

<b>Tab 1</b>	<b>SB 108</b> by <b>Campbell</b> ; (Similar to CS/H 00293) Florida Kidcare Program						
933590	A	S	RCS	GO, Campbell	btw L.50 - 51:	01/16 06:09 PM	
<b>Tab 2</b>	<b>CS/SB 268</b> by <b>CF, Passidomo</b> ; (Similar to H 01037) Public Records/Public Guardians/Employees with Fiduciary Responsibility						
287538	A	S	RCS	GO, Passidomo	Delete L.25:	01/16 06:09 PM	
<b>Tab 3</b>	<b>SB 538</b> by <b>Garcia (CO-INTRODUCERS) Rodriguez</b> ; (Similar to H 00279) State and Local Governmental Relations with The Government of Venezuela						
<b>Tab 4</b>	<b>SB 722</b> by <b>Garcia</b> ; (Identical to H 00665) Retirement						
<b>Tab 5</b>	<b>SB 780</b> by <b>Brandes</b> ; (Identical to H 00545) Prohibition Against Contracting with Scrutinized Companies						
<b>Tab 6</b>	<b>SB 912</b> by <b>Broxson</b> ; (Similar to CS/CS/H 00083) Agency Rulemaking						
<b>Tab 7</b>	<b>SB 1078</b> by <b>Perry</b> ; Public Records/United States Census Bureau						

**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**

**Senator Baxley, Chair**  
**Senator Mayfield, Vice Chair**

**MEETING DATE:** Tuesday, January 16, 2018  
**TIME:** 4:00—6:00 p.m.  
**PLACE:** James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

**MEMBERS:** Senator Baxley, Chair; Senator Mayfield, Vice Chair; Senators Galvano, Rader, Rouson, Stargel, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	<b>SB 108</b> Campbell (Similar CS/H 293)	Florida Kidcare Program; Establishing the Kidcare Operational Efficiency and Health Care Improvement Workgroup as a task force administratively housed in the Department of Health to maximize the return on investment and enhance the operational efficiencies of the Florida Kidcare program, etc.  CF 09/12/2017 CF 10/09/2017 Favorable GO 01/16/2018 Fav/CS RC	Fav/CS Yeas 6 Nays 0
2	<b>CS/SB 268</b> Children, Families, and Elder Affairs / Passidomo (Similar H 1037)	Public Records/Public Guardians/Employees with Fiduciary Responsibility; Providing an exemption from public records requirements for certain identifying and location information of current or former public guardians, employees with fiduciary responsibility, and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CF 11/06/2017 CF 11/13/2017 Fav/CS GO 01/16/2018 Fav/CS RC	Fav/CS Yeas 6 Nays 0
3	<b>SB 538</b> Garcia (Similar H 279, H 359, S 70)	State and Local Governmental Relations with The Government of Venezuela; Requiring the State Board of Administration to divest investments, and prohibiting it from investment, in any institution or company or subsidiary of a company domiciled in the United States which does business in or with the government of Venezuela or its agencies or instrumentalities in violation of federal law; authorizing the Governor to waive such requirements under certain circumstances, etc.  GO 01/16/2018 Favorable AFT AP	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**Governmental Oversight and Accountability  
Tuesday, January 16, 2018, 4:00—6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	<b>SB 722</b> Garcia (Identical H 665)	Retirement; Specifying the minimum amount of the factor used to calculate the cost-of-living adjustment of benefits for certain retirees and beneficiaries of the Florida Retirement System, etc.  GO 01/16/2018 Favorable AGG AP	Favorable Yeas 6 Nays 0
5	<b>SB 780</b> Brandes (Identical H 545)	Prohibition Against Contracting with Scrutinized Companies; Prohibiting a company that is on the Scrutinized Companies that Boycott Israel List or that is engaged in a boycott of Israel from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity for goods or services of any amount; requiring such contracts entered into or renewed on or after July 1, 2018, to include a provision authorizing termination of the contract under specified circumstances, etc.  GO 01/16/2018 Favorable AGG AP	Favorable Yeas 6 Nays 0
6	<b>SB 912</b> Broxson (Similar CS/CS/H 83)	Agency Rulemaking; Requiring certain notices to include an agency website address for a specified purpose; requiring the Department of State to include on the Florida Administrative Register website the agency website addresses where statements of estimated regulatory costs can be viewed in their entirety, etc.  GO 01/16/2018 Favorable ATD AP	Favorable Yeas 6 Nays 0
7	<b>SB 1078</b> Perry	Public Records/United States Census Bureau ; Creating an exemption from public records requirements for specified United States Census Bureau address information held by an agency; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  GO 01/16/2018 Favorable RC	Favorable Yeas 6 Nays 0

Other Related Meeting Documents

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

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

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

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BILL: CS/SB 108

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Campbell

SUBJECT: Florida Kidcare Program

DATE: January 17, 2018      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<b>Favorable</b>
2.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 108 creates the Kidcare Operational Efficiency and Health Care Improvement Workgroup to maximize the state's return on investment in the Kidcare program, a health insurance program for children in lower income households. The workgroup is housed in the Department of Health and must recommend operational efficiencies to the Governor and Legislature by December 31, 2018.

The bill is unlikely to have a fiscal impact on the state and has an effective date of July 1, 2018.

**II. Present Situation:**

**Florida Kidcare Program**

The Florida Kidcare Program (Kidcare)<sup>1</sup> was created in 1998 by the Florida Legislature in response to the federal enactment of the Children's Health Insurance Program (CHIP) in 1997.<sup>2</sup> CHIP provides subsidized health insurance to uninsured children who do not qualify for Medicaid but who have family incomes under 200 percent of the federal poverty level (FPL) and meet other eligibility criteria.

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<sup>1</sup> Section 409.812, F.S.; Chapter 98-288, s. 34, L.O.F.

<sup>2</sup> Social Security Administration, *Title XXI - State Children's Health Insurance Program*, [http://www.ssa.gov/OP\\_Home/ssact/title21/2100.htm](http://www.ssa.gov/OP_Home/ssact/title21/2100.htm) and Medicaid.gov, *Program History*, <https://www.medicaid.gov/about-us/program-history/index.html> (last visited on Jan. 8, 2018).

The state statutory authority for Kidcare is found under part II of ch. 409, ss. 409.810 through 409.821, F.S.<sup>3</sup> Kidcare includes four operating components: Medicaid for children, Medikids, the Children's Medical Services Network (CMS Network), and the Florida Healthy Kids Corporation (FHKC).<sup>4</sup> Coverage for the non-Medicaid components are funded through Title XXI of the federal Social Security Act. Title XIX of the Social Security Act (Medicaid), state funds, and family contributions also provide funding for the different components. Family contributions under the Title XXI component are based on family size, household incomes, and other eligibility factors. Families above the income limits for premium assistance or who are not otherwise eligible for premium assistance are offered the opportunity to participate in Kidcare at a non-subsidized rate (full pay). Currently, the income limit for premium assistance is 200 percent of the FPL.<sup>5</sup>

Several state agencies and the FHKC share responsibilities for Kidcare. The AHCA, the Department of Children and Families (DCF), the Department of Health (DOH), and the FHKC have specific duties under Kidcare, as detailed in part II of ch. 409, F.S. The DCF determines eligibility for Medicaid. The FHKC receives all Kidcare applications and screens for Medicaid eligibility and determines eligibility for all Title XXI programs, referring applications to the DCF, as appropriate, for a complete Medicaid determination.<sup>6</sup>

To enroll in Kidcare, families may apply online or use a paper application<sup>7</sup> that determines eligibility for multiple programs, including Medicaid and CHIP, for the entire family. Applications are available in English, Spanish, and Creole. Eligibility for premium assistance is determined first through electronic data matches with available databases or, in cases in which income cannot be verified electronically, through submission of current pay stubs, tax returns, or W-2 forms.

Section 409.818(2)(b), F.S., requires the DOH to chair a state-level Florida Kidcare coordinating council to review and make recommendations concerning the implementation and operation of the program. The coordinating council includes representatives from DOH, DCF, AHCA, FHKC, the Office of Insurance Regulation of the Financial Services Commission, local government, health insurers, health maintenance organizations, health care providers, families participating in the program, and organizations representing low-income families.

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

This bill creates as a task force the Kidcare Operational Efficiency and Health Care Improvement Workgroup (workgroup), to be administratively housed at the DOH.<sup>8</sup> The workgroup is established to maximize the return on investment of public funds and streamline and enhance the

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<sup>3</sup> Section 409.810, F.S., provides that ss. 409.810-409.821, F.S., constitutes the Florida Kidcare Act.

<sup>4</sup> Section 409.813, F.S.

<sup>5</sup> Section 409.814, F.S.

<sup>6</sup> Section 409.818, F.S.

<sup>7</sup> See <https://www.healthykids.org/application/> (last visited on Jan. 8, 2018).

<sup>8</sup> Section 20.03(8), F.S., defines "committee" or "task force" as an advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative with respect to that problem. Its existence terminates upon the completion of its assignment.

operational efficiencies of Kidcare to provide improved health care services to children. Members of the workgroup serve on a voluntary basis.

The workgroup, to be convened and staffed by the FHKC, will consist of the following 12 members:

- The President of the Florida Chapter of the American Academy of Pediatrics or a designee.
- The State Health Officer or a designee.
- The Secretary of Health Care Administration or a designee with a background in children's health policy.
- The assistant secretary for child welfare of the DCF or a designee.
- A representative of directors of the FHKC.
- A representative of the Florida Association of Children's Hospitals, Inc.
- A representative of the Florida Covering Kids and Families Coalition.
- A representative of the Florida Association of Health Plans.
- A representative of the Florida Children's Council with a background in children's health policy.
- A representative of the Florida Dental Association.
- The Director of Children's Medical Services or a designee.
- A parent with a child in Florida Kidcare.
- A representative of the Florida Insurance Council.

The workgroup must:

- Research successful and innovative models to provide improved value and health care outcomes.
- Recommend ways to streamline and unify Kidcare to provide greater operational efficiencies, including as a single benefits package, a single set of performance measures, and a single third-party administrator.
- Provide necessary transition plans.
- Recommend any federal waivers for children's health care to the AHCA, which must obtain specific legislative authorization before seeking, applying for, accepting, or renewing the waiver.

The workgroup must submit a report on its findings and recommendations for streamlining Kidcare to the Governor, President of the Senate, and Speaker of the House of Representatives by December 31, 2018.

While the bill takes effect July 1, 2018, its provisions expire December 31, 2018.

#### **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:

Any efficiencies recommended to and implemented by the DOH could reduce costs to the state.

The DOH indicates that although the task force would be housed within the DOH, the FHKC must convene and staff the task force. Therefore, the DOH does not expect a fiscal impact.<sup>9</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates an undesignated section of law.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on January 16, 2018:**

The CS adds to the list of persons and entities required to serve on the Kidcare Operational Efficiency and Health Care Improvement Workgroup a representative of the Florida Insurance Council.

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<sup>9</sup> Florida Department of Health, *2018 Legislative Bill Analysis* (Aug. 15, 2017).

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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933590

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
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The Committee on Governmental Oversight and Accountability  
(Campbell) recommended the following:

**Senate Amendment**

Between lines 50 and 51

insert:

(m) A representative of the Florida Insurance Council.

By Senator Campbell

38-00159-18

2018108\_\_

A bill to be entitled

An act relating to the Florida Kidcare program; establishing the Kidcare Operational Efficiency and Health Care Improvement Workgroup as a task force administratively housed in the Department of Health to maximize the return on investment and enhance the operational efficiencies of the Florida Kidcare program; providing for duties and membership of the workgroup; requiring a report to the Governor and Legislature by a specified date; providing for expiration of the workgroup; providing an effective date.

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

Section 1. Kidcare Operational Efficiency and Health Care Improvement Workgroup.—The Kidcare Operational Efficiency and Health Care Improvement Workgroup, a task force as defined in s. 20.03, Florida Statutes, is established to maximize the return on investment and streamline and enhance the operational efficiencies of the Florida Kidcare program to provide improved health care services to children. The workgroup shall be administratively housed in the Department of Health. Members of the workgroup shall serve on a voluntary basis.

(1) The workgroup shall be convened and staffed by the Florida Healthy Kids Corporation and shall consist of the following members:

(a) The President of the Florida Chapter of the American Academy of Pediatrics or his or her designee.

Page 1 of 3

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

38-00159-18

2018108\_\_

(b) The State Health Officer or his or her designee.

(c) The Secretary of Health Care Administration or his or her designee, who must have a background in children's health policy.

(d) The assistant secretary for child welfare of the Department of Children and Families or his or her designee.

(e) A representative of directors of the Florida Healthy Kids Corporation.

(f) A representative of the Florida Association of Children's Hospitals, Inc.

(g) A representative of the Florida Covering Kids and Families Coalition.

(h) A representative of the Florida Association of Health Plans.

(i) A representative of the Florida Children's Council with a background in children's health policy.

(j) A representative of the Florida Dental Association.

(k) The Director of Children's Medical Services or his or her designee.

(l) A parent of a child enrolled in the Florida Kidcare program.

(2) The workgroup shall:

(a) Examine successful and innovative models to provide improved value and health care outcomes.

(b) Develop recommendations to streamline and unify the program to provide greater operational efficiencies, including recommendations for a single benefits package, a single set of performance measures, and a single third-party administrator.

