chapter and the rules of the state  
150 board and department. In accordance with their respective  
151 responsibilities, the state board and the department shall adopt  
152 rules establishing procedures for application for retirement  
153 benefits and for the cancellation of such application if the  
154 required information or documents are not received. The state  
155 board and the department, as appropriate, are authorized to cash  
156 out a de minimis account of a member who has been terminated  
157 from Florida Retirement System covered employment for a minimum  
158 of 6 calendar months. A de minimis account is an account  
159 containing employer and employee contributions and accumulated  
160 earnings of not more than \$5,000 made under the provisions of  
161 this chapter. Such cash-out must be a complete lump-sum  
162 liquidation of the account balance, subject to the provisions of  
163 the Internal Revenue Code, or a lump-sum direct rollover  
164 distribution paid directly to the custodian of an eligible  
165 retirement plan, as defined by the Internal Revenue Code, on  
166 behalf of the member. Any nonvested accumulations and associated  
167 service credit, including amounts transferred to the suspense  
168 account of the Florida Retirement System Investment Plan Trust  
169 Fund authorized under s. 121.4501(6), shall be forfeited upon  
170 payment of any vested benefit to a member or beneficiary, except  
171 for de minimis distributions or minimum required distributions  
172 as provided under this section. If any financial instrument  
173 issued for the payment of retirement benefits under this section  
174 is not presented for payment within 180 days after the last day

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175 of the month in which it was originally issued, the third-party  
 176 administrator or other duly authorized agent of the state board  
 177 shall cancel the instrument and credit the amount of the  
 178 instrument to the suspense account of the Florida Retirement  
 179 System Investment Plan Trust Fund authorized under s.  
 180 121.4501(6). Any amounts transferred to the suspense account are  
 181 payable upon a proper application, not to include earnings  
 182 thereon, as provided in this section, within 10 years after the  
 183 last day of the month in which the instrument was originally  
 184 issued, after which time such amounts and any earnings  
 185 attributable to employer contributions shall be forfeited. Any  
 186 forfeited amounts are assets of the trust fund and are not  
 187 subject to chapter 717.

188 (3) DEATH BENEFITS.—Under the Florida Retirement System  
 189 Investment Plan:

190 (a) Survivor benefits are payable in accordance with the  
 191 following terms and conditions, except as provided in subsection  
 192 (4):

193 1. To the extent vested, benefits are payable only to a  
 194 member's beneficiary or beneficiaries as designated by the  
 195 member as provided in s. 121.4501(20).

196 2. Benefits shall be paid by the third-party administrator  
 197 or designated approved providers in accordance with the law, the  
 198 contracts, and any applicable state board rule or policy.

199 3. To receive benefits, the member must be deceased.

200 (b) Except as provided in subsection (4), in the event of a  
 201 member's death, all vested accumulations as described in s.  
 202 121.4501(6), less withholding taxes remitted to the Internal  
 203 Revenue Service, shall be distributed, as provided in paragraph

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204 (c) or as described in s. 121.4501(20), as if the member retired  
 205 on the date of death. No other death benefits are available for  
 206 survivors of members, except for benefits, or coverage for  
 207 benefits, as are otherwise provided by law or separately  
 208 provided by the employer, at the employer's discretion.

209 (c) Except as provided in subsection (4), upon receipt by  
 210 the third-party administrator of a properly executed application  
 211 for distribution of benefits, the total accumulated benefit is  
 212 payable by the third-party administrator to the member's  
 213 surviving beneficiary or beneficiaries, as:

214 1. A lump-sum distribution payable to the beneficiary or  
 215 beneficiaries, or to the deceased member's estate;

216 2. An eligible rollover distribution, if permitted, on  
 217 behalf of the surviving spouse of a deceased member, whereby all  
 218 accrued benefits, plus interest and investment earnings, are  
 219 paid from the deceased member's account directly to the  
 220 custodian of an eligible retirement plan, as described in s.  
 221 402(c)(8)(B) of the Internal Revenue Code, on behalf of the  
 222 surviving spouse; or

223 3. A partial lump-sum payment whereby a portion of the  
 224 accrued benefit is paid to the deceased member's surviving  
 225 spouse or other designated beneficiaries, less withholding taxes  
 226 remitted to the Internal Revenue Service, and the remaining  
 227 amount is transferred directly to the custodian of an eligible  
 228 retirement plan, if permitted, as described in s. 402(c)(8)(B)  
 229 of the Internal Revenue Code, on behalf of the surviving spouse.  
 230 The proportions must be specified by the member or the surviving  
 231 beneficiary.