(c) Provide any necessary transition plans.

Page 2 of 3

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

38-00159-18

2018108\_\_

59 (d) Provide recommendations regarding federal waivers for  
60 children's health care to the Agency for Health Care  
61 Administration, which shall obtain specific legislative  
62 authorization before seeking, applying for, accepting, or  
63 renewing any federal waiver.

64 (3) The workgroup shall submit a report on its findings and  
65 recommendations for streamlining the Florida Kidcare program to  
66 the Governor, the President of the Senate, and the Speaker of  
67 the House of Representatives by December 31, 2018.

68 (4) This section expires December 31, 2018.

69 Section 2. This act shall take effect July 1, 2018.



# THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**

Appropriations Subcommittee on Finance and Tax  
Appropriations Subcommittee on General Government  
Children, Families, and Elder Affairs  
Communications, Energy, and Public Utilities  
Community Affairs

**JOINT COMMITTEE:**

Joint Administrative Procedures Committee

**SENATOR DAPHNE CAMPBELL**

38th District

October 16, 2017

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

Dear Chair Baxley,

I respectfully request that S108 Florida KidCare be placed on the next available committee agenda. This bill does have a companion bill that was filed in the House. For the 2018 Session, this bill passed the committee of Children, Families, and Elder Affairs. In the 2017 session, the bill passed this committee. S108 creates a workgroup that will maximize the state's return on investment in the KidCare program, a health insurance program for children in lower income households. The workgroup is to recommend operational efficiencies and report to the Governor and Legislature by an effective date.

Sincerely,

A handwritten signature in cursive script that reads "D Campbell".

REPLY TO:

- 633 N.E. 167th Street, Suite 1101, North Miami Beach, Florida 33162 (305) 493-6009
- 218 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5038

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

**JOE NEGRON**  
President of the Senate

**ANITERE FLORES**  
President Pro Tempore

THE FLORIDA SENATE

Also on the bill

APPEARANCE RECORD

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

Meeting Date

108  
Bill Number (if applicable)

933590  
Amendment Barcode (if applicable)

Topic

Name Paul Sanford

in support of  
amend of bill

Job Title

Address 106 S. Monroe St

Phone 222-7200

Street

Tallahassee FL 3230

City

State

Zip

Email

Speaking:  For  Against  Information

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

Representing Florida Insurance 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)

1/10/17 Meeting Date

108 Bill Number (if applicable)

Topic Kidcare

Amendment Barcode (if applicable)

Name Karen Woodall

Job Title Director

Address 579 E. Call St.

Phone 850-321-9386

Tallahassee FL 32301

Email fcsep@yellow.com

Speaking: For Against Information

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

Representing Florida Center for Fiscal + Economic Policy

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)

1/16/18  
Meeting Date

SB 108  
Bill Number (if applicable)

Topic Florida Kidcare Program

Amendment Barcode (if applicable)

Name Amy Liem

Job Title Director of Policy & Advocacy

Address 603 N. Martin Luther King Jr. Blvd

Phone 407-801-4339

Street

Tallahassee  
City

FL  
State

32301  
Zip

Email ~~amy@floridalegal.org~~ amy@floridalegal.org

Speaking:  For  Against  Information

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

Representing Florida Legal Services

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)

1/16/18  
Meeting Date

SB 108  
Bill Number (if applicable)

Topic Florida Kidcare

Amendment Barcode (if applicable)

Name Tara Reid

Job Title Senior Associate - Strategos Group

Address 200 W. College Ave, Ste 202 Phone 386-530-0426

Tallahassee FL 32311  
City State Zip

Email treid@strategosgroup.com

Speaking:  For  Against  Information

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

Representing Children's Movement of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18  
Meeting Date

108  
Bill Number (if applicable)

Topic FL Kidcare Program

Amendment Barcode (if applicable)

Name Chris Schoonover

Job Title

Address 101 E. College Ave. Ste 502

Phone 850-222-9075

Tallahassee FL 32301

Email cschoonover@capacityconsult.com

Speaking:  For  Against  Information

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

Representing FL Healthy Kids Corporation

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 268

INTRODUCER: Governmental Oversight and Accountability Committee; Children, Families, and Elder Affairs Committee; and Senator Passidomo

SUBJECT: Public Records/Public Guardians/Employees with Fiduciary Responsibility

DATE: January 17, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Brown</u>	<u>Caldwell</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 268 creates a public records exemption for identifying and location information of current and former public guardians, employees with fiduciary responsibility, and their spouses and children.

The required public necessity statement of the bill provides as justification for the exemption that the release of this information may and has placed current and former public guardians, employees with fiduciary responsibility, and the families of these individuals in danger of physical and emotional harm from disgruntled individuals, including wards of the guardian.

The exemption stands repealed on October 2, 2023, pursuant to the Open Government Sunset Review Act, unless the Legislature reviews and reenacts the exemption before that date.

The bill requires a two-thirds vote from each chamber for passage.

The bill takes effect July 1, 2018, but applies retroactively to information protected in this bill which is held by any agency before the effective date.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

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

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

An agency is defined 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 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 a public agency.<sup>6</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>7</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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

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

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

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

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

<sup>6</sup> Section 119.011(2), F.S.

<sup>7</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>8</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.<sup>10</sup> The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.<sup>14</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>15</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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>17</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>18</sup>

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

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

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

<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>15</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>16</sup> Section 119.15(3), F.S.

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

<sup>18</sup> Section 119.15(6)(b)1., F.S.

- 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>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>22</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>23</sup>

### **Guardianship**

Guardianship is a concept whereby a “guardian” acts for another, called a “ward,” whom the law regards as incapable of managing his or her own affairs due to age or incapacity. Guardianships are generally disfavored due to the loss of individual civil rights, and a guardian may be appointed only if the court finds there is no sufficient alternative to guardianship.

There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.<sup>24</sup> A court appoints a limited guardian for a ward who lacks capacity to do some, but not all, of the tasks necessary to care for him or herself or his or her property. In contrast, the court appoints a plenary guardian in instances in which the ward lacks capacity to perform all tasks needed to care for him or herself or his or her property.

For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, in situations in which an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incapacity which is based on the determination of a court appointed examination committee.<sup>25</sup>

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<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> Section 744.102(9)(a) and (b), F.S.

<sup>25</sup> Sections 744.102(12), 744.3201, 744.341, F.S.

Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship.<sup>26</sup> A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relationship.<sup>27</sup> The most basic duty of a fiduciary is the duty of loyalty: a fiduciary must refrain from self-dealing, must not take unfair advantage of the ward, must act in the best interest of the ward, and must disclose material facts.<sup>28</sup> In addition to the duty of loyalty, a fiduciary also owes a duty of care to carry out its responsibilities in an informed and considered manner.

Section 744.361, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary including protecting and preserving the property of the ward. A guardian must file with the court an initial guardianship report,<sup>29</sup> an annual guardianship report,<sup>30</sup> and an annual accounting of the ward's financial activities, accounts and property.<sup>31</sup> The reports provide evidence of the guardian's faithful execution of his or her fiduciary duties.<sup>32</sup>

At the heart of a court's interpretation of a fiduciary relationship is a concern that persons who assume trustee-like positions with discretionary power over the interests of others might breach their duties and abuse their position. Section 744.446(1), F.S., explicitly states that the "fiduciary relationship which exists between the guardian and the ward may not be used for the private gain of the guardian other than the remuneration for fees and expenses provided by law." If a guardian breaches his or her fiduciary duty, a court will intervene and "take the necessary actions to protect the ward and the ward's assets."<sup>33</sup>

### **Office of the Public and Professional Guardians**

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.<sup>34</sup> The Statewide Public Guardianship Office was renamed the Office of the Public and Professional Guardians in 2016.<sup>35</sup> A public guardian may serve "an incapacitated person if there is no family member or friend, other person, bank, or corporation willing and qualified to serve as guardian."<sup>36</sup> A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.<sup>37</sup> A public guardian may be an appointee of the Office of the Public and Professional Guardians or a contract employee of a nonprofit corporation.<sup>38</sup> Public guardianship offices are located in all 20 judicial circuits in the state.

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<sup>26</sup> *Lawrence v. Norris*, 563 So. 2d 195, 197 (Fla. 1st DCA 1990). Section 744.361(1), F.S., provides, in part, "The guardian of an incapacitated person is a fiduciary ..."

<sup>27</sup> *Doe v. Evans*, 814 So. 2d 370, 374 (Fla. 2002).

<sup>28</sup> *Capital Bank v. MVP, Inc.* 644 So. 2d 515, 520 (Fla. 3d DCA 1994).

<sup>29</sup> Section 744.362, F.S.

<sup>30</sup> Section 744.367, F.S.

<sup>31</sup> Section 744.3678, F.S.

<sup>32</sup> Sections 744.368(1) and 744.369, F.S.

<sup>33</sup> Section 744.446(4), F.S.

<sup>34</sup> Section 744.7021, F.S.; Section 4, Chapter 99-277, L.O.F.

<sup>35</sup> Chapter 2016-40, L.O.F.

<sup>36</sup> Section 744.2007(1), F.S.

<sup>37</sup> Section 744.102(17), F.S.

<sup>38</sup> Section 744.2006(2), F.S.

Currently, the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of public guardians and employees with fiduciary responsibility as well as the names and location of schools and day care facilities of the children of public guardians and employees with fiduciary responsibility are subject to release pursuant to a public records request.

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

This bill creates a public records exemption for contact and identify information held by an agency of former and current public guardians, employees with fiduciary responsibility in guardianship situations, and spouses and children of these individuals.

An employee with fiduciary responsibility is defined as an employee of a public guardian:

- Who has the ability to direct withdrawals or investments made from a ward's financial accounts;
- Who, under the supervision of the guardian supervises, cares for the ward; or
- Who makes any health care decision as defined in law for purposes of health care advance directives on behalf of the ward.

The public records exemption makes exempt from public disclosure:

- For former or current public guardians and employees with fiduciary responsibility, home addresses, telephone numbers, dates of birth, places of employment; and
- For spouses and children of former or current public guardians and employees with fiduciary responsibility, names, home addresses, telephone numbers, dates of birth, places of employment, and locations of schools and day care facilities attended by the children.

The required public necessity statement provides as justification for the exemption that the release of this information may and has placed current and former public guardians, employees with fiduciary responsibility, and the families of these individuals in danger of physical and emotional harm from disgruntled individuals, including wards of the guardian. The public necessity statement cites instances of threats of incarceration, violence, including death, and actual violence.

The public records exemption is subject to the Open Government Sunset Review Act pursuant to s. 119.15, F.S., and will be repealed October 2, 2023, unless the Legislature reviews and reenacts the exemption before that date.

The bill requires a two-thirds vote from each chamber for passage.

The bill takes effect July 1, 2018, but applies retroactively to protected information held by an agency before that date.

**IV. Constitutional Issues:**

## A. Municipality/County Mandates Restrictions:

None.

## B. Public Records/Open Meetings Issues:

**Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for public records exemptions to pass.

**Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts certain identifying and location information of current and former public guardians, employees with fiduciary responsibility, their spouses and children. The public necessity for the exemption provides that guardians and their family members are subject to threats of emotional and physical harm from disgruntled individuals. The exemption from disclosure would help protect guardians and their families. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

Private contractors would have to redact the information of the public guardian or employee with fiduciary responsibility if a public records request is made, which may cause them to incur a financial cost.

## C. Government Sector Impact:

An agency would have to redact the information of the public guardian or employee with fiduciary responsibility if a public records request is made. As no appropriation is included in the bill, agencies would have to absorb cost through existing resources. However, fiscal impact is unknown at this time.

**VI. Technical Deficiencies:**

None.



**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 744.21031 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 January 16, 2018:**

The CS better clarifies who is eligible for the public records exemption by defining the term “employee with fiduciary responsibility” as an employee of a public guardian:

- Who has the ability to direct withdrawals or investments made from a ward’s financial accounts;
- Who, under the supervision of the guardian supervises care for the ward; or
- Who makes any health care decision as defined in law for purposes of health care advance directives on behalf of the ward.

**CS by Children, Families, and Elder Affairs on November 13, 2017:**

The amendment replaces the term “public-guardian case manager” with the term “employee with fiduciary responsibility.”

**B. Amendments:**

None.



287538

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/16/2018	.	
	.	
	.	
	.	

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

**Senate Amendment (with title amendment)**

Delete line 25

and insert:

24(a), Art. I of the State Constitution. As used in this  
section, the term "employee with fiduciary responsibility" means  
an employee of a public guardian who has the ability to direct  
any withdrawals or investments made from a ward's banking or  
investment accounts; who, under the supervision of the guardian,  
supervises the care of the ward; or who makes any health care



287538

11 decision, as defined in s. 765.101, on behalf of the ward. This  
12 exemption applies

13  
14 ===== T I T L E A M E N D M E N T =====

15 And the title is amended as follows:

16       Delete line 7

17 and insert:

18       and the spouses and children thereof; defining the  
19       term "employee with fiduciary responsibility";  
20       providing for

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

586-01081A-18

2018268c1

1 A bill to be entitled  
2 An act relating to public records; creating s.  
3 744.21031, F.S.; providing an exemption from public  
4 records requirements for certain identifying and  
5 location information of current or former public  
6 guardians, employees with fiduciary responsibility,  
7 and the spouses and children thereof; providing for  
8 retroactive application; providing for future  
9 legislative review and repeal of the exemption;  
10 providing a statement of public necessity; providing  
11 an effective date.  
12  
13 Be It Enacted by the Legislature of the State of Florida:  
14  
15 Section 1. Section 744.21031, Florida Statutes, is created  
16 to read:  
17 744.21031 Public records exemption.—The home addresses,  
18 telephone numbers, dates of birth, places of employment, and  
19 photographs of current or former public guardians and employees  
20 with fiduciary responsibility; the names, home addresses,  
21 telephone numbers, dates of birth, and places of employment of  
22 the spouses and children of such persons; and the names and  
23 locations of schools and day care facilities attended by the  
24 children of such persons are exempt from s. 119.07(1) and s.  
25 24(a), Art. I of the State Constitution. This exemption applies  
26 to information held by an agency before, on, or after July 1,  
27 2018. This section is subject to the Open Government Sunset  
28 Review Act in accordance with s. 119.15 and shall stand repealed  
29 on October 2, 2023, unless reviewed and saved from repeal

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

586-01081A-18

2018268c1

30 through reenactment by the Legislature.  
31 Section 2. (1) The Legislature finds that it is a public  
32 necessity that the following identifying and location  
33 information be exempt from s. 119.07(1), Florida Statutes, and  
34 s. 24(a), Article I of the State Constitution:  
35 (a) The home addresses, telephone numbers, dates of birth,  
36 places of employment, and photographs of current or former  
37 public guardians and employees with fiduciary responsibility;  
38 (b) The names, home addresses, telephone numbers, dates of  
39 birth, and places of employment of spouses and children of such  
40 guardians and employees with fiduciary responsibility; and  
41 (c) The names and locations of schools and day care  
42 facilities attended by the children of such guardians and  
43 employees with fiduciary responsibility.  
44 (2) The Legislature finds that the release of such  
45 identifying and location information might place current or  
46 former public guardians and employees with fiduciary  
47 responsibility and their family members in danger of physical  
48 and emotional harm from disgruntled individuals who react  
49 inappropriately to actions taken by the public guardians and  
50 employees with fiduciary responsibility. Public guardians and  
51 employees with fiduciary responsibility provide a valuable  
52 service to the community by helping some of the state's most  
53 vulnerable residents who lack the physical or mental capacity to  
54 take care of most aspects of their own personal affairs. Public  
55 guardians and employees with fiduciary responsibility help those  
56 who lack a willing and qualified family member or friend and do  
57 not have the income or assets to pay a professional guardian.  
58 (3) Despite the value of this service, however, some

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

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2018268c1

59 persons, including a public guardian's own wards, become  
60 disgruntled with the assistance provided or the decisions a  
61 public guardian or an employee with fiduciary responsibility  
62 makes, which can result in a guardian or an employee with  
63 fiduciary responsibility or the family members of the guardian  
64 or the employee with fiduciary responsibility becoming potential  
65 targets for an act of revenge. Wards have harassed their public  
66 guardians with threats of incarceration, violence, and death  
67 through voicemail messages and social media. Wards have also  
68 left voicemail messages threatening to kill themselves and others,  
69 as well as the public guardian. In the course of their duties,  
70 public guardians have also been subject to being physically  
71 assaulted.

72 (4) After a public guardian or an employee with fiduciary  
73 responsibility concludes his or her service, the risk continues  
74 because a disgruntled individual may wait until then to commit  
75 an act of revenge. The harm that may result from the release of  
76 a public guardian's or an employee with fiduciary  
77 responsibility's personal identifying and location information  
78 outweighs any public benefit that may be derived from the  
79 disclosure of the information.

80 Section 3. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Dennis Baxley, Chair  
Committee on Governmental Oversight and Accountability

**Subject:** Committee Agenda Request

**Date:** November 13, 2017

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I respectfully request that **Senate Bill #268**, relating to Public Records/Public Guardians, be placed on the:

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

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

---

Senator Kathleen Passidomo  
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)

1/16/18  
Meeting Date

268  
Bill Number (if applicable)

Topic PUBLIC RECORDS PUBLIC GUARDIANS  
Amendment Barcode (if applicable)

Name CARLOS McDONALD

Job Title EXECUTIVE DIRECTOR

Address 8300 NW 53 STREET #402 Phone 305 812-1645  
Street

Miami, FL 33166 Email  
City State Zip

Speaking:  For  Against  Information

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

Representing GUARDIANSHIP PROGRAM OF DADE COUNTY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-16-18

Meeting Date

268

Bill Number (if applicable)

Topic Public Guardian Records Exemption

Amendment Barcode (if applicable)

Name Karen Campbell

Job Title President Public Guardian Coalition

Address c/o 1425 Piedmont Dr. Suite 201B

Phone 850-933-7382

Street

Lauderdale Lakes, FL

32308

City

State

Zip

Email karen.campbell@northfloridaopg.org

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

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

Representing Florida Public Guardian Coalition, 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.



**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 538

INTRODUCER: Senator Garcia

SUBJECT: State and Local Governmental Relations with The Government of Venezuela

DATE: January 12, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	<b>Favorable</b>
2.			AFT	
3.			AP	

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**I. Summary:**

SB 538 requires the State Board of Administration to divest any investment in stocks, securities, or other obligations of any institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., doing business in or with the government of Venezuela, or with agencies or instrumentalities thereof, in violation of federal law.

Also, the bill also prohibits a state agency from investing in any financial institution or company domiciled in the U.S., or any foreign subsidiary of a company domiciled in the U.S. which, directly or through a U.S. or foreign subsidiary, makes any loan, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with the government of Venezuela, or any company doing business in or with the government of Venezuela, in violation of federal law.

Additionally, the bill authorizes the Governor to waive the bill's prohibitions if the Venezuela government collapses and there is a need for immediate aid to Venezuela before the convening of the Legislature or for other humanitarian reasons as determined by the Governor.

The bill has an effective date of July 1, 2018.

**II. Present Situation:**

**State Board of Administration**

The State Board of Administration (SBA) is established by Art. IV, s. 4(e) of the State Constitution and is composed of the Governor as chair, the Chief Financial Officer (CFO), and the Attorney General. The board members are commonly referred to as "Trustees." The SBA derives its powers to oversee state funds from Art. XII, s. 9 of the Constitution and ch. 215, F.S.

The SBA has responsibility for oversight of the Florida Retirement System (FRS) Pension Plan investments and the FRS Investment Plan,<sup>1</sup> which represent approximately \$168.8 billion, or 86.3 percent, of the \$195.7 billion in assets managed by the SBA as of October 26, 2017.<sup>2</sup> The SBA also manages more than 30 other investment portfolios with combined assets of \$26.9 billion, including the Florida Hurricane Catastrophe Fund, the Florida Lottery Fund, the Florida Pre-Paid College Plan, and various debt-service accounts for state bond issues.<sup>3</sup>

The Trustees, at the August 16, 2017, Cabinet meeting, passed a resolution to add the following language to the SBA's Investment Policy Statement for the FRS:

- Prohibited Investments. Until such as time as the SBA determines it is otherwise prudent to do so, the SBA is prohibited from investing in:
  - any financial institution or company domiciled in the United States, or foreign subsidiary of a company domiciled in the United States, which directly or through a United States or foreign subsidiary and in violation of federal law, makes any loan, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services in or with the government of Venezuela; and
  - any securities issued by the government of Venezuela or any company that is majority-owned by the government of Venezuela.
- Proxy Voting. The SBA will not vote in favor of any proxy resolution advocating the support of the Maduro Regime in Venezuela.<sup>4</sup>

The SBA's Investment Advisory Council formally recommended that the language be added to the FRS Investment Policy Statement at its meeting on September 25, 2017. The Trustees accepted the updated Investment Policy Statement at their October 17, 2017, meeting.

### **State Divestment Laws**

Section 215.471, F.S., enacted in 1993, prohibits the SBA from investing in stocks, securities, or other obligations of:

- Any institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., doing business in or with Cuba, or with agencies or instrumentalities thereof in violation of federal law.
- Any institution or company domiciled outside of the U.S. if the President of the U.S. has applied sanctions against the foreign country in which the institution or company is domiciled, pursuant to s. 4 of the Cuban Democracy Act of 1992.

Section 215.471, F.S., also prohibits the SBA from acting as a fiduciary with respect to voting on, or in favor of, any proxy resolution advocating expanded U.S. trade with Cuba or Syria.

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<sup>1</sup> Members in the FRS may elect to participate in the pension plan, which is a defined benefit plan, or the investment plan, which is a defined contribution plan.

<sup>2</sup> State Board of Administration, SB 538 Agency Analysis (Oct. 27, 2017) (copy on file with the Senate Governmental Oversight and Accountability Committee).

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

<sup>4</sup> *Id.*

Section 215.472, F.S., enacted in 1993, prohibits each state agency from investing in:

- Any financial institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., which directly or through a U.S. or foreign subsidiary makes any loan, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with Cuba, the government of Cuba, or any company doing business in or with Cuba in violation of federal law.
- Any financial institution or company domiciled outside of the U.S. if the President of the U.S. has applied sanctions against the foreign country in which the institution or company is domiciled pursuant to s. 4 of the Cuban Democracy Act of 1992.

Section 215.473, F.S., enacted in 2007, requires the SBA to assemble and publish a list of scrutinized companies that have prohibited business operation in Sudan and Iran. Once placed on the list of scrutinized companies, the SBA is prohibited from acquiring those companies' securities and is required to divest such securities if the companies do not cease the prohibited activities or take certain compensating actions.

Section 215.4725, F.S., enacted in 2016, requires the SBA to identify and assemble a list of companies that boycott Israel. The SBA must provide written notice to the companies that may be placed on the list and give those companies an opportunity to respond prior to the company becoming subject to investment prohibition and placement on the list.

The state has practiced divestment several times in modern history.<sup>5</sup> From 1986 to 1993, the Legislature directed the SBA to divest investments of companies doing business with South Africa. From 1988 to 2015, the Legislature placed restrictions on investments in any institution or company doing business in or with Northern Ireland. From 1997 until 2001, the SBA made a decision to divest of 16 tobacco stocks due to pending litigation involving the state and those companies.

### **Federal Venezuela Sanctions**

In recent years, the federal government has imposed various sanctions on the government of Venezuela. On August 24, 2017, President Trump signed Executive Order 13808 to prohibit U.S. persons and entities from engaging in transactions involving the following:

- New debt with a maturity of greater than 90 days of Petroleos de Venezuela, S.A. (PdVSA), Venezuela's state-owned oil company;
- New debt with a maturity of greater than 30 days, or new equity, of the government of Venezuela, other than debt of PdVSA as defined above;
- Bonds issued by the government of Venezuela prior to August 25, 2017;
- Dividend payments or other distributions of profits to the government of Venezuela from any entity owned or controlled, directly or indirectly, by the government of Venezuela; and
- The purchase, directly or indirectly, of securities from the government of Venezuela, other than security qualifying as new debt with a maturity of less than or equal to 90 days (for PdVSA) or 30 days (for the government of Venezuela).<sup>6</sup>

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<sup>5</sup> See CS/CS/HB 959 House of Representatives Final Bill Analysis, Notes 14 through 17 (May 11, 2012) (copy available with Senate Governmental Oversight and Accountability Committee).

<sup>6</sup> Exec. Order No. 13808, 3 C.F.R. 41155 (2017).

The executive order defined the term “government of Venezuela” to mean the government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and PdVSA, and any person or entity owned or controlled by, or acting for or on behalf of, the government of Venezuela.<sup>7</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 215.471, F.S., to require the SBA to divest any investment in stocks, securities, or other obligations of any institution or company domiciled in the U.S., or foreign subsidiary of a company domiciled in the U.S., doing business in or with the government of Venezuela, or with agencies or instrumentalities thereof, in violation of federal law.

For this section, the bill defines the term “government of Venezuela” to mean the government of Venezuela, its agencies or instrumentalities, or companies majority-owned or controlled by the government of Venezuela.

Also, the bill authorizes the Governor to waive this section’s requirements if the Venezuela government collapses and there is a need for immediate aid to Venezuela before the convening of the Legislature or for other humanitarian reasons as determined by the Governor.

Additionally, the SBA is prohibited from being a fiduciary with respect to voting on, and may not have the right to vote in favor of, any proxy resolution advocating expanded U.S. trade with the government of Venezuela.

**Section 2** of the bill amends s. 215.472, F.S., to prohibit a state agency from investing in any financial institution or company domiciled in the U.S., or any foreign subsidiary of a company domiciled in the U.S. which, directly or through a U.S. or foreign subsidiary, makes any loan, extends credit of any kind or character, advances funds in any manner, or purchases or trades any goods or services with the government of Venezuela, or any company doing business in or with the government of Venezuela, in violation of federal law.

For this section, the bill defines the term “government of Venezuela” to mean the government of Venezuela, its agencies or instrumentalities, or companies majority-owned or controlled by the government of Venezuela.

Also, the bill authorizes the Governor to waive this section’s requirements if the Venezuela government collapses and there is a need for immediate aid to Venezuela before the convening of the Legislature or for other humanitarian reasons as determined by the Governor.

**Section 3** of the bill provides an effective date of July 1, 2018.

---

<sup>7</sup> *Id.* at 41156.