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233 This paragraph does not abrogate other applicable provisions of  
234 state or federal law providing for payment of death benefits.

235 (4) DEATH BENEFITS FOR SPECIAL RISK CLASS MEMBERS.—Benefits  
236 are provided under this subsection to the spouse and children of  
237 members in the Special Risk Class when killed in the line of  
238 duty and are payable in lieu of the benefits that would  
239 otherwise be payable under the provisions of subsections (1) or  
240 (3). Such benefits must be funded from employer contributions  
241 made under s. 121.571, transferred employee contributions and  
242 funds accumulated pursuant to paragraph (a), and interest and  
243 earnings thereon.

244 (a) Transfer of funds.—To qualify to receive monthly  
245 benefits under this subsection:

246 1. All moneys accumulated in the member's account,  
247 including vested and nonvested accumulations as described in s.  
248 121.4501(6), must be transferred from such individual accounts  
249 to the division for deposit in the survivor benefit account of  
250 the Florida Retirement System Trust Fund. Moneys in the survivor  
251 benefit account must be accounted for separately. Earnings must  
252 be credited on an annual basis for amounts held in the survivor  
253 benefit account of the Florida Retirement System Trust Fund  
254 based on actual earnings of the trust fund.

255 2. If the member has retained retirement credit earned  
256 under the pension plan as provided in s. 121.4501(3), a sum  
257 representing the actuarial present value of such credit within  
258 the Florida Retirement System Trust Fund shall be reassigned by  
259 the division from the pension plan to the survivor benefit  
260 retirement program as implemented under this subsection and  
261 shall be deposited in the survivor benefit account of the trust

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262 fund.

263 (b) Survivor retirement; entitlement.—An investment plan  
264 member who is in the Special Risk Class at the time the member  
265 is killed in the line of duty on or after July 1, 2013,  
266 regardless of length of creditable service, may have survivor  
267 benefits paid as provided in s. 121.091(7)(d) and (i) to:

268 1. The surviving spouse for the spouse's lifetime; or  
269 2. If no surviving spouse or the surviving spouse dies, the  
270 dependent child or children until the 18th birthday of the  
271 youngest, unmarried child. Such payments may be extended until  
272 the 25th birthday of the member's child if the child is  
273 unmarried and enrolled as a full-time student as provided in s.  
274 121.091(7)(d) and (i).

275 (c) Survivor benefit retirement effective date.—The  
276 effective retirement date for the surviving spouse or eligible  
277 dependent child of a Special Risk Class member who is killed in  
278 the line of duty shall be:

279 1. The first of the month following the member's death if  
280 the member dies on or after July 1, 2015.

281 2. July 1, 2015, for a member of the Special Risk Class  
282 when killed in the line of duty on or after July 1, 2013, but  
283 before July 1, 2015, if the application is received before July  
284 1, 2015; or the first of the month following the receipt of the  
285 application.

286  
287 If the investment plan account balance has already been paid out  
288 to the surviving spouse or the eligible unmarried dependent  
289 child or children, the benefit payable shall be actuarially  
290 reduced by the amount of the payout.