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

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

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

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

The U.S. Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,<sup>8</sup> maintain a military,<sup>9</sup> enter into treaties and other international agreements,<sup>10</sup> regulate foreign commerce,<sup>11</sup> and to hear cases involving foreign states and citizens.<sup>12</sup> These grants of power have been interpreted to grant the federal government the exclusive power to act in the area of foreign affairs.<sup>13</sup> When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid.<sup>14</sup>

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

None.

**B. Private Sector Impact:**

Indeterminate.

**C. Government Sector Impact:**

The bill may have an insignificant negative fiscal impact on the SBA related to conducting research. The SBA, however, will absorb these costs.<sup>15</sup>

<sup>8</sup> Section 8, Art. I, U.S. Constitution.

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

<sup>10</sup> Section 2, Art. II, U.S. Constitution.

<sup>11</sup> Section 8, Art. I, U.S. Constitution.

<sup>12</sup> Section 2, Art. III, U.S. Constitution.

<sup>13</sup> *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (Stating that the "Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.").

<sup>14</sup> *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass'n v. Garamendi*, 539 U.S. 396 (2003).

<sup>15</sup> See *supra* note 2.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 215.471 and 215.472 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

By Senator Garcia

36-00707-18

2018538\_\_

1 A bill to be entitled  
 2 An act relating to state and local governmental  
 3 relations with the government of Venezuela; amending  
 4 s. 215.471, F.S.; requiring the State Board of  
 5 Administration to divest investments, and prohibiting  
 6 it from investment, in any institution or company or  
 7 subsidiary of a company domiciled in the United States  
 8 which does business in or with the government of  
 9 Venezuela or its agencies or instrumentalities in  
 10 violation of federal law; defining the term  
 11 "government of Venezuela"; authorizing the Governor to  
 12 waive such requirements under certain circumstances;  
 13 prohibiting the State Board of Administration from  
 14 voting on any proxy resolution advocating expanded  
 15 United States trade with the government of Venezuela;  
 16 amending s. 215.472, F.S.; prohibiting state agencies  
 17 from investing in any financial institution or company  
 18 or foreign subsidiary of a company domiciled in the  
 19 United States which engages in specified transactions  
 20 with the government of Venezuela or certain companies  
 21 in violation of federal law; defining the term  
 22 "government of Venezuela"; authorizing the Governor to  
 23 waive such prohibition under certain circumstances;  
 24 providing an effective date.  
 25  
 26 WHEREAS, the current government of Venezuela is intolerable  
 27 to its people and continues to demonstrate the use of extreme  
 28 violence and political persecution in the orchestrated  
 29 suppression of human rights, and

Page 1 of 4

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

36-00707-18

2018538\_\_

30 WHEREAS, the regime of President Nicolas Maduro continues  
 31 to unjustly detain and prosecute political prisoners in spite of  
 32 international calls for their complete freedom, and  
 33 WHEREAS, the State of Florida stands in unity with the  
 34 people of Venezuela in their fight for democracy and freedom  
 35 from the oppressive Maduro regime, and  
 36 WHEREAS, the United States has deemed the situation in  
 37 Venezuela an extraordinary threat to our national security and  
 38 foreign policy, and  
 39 WHEREAS, the United States has issued sanctions against  
 40 Venezuelan officials, including Nicolas Maduro, who has been  
 41 identified as a "specially designated national" and labeled a  
 42 dictator by the United States Department of the Treasury, NOW,  
 43 THEREFORE,  
 44  
 45 Be It Enacted by the Legislature of the State of Florida:  
 46  
 47 Section 1. Paragraph (c) is added to subsection (1) of  
 48 section 215.471, Florida Statutes, and subsection (2) of that  
 49 section is amended, to read:  
 50 215.471 Divestiture by the State Board of Administration;  
 51 reporting requirements.—  
 52 (1) The State Board of Administration shall divest any  
 53 investment under s. 121.151 and ss. 215.44-215.53, and is  
 54 prohibited from investment in stocks, securities, or other  
 55 obligations of:  
 56 (c) Any institution or company domiciled in the United  
 57 States, or foreign subsidiary of a company domiciled in the  
 58 United States, doing business in or with the government of

Page 2 of 4

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

36-00707-18

2018538\_\_

59 Venezuela, or with agencies or instrumentalities thereof, in  
 60 violation of federal law. As used in this section, the term  
 61 "government of Venezuela" means the government of Venezuela, its  
 62 agencies or instrumentalities, or companies majority-owned or  
 63 controlled by the government of Venezuela. The Governor may  
 64 waive the requirements of this paragraph in the event that there  
 65 is a collapse of the government in Venezuela and there is a need  
 66 for immediate aid to Venezuela before the convening of the  
 67 Legislature, or for other humanitarian reasons as determined by  
 68 the Governor.

69 (2) The State Board of Administration may not be a  
 70 fiduciary under this section with respect to voting on, and may  
 71 not have the right to vote in favor of, any proxy resolution  
 72 advocating expanded United States trade with Cuba, ~~or~~ Syria, or  
 73 the government of Venezuela. The board's staff shall report on  
 74 its activities in its annual proxy voting report.

75 Section 2. Subsection (3) is added to section 215.472,  
 76 Florida Statutes, to read:

77 215.472 Prohibited investments.—Notwithstanding any other  
 78 provision of law, each state agency, as defined in s. 216.011,  
 79 is prohibited from investing in:

80 (3) Any financial institution or company domiciled in the  
 81 United States, or any foreign subsidiary of a company domiciled  
 82 in the United States, which directly or through a United States  
 83 or foreign subsidiary makes any loan, extends credit of any kind  
 84 or character, advances funds in any manner, or purchases or  
 85 trades any goods or services with the government of Venezuela,  
 86 or any company doing business in or with the government of  
 87 Venezuela in violation of federal law. As used in this

Page 3 of 4

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

36-00707-18

2018538\_\_

88 subsection, the term "government of Venezuela" means the  
 89 government of Venezuela, its agencies or instrumentalities, or  
 90 companies majority-owned or controlled by the government of  
 91 Venezuela. The Governor may waive the prohibition in this  
 92 subsection in the event that there is a collapse of the  
 93 government in Venezuela and there is a need for immediate aid to  
 94 Venezuela before the convening of the Legislature, or for other  
 95 humanitarian reasons as determined by the Governor.

96 Section 3. This act shall take effect July 1, 2018.

Page 4 of 4

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





**The Florida Senate**  
State Senator René García  
36<sup>th</sup> District

Please reply to:

□ District Office:

1490 West 68 Street  
Suite # 201  
Hialeah, FL. 33014  
Phone# (305) 364-3100

November 8, 2017

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

Dear Senator Baxley,

Please have this letter serve as my formal request to have **SB 538 State and Local Governmental Relations with The Government of Venezuela** be heard during the next Governmental Oversight and Accountability Committee Meeting. Should you have any questions or concerns, please do not hesitate to contact my office.

Sincerely,

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

State Senator René García  
District 36

CC: Diana Caldwell  
Tamra Redig

**Committees:** Children, Families, and Elder Affairs, Chair, Appropriations Subcommittee on Finance and Tax, Vice Chair, Appropriations Subcommittee on the Environment and Natural Resources, Appropriations Subcommittee on General Government, Banking and Insurance, Judiciary, Joint Administrative Procedures Committee.

# APPEARANCE RECORD

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

1-16-18

Meeting Date

538

Bill Number (if applicable)

Topic State & Local Gov. Relations w/ the Gov. of Venezuela <sup>veta</sup>

Amendment Barcode (if applicable)

Name Kimberly Renspie

Job Title Deputy Legislative Affairs Director

Address 200 E Gaines Street

Phone 850-413-5939

Street

Tallahassee,

FL

32329

Email kimberly.renspie@myfloridacfo.com

City

State

Zip

Speaking:  For  Against  Information

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

Representing CFO Patronis

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: SB 722

INTRODUCER: Senator Garcia

SUBJECT: Retirement

DATE: January 12, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	GO	<b>Favorable</b>
2.			AGG	
3.			AP	

---

**I. Summary:**

SB 722 amends s. 121.101, F.S., to set the level of the annual cost of living adjustment for all Florida Retirement System pension plan retirees and annuitants beginning July 1, 2018. For the annual cost of living adjustment for a retiree and beneficiary retiring on or after July 1, 2011, with service credit earned before July 1, 2011, the factor calculated may not be a product of less than 2.

State agencies, universities and colleges, school districts, counties, and various other local governments participating in the Florida Retirement System will bear the cost.

**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>

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<sup>1</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 33. Available online at: [https://www.rol.frs.state.fl.us/forms/2016-17\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2016-17_CAFR.pdf). (Last visited January 3, 2018.)

<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.

The FRS is a multi-employer, contributory plan, governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2017, the FRS had 637,643 active members, 406,374 annuitants, 16,150 disabled retirees, and 32,233 active participants of the Deferred Retirement Option Program (DROP).<sup>3</sup> As of June 30, 2017, the FRS consisted of 995 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 173 cities and 260 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 552,600 active members, plus 3,116 in renewed membership;
- The Special Risk Class<sup>6</sup> includes 71,612 active members;
- The Special Risk Administrative Support Class<sup>7</sup> has 93 active members;
- The Elected Officers' Class<sup>8</sup> has 2,082 active members, plus 85 in renewed membership; and
- The Senior Management Service Class<sup>9</sup> has 7,912 members, plus 116 in renewed membership.<sup>10</sup>

Each class is funded separately based upon the costs attributable to the members of that class.

Members of the FRS have two primary plan options available for participation:

- The defined contribution plan, also known as the Investment Plan; and
- The defined benefit plan, also known as the Pension Plan.

### ***Pension Plan***

The pension plan is administered by the Secretary of the Department of Management Services through the Division of Retirement.<sup>11</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>12</sup> For members enrolled on or after

<sup>3</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 144.

<sup>4</sup> *Id.*, at 180.

<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 Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2017, at p. 147.

<sup>11</sup> Section 121.025, F.S.

<sup>12</sup> Section 121.021(45)(a), F.S.

July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>13</sup> 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>14</sup> For most members of the pension plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.<sup>15</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>16</sup> Members initially enrolled in the pension plan on or after July 1, 2011, have longer service 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>17</sup>

### Cost of Living Adjustments

For pension plan members whose effective retirement date was before July 1, 2011, the member's monthly retirement benefit is increased by 3 percent each July 1.

For members who retire on or after July 1, 2011, the member's monthly retirement benefit is increased on July 1 of each year by 3 percent prorated by the member's service credit earned prior to July 1, 2011 divided by the member's total service credit earned.<sup>18</sup>

Members who initially enroll in the FRS on or after July 1, 2011, receive no cost of living adjustment during retirement. This is because the member's total service will be post-2011, resulting in the 3 percent adjustment prorated to 0 percent. The maximum cost of living adjustment under s. 121.101, F.S., is 3 percent. Members of the investment plan do not receive a cost of living adjustment during retirement.

### Reinstatement of Cost of Living Adjustments

At the time the COLA was modified in 2011, the Legislature included a provision that allowed the 3 percent COLA to be reinstated contingent on the availability of funding and the Legislature enacting sufficient employer contributions specifically for the purpose of funding the 3 percent COLA. If the legislature provides such funding and enacts sufficient employer contributions, the provision regarding the prorated COLA expires and the COLA reverts to 3 percent annually.<sup>19</sup>

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<sup>13</sup> Section 121.021(45)(b), F.S.

<sup>14</sup> Section 121.091, F.S.

<sup>15</sup> Section 121.021(29)(a)1., F.S.

<sup>16</sup> Section 121.021(29)(b)1., F.S.

<sup>17</sup> Sections 121.021(29)(a)2. and (b)2., F.S.

<sup>18</sup>To illustrate the formula of years of service as of 7/2011 divided by years of service after 7/2011 multiplied by 3.00%.

Example 1 – 24 years of service before 7/11, 6 years after 7/11:  $24/30=.80 \times 3.0\% = 2.4\%$  Cost of living adjustment.

Example 2 – 6 years before 7/11, 24 years after 7/11:  $6/30=.002 \times 3\% = .006$  Cost of living adjustment. Accordingly, it appears that employees hired after July 1991 will have a COLA of 2% or less.

<sup>19</sup> Section 121.101(5), F.S.

### **Consumer Price Indices**

The Bureau of Labor Statistics (BLS) within the federal Department of Labor models an experimental consumer price index (CPI) for Americans 62 years of age and older. This index is referred to as Consumer Price Index for the Elderly or CPI-E. The fixed market basket of goods and services used for this index is different from the fixed market basket used for the Consumer Price Index for All Urban Consumers (CPI-U).

The annual percentage change in the CPI-U for the period December 1982 through December 2011 was 2.9 percent. The annual percentage change in the CPI-E for the same period was 3.1 percent.<sup>20</sup> The BLS does not forecast the CPI-E.

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

**Section 1** amends s. 121.101(4)(c), F.S., to provide that a retiree and beneficiary retiring on or after July 1, 2011, with service credit earned before July 1, 2011, the factor calculated may not be a product of less than 2. This will affect all employees hired after July 1991 who would otherwise have cost of living adjustments of less than 2 percent by setting a floor of 2 percent.

**Section 2** provides a legislative finding of a legitimate state purpose and fulfills an important state interest.

**Section 3** provides an effective date of July 1, 2018.

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

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

Subsection (a) of s. 18, Art. VII 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 expenditure is required to comply with a law that applies to all persons similarly situated.”

This bill includes legislative findings that the bill fulfills important state interests (see section 9), and the bill applies to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, universities, community colleges, counties, and municipalities.

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

None.

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

None.

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<sup>20</sup> [http://www.bls.gov/opub/ted/2012/ted\\_20120302.htm](http://www.bls.gov/opub/ted/2012/ted_20120302.htm) (last viewed January 5, 2018).

**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.

Therefore, an actuarial study will be necessary.

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

The bill does not provide the adjustments to contribution rates necessary to fund the cost of the retirement benefit enhancements.

**B. Private Sector Impact:**

According to DMS, members and annuitants of the FRS who retire on or after July 1, 2011, will be entitled to a cost of living increase of no less than 2 percent. However, the COLA is paid beginning with the July benefit payment. The amount is based on the prior June benefit that is increased by the COLA percentage. The earliest a retiree or beneficiary benefit could be affected is the July 2018 benefit payment issued on the last state working day of July 2018, at this time there are no retirees that would be impacted by this change whose individually determined COLA is less than 2.0 percent.

**C. Government Sector Impact:**

While undetermined, the bill does not provide the funding necessary to implement the benefit enhancement. In addition, an actuarial special study is required to determine the fiscal impact for which the Legislature must provide funding to meet constitutional and statutory requirement for benefit improvements to the Pension Plan.

According to DMS, programming changes for benefit calculations as well as publication and education changes will be necessary if this proposal becomes law.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

According to DMS, the implementation process will need to start prior to the effective date in this version of the bill to be prepared to implement the provisions of the bill in July 2018. It would be helpful to DMS to have the bill become effective upon becoming law with the effective date of the 2-percent minimum COLA for Tier I FRS members retiring on or after July 1, 2011,

specified for July 1, 2018, to cover the need to expend funds for preparation prior to the effective date of the provision..

**VIII. Statutes Affected:**

This bill substantially amends section 121.101 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 Garcia

36-00792-18

2018722\_\_

1 A bill to be entitled  
 2 An act relating to retirement; amending s. 121.101,  
 3 F.S.; specifying the minimum amount of the factor used  
 4 to calculate the cost-of-living adjustment of benefits  
 5 for certain retirees and beneficiaries of the Florida  
 6 Retirement System; providing a declaration of  
 7 important state interest; providing an effective date.  
 8  
 9 Be It Enacted by the Legislature of the State of Florida:  
 10  
 11 Section 1. Subsection (4) of section 121.101, Florida  
 12 Statutes, is amended to read:  
 13 121.101 Cost-of-living adjustment of benefits.-  
 14 (4) For members whose effective retirement date is on or  
 15 after July 1, 2011, the benefit of each retiree and annuitant  
 16 shall be adjusted annually on July 1 as follows:  
 17 (a) For those retirees and annuitants who have never  
 18 received a cost-of-living adjustment under this subsection, the  
 19 amount of the monthly benefit payable for the 12-month period  
 20 commencing on the adjustment date shall be the amount of the  
 21 member's initial benefit plus an amount equal to a percentage of  
 22 the member's initial benefit. This percentage is derived by  
 23 dividing the number of months the member has received an initial  
 24 benefit by 12, and multiplying the result by the factor  
 25 calculated pursuant to paragraph (c).  
 26 (b) For those retirees and annuitants who have received a  
 27 cost-of-living adjustment under this subsection, the adjusted  
 28 monthly benefit shall be the amount of the monthly benefit being  
 29 received on June 30 immediately preceding the adjustment date

Page 1 of 2

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

36-00792-18

2018722\_\_

30 plus an amount determined by multiplying the benefit by the  
 31 factor calculated pursuant to paragraph (c).  
 32 (c) The department shall calculate a cost-of-living factor  
 33 for each retiree and beneficiary retiring on or after July 1,  
 34 2011. This factor shall equal the product of 3 percent  
 35 multiplied by the quotient of the sum of the member's service  
 36 credit earned for service before July 1, 2011, divided by the  
 37 sum of the member's total service credit earned. However, for a  
 38 retiree and beneficiary retiring on or after July 1, 2011, with  
 39 service credit earned before July 1, 2011, the factor calculated  
 40 pursuant to this paragraph may not be a product of less than 2.  
 41 Section 2. The Legislature finds that a proper and  
 42 legitimate state purpose is served when employees and retirees  
 43 of the state and its political subdivisions, and the dependents,  
 44 survivors, and beneficiaries of such employees and retirees, are  
 45 extended the basic protections afforded by governmental  
 46 retirement systems. These persons must be provided benefits that  
 47 are fair and adequate and that are managed, administered, and  
 48 funded in an actuarially sound manner, as required by s. 14,  
 49 Article X of the State Constitution and part VII of chapter 112,  
 50 Florida Statutes. Therefore, the Legislature determines and  
 51 declares that this act fulfills an important state interest.  
 52 Section 3. This act shall take effect July 1, 2018.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1/16/2018  
Meeting Date

SB 702  
Bill Number (if applicable)

Topic Retirement - COLA for FRs

Amendment Barcode (if applicable)

Name Matt Puckett

Job Title Lobbyist

Address 300 East Brevard St.

Phone \_\_\_\_\_

Street

Tallahassee FL 32301

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida 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**

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

1/16/18  
Meeting Date

722  
Bill Number (if applicable)

Topic Retirement

Amendment Barcode (if applicable)

Name Rocco Salvatori

Job Title Firefighter

Address 348 West Madison  
Street

Phone 850-224-7333

Tallahassee FL 32301  
City State Zip

Email roccofish@verizon.net

Speaking:  For  Against  Information

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

Representing Florida Professional Firefighters

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.

# APPEARANCE RECORD

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

1-16-18

Meeting Date

722

Bill Number (if applicable)

Topic Retirement

Amendment Barcode (if applicable)

Name Kimberly Renspie

Job Title Deputy Legislative Affairs Director

Address 200 E. Gaines St.

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City

State

Zip

Speaking:  For  Against  Information

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

Representing CFO Patronis

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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BILL: SB 780

INTRODUCER: Senator Brandes

SUBJECT: Prohibition Against Contracting with Scrutinized Companies

DATE: January 12, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	<b>Favorable</b>
2.			AGG	
3.			AP	

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**I. Summary:**

SB 780 prohibits a company that is on the Scrutinized Companies that Boycott Israel List or that is engaged in a boycott of Israel from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local government entity for goods or services of any amount.

The bill also requires a contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, to contain a provision that allows for the termination of the contract at the option of the awarding body if the company has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

An agency or local governmental entity is authorized to make a case-by-case exception to the prohibition of contracting with companies that are on the Scrutinized Companies that Boycott Israel List or that is engaged in a boycott of Israel if certain conditions are met.

Additionally, the bill requires a company to provide certification that it is not engaging in a boycott of Israel before submitting a bid or entering into or renewing a contract with an agency or local governmental entity.

The bill has an effective date of July 1, 2018.

## II. Present Situation:

### Procurement of Personal Property and Services

#### *Procurement of Personal Property and Services by State Agencies*

Chapter 287, F.S., regulates state agency<sup>1</sup> procurement of personal property and services.<sup>2</sup> The Department of Management Services (DMS) is responsible for overseeing state purchasing activity including professional and contractual services<sup>3</sup> as well as commodities needed to support agency activities.<sup>4</sup> The DMS assists state agencies and eligible users by providing uniform commodity and contractual service procurement policies, rules, procedures, and forms.<sup>5</sup>

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

- Single source contracts,<sup>6</sup> which are used when an agency determines that only one vendor is available to provide a commodity or service at the time of purchase;
- Invitations to bid,<sup>7</sup> which are used when an agency determines that standard services or goods will meet its needs, wide competition is available, and the vendor's experience will not greatly influence the agency's results;
- Requests for proposals (RFP),<sup>8</sup> which are used when the procurement requirements allow for consideration of various solutions and the agency believes more than two or three vendors exist who can provide the required goods or services; and
- Invitations to negotiate (ITN),<sup>9</sup> which are used when negotiations are determined to be necessary to obtain the best value and involve a request for high complexity, customized, mission-critical services, by an agency dealing with a limited number of vendors.

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

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

<sup>3</sup> As defined in s. 287.012(8), F.S. "contractual service" means the rendering by a contractor of its time and effort rather than the furnishing of specific commodities. The term applies only to those services rendered by individuals and firms who are independent contractors, and such services may include, but are not limited to, evaluations; consultations; maintenance; accounting; security; management systems; management consulting; educational training programs; research and development studies or reports on the findings of consultants engaged thereunder; and professional, technical, and social services. The term does not include a contract for the furnishing of labor or materials for the construction, renovation, repair, modification, or demolition of a facility, building, portion of building, utility, park, parking lot, or structure or other improvement to real property entered into pursuant to chapter 255 and rules adopted thereunder.

<sup>4</sup> See ss. 287.032 and 287.042, F.S.

<sup>5</sup> Section 287.032(2), F.S.

<sup>6</sup> Section 287.057(3)(c), F.S.

<sup>7</sup> Section 287.057(1)(a), F.S.

<sup>8</sup> Section 287.057(1)(b), F.S.

<sup>9</sup> Section 287.057(1)(c), F.S.

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

- Price;
- Renewal price, if renewal is contemplated;
- Consideration of the total cost for each year of the contract, including renewal years, as submitted by the vendor; and
- Consideration of prior relevant experience of the vendor.<sup>10</sup>

In ITNs, the criteria to be used in determining the acceptability of the reply and guiding the selection of the vendors with which the agency will negotiate must be specified in the ITN. The evaluation criteria must also include consideration of prior relevant experience of the vendor.<sup>11</sup>

Contracts for commodities or contractual services in excess of \$35,000 must be procured utilizing a competitive solicitation process.<sup>12</sup> However, specified contractual services and commodities, such as artistic services and legal services, are not subject to competitive solicitation requirements.<sup>13</sup>

### ***State Term Contracts***

Current law authorizes the DMS to establish purchasing agreements and procure state term contracts for commodities and contractual services using the procurement methods described above.<sup>14</sup> These contracts are generally developed for purchases of commodities and services that are ongoing and common to multiple state agencies. State agencies are required to use state term contracts when they are available.<sup>15</sup> Other eligible users,<sup>16</sup> such as counties, cities, and school districts, may also utilize state term contracts.<sup>17</sup>

### ***Procurement of Personal Property and Services by Local Governments***

Local governments are not subject to the provisions of ch. 287.057, F.S., which prescribe methods for agencies' procurement of commodities or contractual services.<sup>18</sup> Local governmental units may look to the chapter for guidance in the procurement of goods and services, but many have local policies or ordinances to address competitive solicitations.<sup>19</sup>

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<sup>10</sup> Section 287.057(1)(b)3., F.S.

<sup>11</sup> Section 287.057(1)(c)3., F.S.

<sup>12</sup> Section 287.057(1), F.S., requires all projects that exceed the Category Two (\$35,000) threshold contained in s. 287.017, F.S., to be competitively bid. As defined in s. 287.012(6), F.S., "competitive solicitation" means the process of requesting and receiving two or more sealed bids, proposals, or replies submitted by responsive vendors in accordance with the terms of a competitive process, regardless of the method of procurement.

<sup>13</sup> See s. 287.057(3)(e), F.S.

<sup>14</sup> Section 287.042(2)(a), F.S.

<sup>15</sup> Section 287.056(1), F.S.

<sup>16</sup> See s. 287.012(11), F.S., and Rule 60A-1.001(2), F.A.C.

<sup>17</sup> Section 287.056(1), F.S.

<sup>18</sup> See ss. 287.012(1), F.S.

<sup>19</sup> In the absence of specific constitutional or statutory requirements, a public agency has no obligation to establish a bidding procedure and may contract in any manner not arbitrary or capricious. *Volume Servs. Div. of Interstate United Corp. v. Canteen Corp.*, 369 So. 2d 391 (Fla. 2d DCA 1979).

### *State and Local Government Procurement of Certain Professional Services*

In 1972, Congress passed the Brooks Act (Public Law 92-582), which codified Qualifications-Based Selection (QBS) as the federal procurement method for architect and engineering services. The QBS process entails first soliciting statements of qualifications from licensed architectural and engineering providers, selecting the most qualified respondent, and then negotiating a fair and reasonable price. The vast majority of states currently require a QBS process when selecting the services of architectural and engineering professionals.<sup>20</sup>

The Florida Legislature enacted the Consultants' Competitive Negotiation Act (CCNA) in 1973,<sup>21</sup> which specifies the necessary procedures when procuring professional services<sup>22</sup> by an agency.<sup>23</sup>

Currently, the CCNA, codified in s. 287.055, F.S., specifies the process that state and local government agencies must follow when procuring the professional services of an architect, professional engineer, landscape architect, or registered surveyor and mapper. The CCNA requires that state agencies publicly announce, in a consistent and uniform manner, each occasion when professional services must be purchased for one of the following:<sup>24</sup>

- A project, when the agency estimates the basic construction cost to exceed \$325,000.
- A planning or study activity, when the fee for professional services exceeds \$35,000.

The public notice must provide a general description of the project and describe how the interested consultants may apply for consideration.