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291 (d) Line-of-duty death benefit.—The surviving spouse; or if  
 292 no surviving spouse or the surviving spouse dies, the unmarried  
 293 child or children under 18 years of age and until the 18th  
 294 birthday of the youngest child, or until the 25th birthday of  
 295 the member's child if the child is unmarried and enrolled as a  
 296 full-time student, is eligible to receive a retirement benefit  
 297 under s. 121.091(7)(d) and (i) if the member's account balance  
 298 is surrendered and an application is received and approved. Such  
 299 surviving spouse or such child or children shall receive a  
 300 monthly survivor benefit that begins accruing on the first day  
 301 of the month of survivor benefit retirement, as approved by the  
 302 division, and is payable on the last day of that month and each  
 303 month thereafter during the surviving spouse's lifetime or on  
 304 behalf of the unmarried children until the 18th birthday of the  
 305 youngest child, or until the 25th birthday of any of the  
 306 member's children enrolled as a full-time student. All survivor  
 307 benefits must be paid out of the survivor benefit account of the  
 308 Florida Retirement System Trust Fund established under this  
 309 subsection.

310  
 311 If the investment plan account balance has already been paid out  
 312 to the surviving spouse or the eligible unmarried dependent  
 313 child or children, the benefit payable shall be actuarially  
 314 reduced by the amount of the payout.

315 (e) Computation of survivor benefit retirement benefit.—The  
 316 amount of each monthly payment must be calculated as provided  
 317 under s. 121.091(7)(d) and (i).

318 (f) Death of the surviving spouse or children.—

319 1. Upon the death of a surviving spouse, the monthly

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320 benefits shall be paid through the last day of the month of  
 321 death and shall terminate or be paid on behalf of the unmarried  
 322 child or children until the 18th birthday of the youngest child,  
 323 or the 25th birthday of any of the member's unmarried children  
 324 enrolled as a full-time student.

325 2. If the surviving spouse dies and the benefit is being  
 326 paid on behalf of the unmarried children under 18 years of age  
 327 until the youngest, unmarried child reaches his or her 18th  
 328 birthday, or the 25th birthday of any of the member's unmarried  
 329 children enrolled as a full time student, benefits shall be paid  
 330 through the last day of the month until the later of the month  
 331 the youngest, unmarried child reaches his or her 18th birthday,  
 332 the month of the 25th birthday of any of the member's unmarried  
 333 children enrolled as a full-time student, or the month of the  
 334 death of the youngest child.

335 Section 4. Section 121.5912, Florida Statutes, is created  
 336 to read:

337 121.5912 Survivor benefit retirement program; qualified  
 338 status; rulemaking authority.—It is the intent of the  
 339 Legislature that the survivor benefit retirement program for  
 340 Special Risk Class members of the Florida Retirement System  
 341 investment plan meet all applicable requirements for a qualified  
 342 plan. If the state board or the division receives notification  
 343 from the Internal Revenue Service that this program or any  
 344 portion of this program will cause the retirement system, or any  
 345 portion thereof, to be disqualified for tax purposes under the  
 346 Internal Revenue Code, the portion that will cause the  
 347 disqualification does not apply. Upon such notice, the state  
 348 board or the division shall notify the presiding officers of the

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349 Legislature. The state board and the department may adopt any  
 350 rules necessary to maintain the qualified status of the survivor  
 351 benefit retirement program.

352 Section 5. Section 121.735, Florida Statutes, is created to  
 353 read:

354 121.735 Allocations for member line-of-duty death benefits;  
 355 percentage amounts.—

356 (1) The allocations established in subsection (3) shall be  
 357 used to provide line-of-duty death benefit coverage for Special  
 358 Risk Class members in the investment plan and shall be  
 359 transferred monthly by the Division of Retirement from the  
 360 Florida Retirement System Contributions Clearing Trust Fund to  
 361 the survivor benefit account of the Florida Retirement System  
 362 Trust Fund.

363 (2) The allocations are stated as a percentage of each  
 364 investment plan member’s gross compensation for the calendar  
 365 month. A change in a contribution percentage is effective the  
 366 first day of the month for which retirement contributions may be  
 367 made on or after the beginning date of the change. Contribution  
 368 percentages may be modified by general law.