The CCNA provides a two-phase selection process.<sup>25</sup> In the first phase, the “competitive selection,” the agency evaluates the qualifications and past performance of no fewer than three bidders. The agency selects the bidders, ranked in order of preference, and considers the most highly qualified to perform the required services. The CCNA requires consideration of several factors in determining the most highly qualified bidders.<sup>26</sup>

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<sup>20</sup> Forty-six states use this process. American Council of Engineering Companies, Qualifications-Based Selection Resource Center, available at <http://www.acec.org/advocacy/qbs/> (last visited Jan. 11, 2018).

<sup>21</sup> Chapter 73-19, L.O.F.

<sup>22</sup> Section 287.055(2)(a), F.S., defines “professional services” as those within the scope of the practice of architecture, professional engineering, landscape architecture, or registered surveying and mapping, as defined by the laws of the state, or those performed by any architect, professional engineer, landscape architect, or registered surveyor and mapper in connection with his or her professional employment or practice.

<sup>23</sup> Section 287.055(2)(b), F.S., defines “agency” as the state, a state agency, a municipality, a political subdivision, a school district, or a school board. The term “agency” does not extend to a nongovernmental developer that contributes public facilities to a political subdivision under s. 380.06, F.S., or ss. 163.3220-163.3243, F.S.

<sup>24</sup> Section 287.055(3)(a)1., F.S.

<sup>25</sup> Sections 287.055(4) and (5), F.S.

<sup>26</sup> Section 287.055(4)(b), F.S., requires agencies to consider the following factors: the ability of professional personnel; whether a firm is a certified minority business enterprise; past performance; willingness to meet time and budget requirements; location; recent, current, and projected workloads of the firms; and, the volume of work previously awarded to each firm by the agency, with the object of effecting an equitable distribution of contracts among qualified firms, provided such distribution does not violate the principle of selection of the most highly qualified firms.



The CCNA prohibits the agency from requesting, accepting, and considering, during the competitive selection process, proposals for the compensation to be paid.<sup>27</sup>

Section 287.055(2)(d), F.S., defines the term “compensation” to mean the amount paid by the agency for professional services regardless of whether stated as compensation or as other types of rates.

In the second phase, the “competitive negotiation,” the agency negotiates compensation with the most qualified of the minimum three selected firms for professional services at compensation, which the agency determines, is “fair, competitive, and reasonable.”<sup>28</sup> If the agency cannot negotiate a satisfactory contract, the agency must formally terminate negotiations with that firm and must then negotiate with the second most qualified firm.<sup>29</sup> The agency must negotiate with the third most qualified firm if the negotiation with the second most qualified firm fails to produce a satisfactory contract.<sup>30</sup> If the agency cannot negotiate a satisfactory contract with any of the three selected, the agency must select additional firms in order of their competence and qualifications and continue negotiations until it reaches a contract.<sup>31</sup> Once negotiations with a firm are terminated, the agency cannot resume negotiations with that firm for the project.

In October 2011, the Attorney General opined that local governments could not create a hybrid procurement process for awarding projects and are limited to utilizing statutorily defined procedures.<sup>32</sup>

### ***Procurement of Construction Services for Public Property and Publicly Owned Buildings***

Chapter 255, F.S., specifies the procedures to be followed in the procurement of construction services for public property and publicly owned buildings. Section 255.29, F.S., requires the DMS to establish, by rule,<sup>33</sup> the following construction contract procedures for:

- Determining the qualifications and responsibility of potential bidders prior to advertisement for and receipt of bids for building construction contracts, including procedures for the rejection of bidders who are reasonably determined from prior experience to be unqualified or irresponsible to perform the work required by a proposed contract.
- Awarding each state agency construction project to the lowest qualified bidder. Additionally, the DMS must provide procedures for cases in which the DMS declares a valid emergency to exist, which would necessitate the waiver of the rules governing the award of state construction contracts to the lowest qualified bidder.
- Governing negotiations for construction contracts and modifications to contract documents when the DMS Secretary determines that such negotiations are in the best interest of the state.

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<sup>27</sup> *Id.*

<sup>28</sup> Section 287.055(5)(a), F.S.

<sup>29</sup> Section 287.055(5)(b), F.S.

<sup>30</sup> *Id.*

<sup>31</sup> Section 287.055(5)(c), F.S.

<sup>32</sup> Op. Att’y Gen. Fla. 2011-21 (2011).

<sup>33</sup> See Chapter 60D-5, F.A.C., that establishes the procedures for s. 255.29, F.S. Rule 60D-5.001, F.A.C., requires procedures be followed in advertising for bids for construction contracts; in determining the eligibility of potential bidders to submit proposals for construction contracts; in awarding construction contracts; for waiver of non-material bid deviations; for rejection of bids; for disqualification of contractors; in requesting authority to negotiate contracts, and in negotiating contracts.

- Entering into performance-based contracts for the development of public facilities when the DMS determines the use of such contracts to be in the best interest of the state.

These procedures must include, but are not limited to:<sup>34</sup>

- Prequalification of bidders;
- Criteria to be used in developing requests for proposals which may provide for singular responsibility for design and construction, developer flexibility in material selection, construction techniques, and application of state-of-the-art improvements;
- Accelerated scheduling, including the development of plans, designs, and construction simultaneously; and
- Evaluation of proposals and award of contracts considering such factors as price, quality, and concept of the proposal.

The state must competitively bid contracts for construction projects that it projects to cost in excess of \$200,000.<sup>35</sup> County, municipal, or other political subdivision contracts for construction projects that are projected to cost in excess of \$200,000 also must be bid competitively.<sup>36</sup> Counties, municipalities, special districts, or other political subdivisions seeking to construct or improve a public building must bid the project competitively if the projected cost is in excess of \$300,000.<sup>37</sup>

The solicitation of competitive bids or proposals for any state construction project with anticipated costs of more than \$200,000 must be advertised publicly in the Florida Administrative Register (FAR) at least 21 days prior to the established bid opening.<sup>38</sup> If the state construction project is projected to exceed \$500,000, the advertisement must be published in the FAR at least 30 days prior to the bid opening and at least once in a newspaper of general circulation in the county where the project is located 30 days prior to the bid opening, and at least five days prior to any scheduled prebid conference.<sup>39</sup>

### **Scrutinized Companies**

Current law prohibits state and local governments from contracting for goods or services with scrutinized companies<sup>40</sup> and companies that are engaged in a boycott of Israel.<sup>41</sup> Companies on the Scrutinized Companies that Boycott Israel List<sup>42</sup> or engaged in a boycott of Israel<sup>43</sup> or on the

<sup>34</sup> Section 255.29(4)(a)-(d), F.S.

<sup>35</sup> Section 255.0525(1), F.S. Also, see Rules 60D-5.002(2) and 60D-5.0073, F.A.C.

<sup>36</sup> Section 255.0525(2), F.S.

<sup>37</sup> Section 255.20(1), F.S. (Special district as defined in ch. 189, F.S.). For electrical work, local governments must competitively award projects estimated to cost more than \$75,000 to an appropriately licensed contractor.

<sup>38</sup> Section 255.0525(1), F.S.

<sup>39</sup> *Id.* Similar publishing provisions apply to construction projects projected to cost more than \$200,000 for counties, municipalities, and other political subdivisions. See Section 255.0525(2), F.S.

<sup>40</sup> Sections 215.473(1)(v) and 215.4725(1)(f), F.S.

<sup>41</sup> See s. 287.135, F.S.

<sup>42</sup> The Israel List is a list of companies that boycott Israel that is compiled by the State Board of Administration. Section 215.4725(2), F.S.

<sup>43</sup> The term “boycott of Israel” means refusing to deal, terminating business activities, or taking other actions to limit commercial relations with Israel, or persons or entities doing business in Israel or in Israeli-controlled territories, in a discriminatory manner. A statement by a company that it is participating in a boycott of Israel or in Israeli-controlled

Scrutinized Companies with Activities in Sudan List or on the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria are prohibited from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local governmental entity<sup>44</sup> for goods or services of \$1 million or more.<sup>45</sup> In addition, any contract with an agency or local governmental entity for goods or services of \$1 million or more, entered into or renewed on or after specified dates, must contain a provision that allows for the termination of the contract, at the option of the awarding body, if the company is found to have submitted a false certification or is engaged in a boycott of Israel or has been placed on the Scrutinized Companies that Boycott Israel List or the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria.<sup>46</sup> Current law allows an agency or local governmental entity to make a case-by-case exception to the prohibition if certain conditions are met.<sup>47</sup>

A company that submits a bid or proposal for, or that otherwise proposes to enter into or renew a contract with an agency or local governmental entity for goods or services of \$1 million or more must certify that it is not participating in a boycott of Israel, on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or that it does not have business operations in Cuba or Syria.<sup>48</sup> The certification must be submitted at the time a bid or proposal is submitted or before a contract is executed or renewed.<sup>49</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends section 287.135, F.S., to prohibit a company that is on the Scrutinized Companies that Boycott Israel List or that is engaged in a boycott of Israel from bidding on, submitting a proposal for, or entering into or renewing a contract with an agency or local government entity for goods or services of any amount.

The bill updates the time frames for contracts with an agency or local governmental entity for goods or services of \$1 million or more entered into or renewed after October 1, 2016 through June 30, 2016, and after July 1, 2018, that must contain a provision that allows for the termination of the contract, at the option of the awarding body, if the company is found to have submitted a false certification or has been placed on the Scrutinized Companies with Activities in Sudan List or the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List or engaged in business operations in Cuba or Syria.

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territories, or that it has initiated a boycott in response to a request for a boycott of Israel or in compliance with, or in furtherance of, calls for a boycott of Israel, may be considered by the State Board of Administration to be evidence that a company is participating in a boycott of Israel. The term does not include restrictive trade practices or boycotts fostered or imposed by foreign countries against Israel. Sections 287.135(1)(b) and 215.4725(1)(a), F.S.

<sup>44</sup> The term "local governmental entity" means a county, municipality, special district, or other political subdivision of the state. Section 287.135(1)(d), F.S.

<sup>45</sup> Section 287.135(2), F.S.

<sup>46</sup> Section 287.135(3), F.S.

<sup>47</sup> Section 287.135(4), F.S.

<sup>48</sup> Section 287.135(5), F.S.

<sup>49</sup> *Id.*

The bill requires a contract with an agency or local governmental entity for goods or services of any amount entered into or renewed on or after July 1, 2018, to contain a provision that allows for the termination of the contract at the option of the awarding body if the company has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

The bill authorizes an agency or local governmental entity to make a case-by-case exception to the contracting prohibition for a company on the Scrutinized Companies that Boycott Israel List for contracts for goods or services of any amount based on the same conditions currently applicable to contracts of \$1 million or more.

The bill requires a company that submits a bid or proposal for, or that otherwise proposes to enter into or renew a contract with an agency or local governmental entity for goods or services of any amount to certify that it is not participating in a boycott of Israel.

The bill provides for preemption of any ordinance or rule of any agency or local governmental entity involving public contracts for goods or services of any amount with a company that has been placed on the Scrutinized Companies that Boycott Israel List or is engaged in a boycott of Israel.

**Section 2** of the bill provides an effective date of July 1, 2018.

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

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

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

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

None.

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

None.

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

The U.S. Constitution grants the federal government various powers related to foreign affairs, such as the power to declare war,<sup>50</sup> maintain a military,<sup>51</sup> enter into treaties and other international agreements,<sup>52</sup> regulate foreign commerce,<sup>53</sup> and to hear cases involving foreign states and citizens.<sup>54</sup> These grants of power have been interpreted to

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<sup>50</sup> Section 8, Art. I, U.S. Constitution.

<sup>51</sup> *Id.*

<sup>52</sup> Section 2, Art. II, U.S. Constitution.

<sup>53</sup> Section 8, Art. I, U.S. Constitution.

<sup>54</sup> Section 2, Art. III, U.S. Constitution.

grant the federal government the exclusive power to act in the area of foreign affairs.<sup>55</sup> When a state law operates in the field of foreign affairs without federal authorization, a reviewing court might find the state law to be invalid.<sup>56</sup>

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 287.135 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>55</sup> *Hines v. Davidowitz*, 312 U.S. 52, 63 (1941) (Stating that the “Federal Government, representing as it does the collective interests of the forty-eight states, is entrusted with full and exclusive responsibility for the conduct of affairs with foreign sovereignties.”).

<sup>56</sup> *Zschernig v. Miller*, 389 U.S. 429 (1968); *American Ins. Ass’n v. Garamendi*, 539 U.S. 396 (2003).

By Senator Brandes

24-00797-18

2018780\_\_

1 A bill to be entitled  
 2 An act relating to the prohibition against contracting  
 3 with scrutinized companies; amending s. 287.135, F.S.;  
 4 prohibiting a company that is on the Scrutinized  
 5 Companies that Boycott Israel List or that is engaged  
 6 in a boycott of Israel from bidding on, submitting a  
 7 proposal for, or entering into or renewing a contract  
 8 with an agency or local governmental entity for goods  
 9 or services of any amount; providing exceptions;  
 10 requiring such contracts entered into or renewed on or  
 11 after July 1, 2018, to include a provision authorizing  
 12 termination of the contract under specified  
 13 circumstances; requiring a company to provide a  
 14 specified certification before submitting a bid or  
 15 proposal for or entering into or renewing such  
 16 contracts; providing for preemption of agency or local  
 17 governmental entity ordinances and rules involving  
 18 such contracts; conforming provisions to changes made  
 19 by the act; providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23 Section 1. Section 287.135, Florida Statutes, is amended to  
 24 read:

25 287.135 Prohibition against contracting with scrutinized  
 26 companies.—

27 (1) In addition to the terms defined in ss. 287.012 and  
 28 215.473, as used in this section, the term:

29 (a) "Awarding body" means, for purposes of state contracts,

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

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30 an agency or the department, and for purposes of local  
 31 contracts, the governing body of the local governmental entity.