369 (3) Effective July 1, 2015, allocations from the Florida  
 370 Retirement System Contributions Clearing Trust Fund to provide  
 371 line-of-duty death benefits for Special Risk Class members in  
 372 the investment plan, and to offset the costs of administering  
 373 said coverage, are as follows:

<u>Membership Class</u>	<u>Percentage of Gross</u> <u>Compensation</u>
-------------------------	---

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376

377

Special Risk Class                      0.82%

378

379

380

381 Section 6. Section 121.75, Florida Statutes, is amended to  
 382 read:

383 121.75 Allocation for pension plan.—After making the  
 384 transfers required pursuant to ss. 121.71, 121.72, 121.73,  
 385 121.735, and 121.74, the monthly balance of funds in the Florida  
 386 Retirement System Contributions Clearing Trust Fund shall be  
 387 transferred to the Florida Retirement System Trust Fund to pay  
 388 the costs of providing pension plan benefits and plan  
 389 administrative costs under the pension plan.

390 Section 7. (1) In order to fund the benefit changes  
 391 provided in this act, the required employer contribution rates  
 392 for members of the Florida Retirement System established in s.  
 393 121.71(4), Florida Statutes, must be adjusted as follows:

394 (a) The Special Risk Class must be increased by 0.45  
 395 percentage point; and

396 (b) The Deferred Retirement Option Program must be  
 397 increased by 0.06 percentage point.

398 (2) In order to fund the benefit changes provided in this  
 399 act, the required employer contribution rate for the unfunded  
 400 actuarial liability of the Florida Retirement System established  
 401 in s. 121.71(5), Florida Statutes, for the Special Risk Class is  
 402 increased by 0.13 percentage point.

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403       (3) The adjustments provided in subsections (1) and (2)  
404 shall be in addition to all other changes to such contribution  
405 rates which may be enacted into law to take effect on July 1,  
406 2015. The Division of Law Revision and Information is directed  
407 to adjust accordingly the contribution rates provided in s.  
408 121.71, Florida Statutes.

409       Section 8. The Legislature finds that a proper and  
410 legitimate state purpose is served when employees and retirees  
411 of the state and of its political subdivisions, and the  
412 dependents, survivors, and beneficiaries of such employees and  
413 retirees, are extended the basic protections afforded by  
414 governmental retirement systems that provide fair and adequate  
415 benefits that are managed, administered, and funded in an  
416 actuarially sound manner, as required by s. 14, Article X of the  
417 State Constitution and part VII of chapter 112, Florida  
418 Statutes. Therefore, the Legislature determines and declares  
419 that this act fulfills an important state interest.

420       Section 9. 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)

4.7.15  
Meeting Date

7082  
Bill Number (if applicable)

Topic Death Benefits

Amendment Barcode (if applicable)

Name Ken Koczynski "cop-CHEN-ski"

Job Title Lobbyist

Address 300 East Brevard St  
Street

Phone 222-3321

Tallah FL 32301  
City State Zip

Email ken@flpba.org

Speaking:  For  Against  Information

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

Representing Fla PBA Inc

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)

7062  
Bill Number (if applicable)

Meeting Date \_\_\_\_\_

Topic Death Benefits

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

Name Lisa Henning

Job Title Director Legislative Affairs

Address 242 Office Plaza Dr

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 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

Tallahassee, Florida 32399-1100

## COMMITTEES:

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

**SENATOR JOHN LEGG**

17th District

Legg.John.web@FLSenate.gov

April 6, 2015

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

**RE: Excused Absence**

Dear Chair Ring:

I am unable to attend the Committee on Governmental Oversight and Accountability on Tuesday, April 7, 2015 and I respectfully request that this absence be excused. Your leadership and consideration are appreciated.

Sincerely,

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

John Legg  
State Senator, District 17

cc: Joe McVaney, Staff Director

REPLY TO:

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

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

**ANDY GARDINER**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** SB 401  
**Caption:** Senate Governmental Oversight & Accountability Committee