32 (b) "Boycott of Israel" has the same meaning as defined in  
 33 s. 215.4725.

34 (c) "Business operations" means, for purposes specifically  
 35 related to Cuba or Syria, engaging in commerce in any form in  
 36 Cuba or Syria, including, but not limited to, acquiring,  
 37 developing, maintaining, owning, selling, possessing, leasing,  
 38 or operating equipment, facilities, personnel, products,  
 39 services, personal property, real property, military equipment,  
 40 or any other apparatus of business or commerce.

41 (d) "Local governmental entity" means a county,  
 42 municipality, special district, or other political subdivision  
 43 of the state.

44 (2) A company is ineligible to, and may not, bid on, submit  
 45 a proposal for, or enter into or renew a contract with an agency  
 46 or local governmental entity for goods or services of ~~\$1 million~~  
 47 ~~or more if at the time of bidding or submitting a proposal for a~~  
 48 ~~new contract or renewal of an existing contract, the company:~~

49 (a) Any amount if, at the time of bidding on, submitting a  
 50 proposal for, or entering into or renewing such contract, the  
 51 company is on the Scrutinized Companies that Boycott Israel  
 52 List, created pursuant to s. 215.4725, or is engaged in a  
 53 boycott of Israel; or

54 (b) One million dollars or more if, at the time of bidding  
 55 on, submitting a proposal for, or entering into or renewing such  
 56 contract, the company:

57 1. Is on the Scrutinized Companies with Activities in Sudan  
 58 List or the Scrutinized Companies with Activities in the Iran

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

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59 Petroleum Energy Sector List, created pursuant to s. 215.473; or

60 ~~2.(e)~~ Is engaged in business operations in Cuba or Syria.

61 (3)(a) Any contract with an agency or local governmental  
62 entity for goods or services of \$1 million or more entered into  
63 or renewed on or after:

64 ~~1.(a)~~ July 1, 2011, through June 30, 2012, must contain a  
65 provision that allows for the termination of such contract at  
66 the option of the awarding body if the company is found to have  
67 submitted a false certification as provided under subsection (5)  
68 or been placed on the Scrutinized Companies with Activities in  
69 Sudan List or the Scrutinized Companies with Activities in the  
70 Iran Petroleum Energy Sector List.

71 ~~2.(b)~~ July 1, 2012, through September 30, 2016, must  
72 contain a provision that allows for the termination of such  
73 contract at the option of the awarding body if the company is  
74 found to have submitted a false certification as provided under  
75 subsection (5), been placed on the Scrutinized Companies with  
76 Activities in Sudan List or the Scrutinized Companies with  
77 Activities in the Iran Petroleum Energy Sector List, or been  
78 engaged in business operations in Cuba or Syria.

79 ~~3.(e)~~ October 1, 2016, through June 30, 2018, must contain  
80 a provision that allows for the termination of such contract at  
81 the option of the awarding body if the company:

82 ~~a.1-~~ Is found to have submitted a false certification as  
83 provided under subsection (5);

84 ~~b.2-~~ Has been placed on the Scrutinized Companies that  
85 Boycott Israel List, or is engaged in a boycott of Israel;

86 ~~c.3-~~ Has been placed on the Scrutinized Companies with  
87 Activities in Sudan List or the Scrutinized Companies with

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88 Activities in the Iran Petroleum Energy Sector List; or

89 ~~d.4-~~ Has been engaged in business operations in Cuba or  
90 Syria.

91 4. July 1, 2018, must contain a provision that allows for  
92 the termination of such contract at the option of the awarding  
93 body if the company is found to have submitted a false  
94 certification as provided under subsection (5), been placed on  
95 the Scrutinized Companies with Activities in Sudan List or the  
96 Scrutinized Companies with Activities in the Iran Petroleum  
97 Energy Sector List, or been engaged in business operations in  
98 Cuba or Syria.

99 (b) Any contract with an agency or local governmental  
100 entity for goods or services of any amount entered into or  
101 renewed on or after July 1, 2018, must contain a provision that  
102 allows for the termination of such contract at the option of the  
103 awarding body if the company is found to have been placed on the  
104 Scrutinized Companies that Boycott Israel List or is engaged in  
105 a boycott of Israel.

106 (4) Notwithstanding subsection (2) or subsection (3), an  
107 agency or local governmental entity, on a case-by-case basis,  
108 may permit a company on ~~the Scrutinized Companies that Boycott~~  
109 ~~Israel List~~, the Scrutinized Companies with Activities in Sudan  
110 List or the Scrutinized Companies with Activities in the Iran  
111 Petroleum Energy Sector List, or a company engaged in with  
112 business operations in Cuba or Syria, to be eligible for, bid  
113 on, submit a proposal for, or enter into or renew a contract for  
114 goods or services of \$1 million or more, or may permit a company  
115 on the Scrutinized Companies that Boycott Israel List to be  
116 eligible for, bid on, submit a proposal for, or enter into or

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117 renew a contract for goods or services of any amount, under the  
 118 conditions set forth in paragraph (a) or the conditions set  
 119 forth in paragraph (b):

120 (a)1. With respect to a company on the Scrutinized  
 121 Companies with Activities in Sudan List or the Scrutinized  
 122 Companies with Activities in the Iran Petroleum Energy Sector  
 123 List, all of the following occur:

124 a. The scrutinized business operations were made before  
 125 July 1, 2011.

126 b. The scrutinized business operations have not been  
 127 expanded or renewed after July 1, 2011.

128 c. The agency or local governmental entity determines that  
 129 it is in the best interest of the state or local community to  
 130 contract with the company.

131 d. The company has adopted, has publicized, and is  
 132 implementing a formal plan to cease scrutinized business  
 133 operations and to refrain from engaging in any new scrutinized  
 134 business operations.

135 2. With respect to a company engaged in business operations  
 136 in Cuba or Syria, all of the following occur:

137 a. The business operations were made before July 1, 2012.  
 138 b. The business operations have not been expanded or  
 139 renewed after July 1, 2012.

140 c. The agency or local governmental entity determines that  
 141 it is in the best interest of the state or local community to  
 142 contract with the company.

143 d. The company has adopted, has publicized, and is  
 144 implementing a formal plan to cease business operations and to  
 145 refrain from engaging in any new business operations.

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146 3. With respect to a company on the Scrutinized Companies  
 147 that Boycott Israel List, all of the following occur:

148 a. The boycott of Israel was initiated before October 1,  
 149 2016.

150 b. The company certifies in writing that it has ceased its  
 151 boycott of Israel.

152 c. The agency or local governmental entity determines that  
 153 it is in the best interest of the state or local community to  
 154 contract with the company.

155 d. The company has adopted, has publicized, and is  
 156 implementing a formal plan to cease scrutinized business  
 157 operations and to refrain from engaging in any new scrutinized  
 158 business operations.

159 (b) One of the following occurs:

160 1. The local governmental entity makes a public finding  
 161 that, absent such an exemption, the local governmental entity  
 162 would be unable to obtain the goods or services for which the  
 163 contract is offered.

164 2. For a contract with an executive agency, the Governor  
 165 makes a public finding that, absent such an exemption, the  
 166 agency would be unable to obtain the goods or services for which  
 167 the contract is offered.

168 3. For a contract with an office of a state constitutional  
 169 officer other than the Governor, the state constitutional  
 170 officer makes a public finding that, absent such an exemption,  
 171 the office would be unable to obtain the goods or services for  
 172 which the contract is offered.

173 (5) At the time a company submits a bid or proposal for a  
 174 contract or before the company enters into or renews a contract



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175 with an agency or local governmental entity for goods or  
 176 services of \$1 million or more, the company must certify that  
 177 the company is not ~~participating in a boycott of Israel~~, on the  
 178 Scrutinized Companies with Activities in Sudan List or the  
 179 Scrutinized Companies with Activities in the Iran Petroleum  
 180 Energy Sector List ~~and, or~~ that it does not have business  
 181 operations in Cuba or Syria. At the time a company submits a bid  
 182 or proposal for a contract or before the company enters into or  
 183 renews a contract with an agency or local governmental entity  
 184 for goods or services of any amount, the company must certify  
 185 that the company is not participating in a boycott of Israel.

186 (a) If, after the agency or the local governmental entity  
 187 determines, using credible information available to the public,  
 188 that the company has submitted a false certification, the agency  
 189 or local governmental entity shall provide the company with  
 190 written notice of its determination. The company shall have 90  
 191 days following receipt of the notice to respond in writing and  
 192 to demonstrate that the determination of false certification was  
 193 made in error. If the company does not make such demonstration  
 194 within 90 days after receipt of the notice, the agency or the  
 195 local governmental entity shall bring a civil action against the  
 196 company. If a civil action is brought and the court determines  
 197 that the company submitted a false certification, the company  
 198 shall pay the penalty described in subparagraph 1. and all  
 199 reasonable attorney fees and costs, including any costs for  
 200 investigations that led to the finding of false certification.

201 1. A civil penalty equal to the greater of \$2 million or  
 202 twice the amount of the contract for which the false  
 203 certification was submitted shall be imposed.

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204 2. The company is ineligible to bid on any contract with an  
 205 agency or local governmental entity for 3 years after the date  
 206 the agency or local governmental entity determined that the  
 207 company submitted a false certification.

208 (b) A civil action to collect the penalties described in  
 209 paragraph (a) must commence within 3 years after the date the  
 210 false certification is submitted.

211 (6) Only the agency or local governmental entity that is a  
 212 party to the contract may cause a civil action to be brought  
 213 under this section. This section does not create or authorize a  
 214 private right of action or enforcement of the penalties provided  
 215 in this section. An unsuccessful bidder, or any other person  
 216 other than the agency or local governmental entity, may not  
 217 protest the award of a contract or contract renewal on the basis  
 218 of a false certification.

219 (7) This section preempts any ordinance or rule of any  
 220 agency or local governmental entity involving public contracts  
 221 for goods or services of:

222 (a) One million dollars ~~Of \$1 million~~ or more with a  
 223 company engaged in scrutinized business operations.

224 (b) Any amount with a company that has been placed on the  
 225 Scrutinized Companies that Boycott Israel List or is engaged in  
 226 a boycott of Israel.

227 (8) The contracting prohibitions in this section applicable  
 228 to companies on the Scrutinized Companies with Activities in  
 229 Sudan List or the Scrutinized Companies with Activities in the  
 230 Iran Petroleum Energy Sector List or to companies engaged in  
 231 business operations in Cuba or Syria become inoperative on the  
 232 date that federal law ceases to authorize the states to adopt

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233 and enforce such contracting prohibitions.

234 Section 2. This act shall take effect July 1, 2018.



The Florida Senate

## Committee Agenda Request

**To:** Senator Dennis Baxley  
Committee on Governmental Oversight and  
Accountability

**Subject:** Committee Agenda Request

**Date:** November 17, 2017

---

I respectfully request that **Senate Bill #780**, relating to **Prohibition Against Contracting with Scrutinized Companies**, be placed on the:

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

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

Senator Jeff Brandes  
Florida Senate, District 24

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/16/18

Meeting Date

SB 780

Bill Number (if applicable)

Topic Support of bill

Amendment Barcode (if applicable)

Name Carly Cohen

Job Title FSU Student

Address 700 N. Woodward Ave

Phone 561 460 9299

Street

Tallahassee

FL

State

32304

Zip

Email cohencarly@aol.com

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

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

Representing Nolepac at FSU

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

APPEARANCE RECORD

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

1/16/18  
Meeting Date

SB 780  
Bill Number (if applicable)

Topic Support of Bill

Amendment Barcode (if applicable)

Name Ofir Hagag

Job Title FSU student

Address 233 W Jefferson St  
Street

Phone 954 478 6408

Tallahassee FL 32304  
City State Zip

Email ofir.hagag@gmail.com

Speaking:  For  Against  Information

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

Representing Nole Pac at FSU

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

Meeting Date \_\_\_\_\_

780  
Bill Number (if applicable) \_\_\_\_\_

Topic \_\_\_\_\_

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

Name RASHMI MURPHY SB 780

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

Address \_\_\_\_\_

Phone \_\_\_\_\_

Street

Email \_\_\_\_\_

City

State

Zip

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.*

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

1-16-18

Meeting Date

780

Bill Number (if applicable)

Topic Prohibition Against Contracting w/ Scrutiny Corp.

Amendment Barcode (if applicable)

Name Nick Matthews

Job Title Gov't. Relations Consultant

Address 1 E. Broward Blvd.

Phone 813-767-7656

Street

Ft. Lauderdale

FL

33301

City

State

Zip

Email NMatthews@BPLegal.com

Speaking:  For  Against  Information

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

Representing FL. Association of Jewish Federations

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

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

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BILL: SB 912

INTRODUCER: Senator Broxson

SUBJECT: Agency Rulemaking

DATE: January 12, 2018

REVISED: 01/17/18

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Peacock	Caldwell	GO	<b>Favorable</b>
2.			ATD	
3.			AP	

---

**I. Summary:**

SB 912 requires an agency to prepare a statement of estimated regulatory costs (SERC) before the adoption or amendment of any rule other than an emergency rule. The bill requires an agency to prepare a SERC for a rule repeal if such repeal would impose a regulatory cost, and establishes that in a challenge to a rule repeal, the repeal must be considered presumptively correct by the adjudicating body.