**Case:**

**Type:**  
**Judge:**

**Started:** 4/7/2015 1:31:47 PM  
**Ends:** 4/7/2015 3:20:46 PM **Length:** 01:49:00

1:31:49 PM Meeting called to order - Roll call  
1:32:25 PM Tab 1 - Senate Confirmation Hearing: Executive Director, Agency for State Technology  
1:33:06 PM Mr. Allison addresses the committee.  
1:35:42 PM Roll Call for confirmation of Jason Allison  
1:36:01 PM Tab 2 - SB 984 by Senator Braynon—Exemption from Legislative Lobbying Requirements  
1:36:56 PM Senate Lavala asks a question of Senator Braynon's aide.  
1:39:17 PM Roll Call for SB 984  
1:40:15 PM Tab 9 - CS/SB 360 by Children, Families, and Elder Affairs / Senator Stargel  
1:40:41 PM Amendment Barcode 201230  
1:41:21 PM Roll Call for CS/SB 360  
1:41:47 PM Tab 3 - SB 1612 by Senator Detert—Public Records/Criminal History Records  
1:42:59 PM Roll Call for SB 1612  
1:43:46 PM Tab 4 - CS/SB 564 by Commerce and Tourism / Senator Richter—Trade Secrets  
1:43:59 PM Amendment Barcode - 172444  
1:44:38 PM Roll Call for SB 564  
1:45:02 PM Tab 5 - CS/SB 566 by Commerce and Tourism / Senator Richter—Public Records/Trade Se  
1:45:19 PM Amendment Barcode 275952  
1:45:26 PM Senator Bullard asks a question.  
1:47:23 PM Cynthia Henderson  
1:47:39 PM Roll Call for CS/SB 566  
1:48:33 PM Tab 6 - CS/SB 1324 by Criminal Justice / Senator Latvala—Public Records/Agency Personnel Inform  
1:49:17 PM Amendment Barcode 963608  
1:50:14 PM Amendment Barcode 134068  
1:51:10 PM Roll Call for CS/SB 1324  
1:51:47 PM Tab 7 - CS/SB 1536 by Senator Richter-Public Records  
1:52:06 PM Roll Call for CS/SB 1536  
1:52:27 PM Tab 10 - SPB 7082 by Governmental Oversight and Accountability— Death Benefits Under the Florida Retirement System  
1:54:03 PM Roll Call for SPB 7082  
1:55:10 PM Tab 8 - SB 1582 by Senator Richter—Public Records/High-pressure Well Stimulation Chemical Disclosure Registry  
1:57:26 PM Senator Latvala asks a question of SB 1582. Senator Richter responds.  
2:00:50 PM Senator Bullard asks a question of SB 1582. Senator Richter responds.  
2:06:00 PM Jennifer Hecker, Director of Natural Resources Policy  
2:07:52 PM Amy Datz, Environmental Caucus of Florida  
2:10:33 PM David Mica, Florida Petroleum Council  
2:11:37 PM Senator Bullard asks a question. Mr. Mica responded.  
2:17:28 PM Ray Bellamy, Physicians for Social Responsibility  
2:20:54 PM Senator Latvala asks that DEP come to a meeting.  
2:22:14 PM Paula Cobb, DEP responded to Senator Latvala's question at the request of the Chair.  
2:34:41 PM Herb Shelton, Environmental Caucus  
2:35:50 PM Edith Karcher, Our Santa Fe River, Fort White, FL  
2:36:36 PM Lauara Dailey, Three Rivers Estates, Fort White, FL  
2:40:59 PM Merrillee Malwitz-Jipson, Fort White, FL  
2:43:45 PM Dr. Ron Saff, Physician PSR/Florida  
2:49:50 PM Kim Ross, President, Rethink Energy Florida  
2:52:59 PM Brian Lee, Soil & Water Conservation Supervisor, Leon County.  
2:54:15 PM Jennifer Rubiello, Environment Florida  
2:57:34 PM Donna MacIver, Greenville, FL  
2:58:24 PM John Dickert  
3:00:31 PM Mary-Lynn Cullery, Sarasota, FL - Advocacy Institute for Children.  
3:03:22 PM David Cullen, Sierra Club Florida, Sarasota, FL

**3:07:43 PM** Gail Marie Perry, Communications Workers of America, Pompano Beach, FL  
**3:12:46 PM** Debbie Harrison Rumberger, Florida League of Voters  
**3:16:16 PM** Senator Latvala makes a statement.  
**3:18:07 PM** Senator Richter closes on bill.  
**3:20:25 PM** Roll Call for SB 1582  
**3:20:38 PM** Meeting adjourned