The bill also deletes provisions in current law requiring a SERC if the proposed rule will have an adverse impact on small business or the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation of the rule.

Additionally, the bill requires the Department of State to include on the Florida Administrative Register website the agency website addresses where each agency's SERCs can be viewed in their entirety. An agency must include in its notice of intended action the agency's website address where SERCs can be viewed in their entirety. If an agency revises a SERC, it must provide notice that a revision has been made and include an agency website address where the revision can be viewed for publication in the Florida Administrative Register.

The bill has an effective date of July 1, 2018.



## II. Present Situation:

### Rulemaking

The Administrative Procedure Act<sup>1</sup> sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. A rule is an agency statement of general applicability that interprets, implements, or prescribes law or policy, including the procedure and practice requirements of an agency, as well as certain types of forms.<sup>2</sup> Rulemaking authority is delegated by the Legislature through statute and explicitly authorizes agencies to “adopt, develop, establish, or otherwise create”<sup>3</sup> rules. Agencies do not have the discretion in and of themselves to engage in rulemaking.<sup>4</sup> To adopt a rule, an agency must have a general grant of authority to implement a specific law by rulemaking.<sup>5</sup> The grant of rulemaking authority itself need not be detailed. The specific statute being interpreted or implemented through rulemaking must provide specific standards and guidelines to preclude the administrative agency from exercising unbridled discretion in creating policy or applying the law.<sup>6</sup>

An agency begins the formal rulemaking process, upon approval of the agency head, by filing a notice of the proposed rule.<sup>7</sup> The notice is published by the Department of State (Department) in the Florida Administrative Register<sup>8</sup> and must provide certain information, including the text of the proposed rule, a summary of the agency’s Statement of Estimated Regulatory Costs (SERC) if one is prepared, and how a party may request a public hearing on the proposed rule.<sup>9</sup> Although the notice includes a summary of the SERC, if prepared, publication of the SERC is not required.

### Statement of Estimated Regulatory Costs

A SERC is an agency estimate of the potential impact of a proposed rule on the public, particularly the potential costs to the public of complying with the rule as well as to the agency and other governmental entities to implement the rule.<sup>10</sup> Agencies are encouraged to prepare a SERC before adopting, amending, or repealing any rule.<sup>11</sup> A SERC is required, however, if the proposed rule will have an adverse impact on small businesses or is likely to directly or indirectly increase regulatory costs by more than \$200,000 in the aggregate within one year after implementation of the rule.<sup>12</sup>

A SERC must include good faith estimates of:

- The number of people and entities affected by the proposed rule;

---

<sup>1</sup> Chapter 120, F.S. *See also* s. 120.51, F.S.

<sup>2</sup> Section 120.52(16), F.S.

<sup>3</sup> Section 120.52(17), F.S.

<sup>4</sup> Section 120.54(1)(a), F.S.

<sup>5</sup> Sections 120.52(8) and 120.536(1), F.S.

<sup>6</sup> *Sloban v. Florida Board of Pharmacy*, 982 So. 2d 26, 29-30 (Fla. 1st DCA 2008); *Board of Trustees of the Internal Improvement Trust Fund v. Day Cruise Association, Inc.*, 794 So. 2d 696, 704 (Fla. 1st DCA 2001).

<sup>7</sup> Section 120.54(3)(a)1., F.S.

<sup>8</sup> Section 120.55(1)(b), F.S.

<sup>9</sup> Section 120.55(1)(b)1. and 2., F.S.

<sup>10</sup> Section 120.541(2), F.S.

<sup>11</sup> Section 120.54(3)(b)1., F.S.

<sup>12</sup> Section 120.54(3)(b)1.a. and b., F.S.

- The cost to the agency and other governmental entities to implement the proposed rule;
- Transactional costs likely to be incurred by people, entities, and governmental agencies for compliance; and
- An analysis of the proposed rule's impact on small businesses, counties, and cities.<sup>13</sup>

The SERC must also include an economic analysis showing whether the rule directly or indirectly is likely to have an adverse impact in excess of \$1 million within the first 5 years after implementation of the rule on:

- Economic growth, private-sector job creation or employment, or private-sector investment;
- Business competitiveness,<sup>14</sup> productivity, or innovation; or
- Regulatory costs, including any transactional costs.<sup>15</sup>

If the economic analysis results in an adverse impact or regulatory costs in excess of \$1 million within 5 years after implementation of the rule, then the rule must be ratified by the Legislature in order to take effect.<sup>16</sup>

Within 21 days after publication of a notice of adoption, amendment, or repeal of a rule, a person substantially affected by the proposal may submit to the agency a good faith written proposal for a lower cost regulatory alternative to a proposed rule which substantially accomplishes the objectives of the law being implemented.<sup>17</sup> If the agency revises a rule before adoption and the revision increases the regulatory costs of the rule the agency must revise the SERC to reflect that alteration.<sup>18</sup> At least 21 days before filing a rule for adoption, an agency that is required to revise a SERC must provide the statement to the person who submitted the lower cost regulatory alternative and to the Joint Administrative Procedures Committee (JAPC)<sup>19</sup> and must provide notice on the agency's website that it is available to the public.<sup>20</sup>

### ***SERCs Prepared by Agencies***

The following chart shows the number of rules which agencies proposed, as well as the number of SERCs that are prepared and reviewed by the JAPC.<sup>21</sup>

<sup>13</sup> Section 120.541(2)(b)-(e), F.S. A small city has an unincarcerated population of 10,000 or less. A small county has an unincarcerated population of 75,000 or less. A small business employs less than 200 people, and has a net worth of \$5 million or less. *See* ss. 120.52 and 288.703, F.S.

<sup>14</sup> Business competitiveness includes the ability of persons doing business in the state to compete with persons doing business in other states or domestic markets. *See* Section 120.541(2)(a)2., F.S.

<sup>15</sup> Section 120.541(2)(a), F.S.

<sup>16</sup> Section 120.541(3), F.S.

<sup>17</sup> Section 120.541(1)(a), F.S.

<sup>18</sup> Section 120.541(1)(c), F.S.

<sup>19</sup> The Administrative Procedures Committee defined in s. 120.52(4), F.S., is also known as the Joint Administrative Procedures Committee, which is a standing committee of the legislature created for the purpose of maintaining a continuous review of administrative rules, the statutory authority upon which those rules are based, and the administrative rulemaking process. Fla. Leg. J. Rule 4.6; *see also* s. 120.545, F.S.

<sup>20</sup> Section 120.541(1)(d), F.S.

<sup>21</sup> Email from Ken Plante, JAPC Coordinator, dated Jan. 10, 2018 (copy on file with the Senate Governmental Oversight and Accountability Committee).

Year	Number of Proposed Rules	Number of SERCs	Percentage of Proposed Rules which Required SERCs
2017	1,760	41	2%
2016	1,918	44	2%
2015	2,851	57	2%
2014	1,771	153	8.6%
2013	2,795	391	14%
2012	2,382	334	14%

### Department of State

The Secretary of State is the state's chief of elections, chief cultural officer and head of the Department of State (Department).<sup>22</sup> The Secretary of State is appointed by the Governor, subject to confirmation by the Senate, and serves at the pleasure of the Governor.<sup>23</sup> The Secretary of State also performs functions conferred by the State Constitution upon the custodian of state records.<sup>24</sup> The Department is composed of the following divisions: Elections, Historical Resources, Corporations, Library and Information Services, Cultural Affairs, and Administration.<sup>25</sup>

The Department's Administrative Code and Register Section is the filing repository for rules promulgated by state agencies and is responsible for publishing the Florida Administrative Register.<sup>26</sup>

### III. Effect of Proposed Changes:

**Section 1** of the bill amends s. 120.54, F.S., to remove the requirement that the agency head approve certain rulemaking notices and to require each agency to have a website where each of their SERCs may be viewed in their entirety.

The bill requires an agency to prepare a SERC before the adoption or amendment of any rule other than an emergency rule. Additionally, the bill requires an agency to prepare a SERC for a rule repeal if such repeal would impose a regulatory cost, and establishes that in a challenge to a rule repeal, the repeal must be considered presumptively correct by the Administrative Procedures Committee, in any proceeding before Division of Administrative Hearings, or in any proceeding before a court of competent jurisdiction.

The bill deletes provisions requiring a SERC if the proposed rule will have an adverse impact on business or the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation of the rule.

<sup>22</sup> Section 20.10(1), F.S. *Also see* <http://dos.myflorida.com/about-the-department/> (last visited on January 3, 2018).

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

<sup>24</sup> *Id.*

<sup>25</sup> Section 20.10(2), F.S.

<sup>26</sup> *See* Department of State, Administrative Code and Register, available at <http://dos.myflorida.com/offices/administrative-code-and-register/> (last visited on Jan. 11, 2018).

**Section 2** of the bill amends s. 120.541, F.S., by deleting provisions requiring a SERC if the proposed rule is likely to directly or indirectly increase regulatory costs in excess of \$200,000 in the aggregate within one year after implementation of the rule.

The bill also requires the Department to include on the Florida Administrative Register website the agency website addresses where the SERCs can be viewed in their entirety. An agency that prepares a SERC must provide in its notice of intended action the agency website addresses where the SERC can be read in its entirety to the Department for publication in the Florida Administrative Register. If an agency revises a SERC, it must provide a notice that a revision has been made and include an agency website address where the revision can be viewed for publication in the Florida Administrative Register.

**Section 3** of the bill provides an effective date of July 1, 2018.

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

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

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

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

None.

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

None.

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

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

None.

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

Indeterminate.

##### **C. Government Sector Impact:**

The Department of Law Enforcement noted in its analysis that the bill would require agencies to prepare a SERC for every rule in development.<sup>27</sup>

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<sup>27</sup> Department of Law Enforcement, SB 912 Agency Analysis (Nov. 27, 2017) (copy on file with the Senate Governmental and Accountability Committee).

**VI. Technical Deficiencies:**

Section 120.52(4), F.S., defines the term “Committee” as the Administrative Procedures Committee. Lines 89 through 90 refer to the Administrative Procedure Committee. The term “committee” should be used for this reference. Also, it appears that provisions regarding preparation of a SERC for proposed rules having an adverse impact on small business or increasing regulatory costs in excess of \$200,000 contained in s. 120.541(1)(b), F.S., may need to be stricken, as similar provisions were deleted in lines 92 through 100 of the bill for s. 120.54(3)(b)1., F.S.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 120.54 and 120.541 of the Florida Statutes.

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

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

None.

**B. Amendments:**

None.

By Senator Broxson

1-00695-18

2018912\_\_

1 A bill to be entitled  
 2 An act relating to agency rulemaking; amending s.  
 3 120.54, F.S.; requiring certain notices to include an  
 4 agency website address for a specified purpose;  
 5 requiring an agency to prepare a statement of  
 6 estimated regulatory costs before adopting or amending  
 7 any rule other than an emergency rule; requiring an  
 8 agency to prepare a statement of estimated regulatory  
 9 costs before repealing a rule in certain  
 10 circumstances; providing for the consideration of  
 11 challenges to a rule repeal; amending s. 120.541,  
 12 F.S.; requiring the Department of State to include on  
 13 the Florida Administrative Register website the agency  
 14 website addresses where statements of estimated  
 15 regulatory costs can be viewed in their entirety;  
 16 requiring an agency to include in its notice of  
 17 intended action the agency website address where the  
 18 statement of estimated regulatory costs can be read in  
 19 its entirety; requiring an agency to provide a notice  
 20 of revision when the agency revises a statement of  
 21 estimated regulatory costs; providing an effective  
 22 date.

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

25  
 26 Section 1. Paragraphs (a) and (b) of subsection (3) of  
 27 section 120.54, Florida Statutes, are amended to read:  
 28 120.54 Rulemaking.—  
 29 (3) ADOPTION PROCEDURES.—

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

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30 (a) Notices.—  
 31 1. Prior to the adoption, amendment, or repeal of any rule  
 32 other than an emergency rule, an agency, ~~upon approval of the~~  
 33 ~~agency head,~~ shall give notice of its intended action, setting  
 34 forth a short, plain explanation of the purpose and effect of  
 35 the proposed action; the full text of the proposed rule or  
 36 amendment and a summary thereof; a reference to the grant of  
 37 rulemaking authority pursuant to which the rule is adopted; and  
 38 a reference to the section or subsection of the Florida Statutes  
 39 or the Laws of Florida being implemented or interpreted. The  
 40 notice must include a summary of the agency's statement of the  
 41 estimated regulatory costs, if one has been prepared, based on  
 42 the factors set forth in s. 120.541(2); an agency website  
 43 address where the statement of estimated regulatory costs can be  
 44 viewed in its entirety; a statement that any person who wishes  
 45 to provide the agency with information regarding the statement  
 46 of estimated regulatory costs, or to provide a proposal for a  
 47 lower cost regulatory alternative as provided by s. 120.541(1),  
 48 must do so in writing within 21 days after publication of the  
 49 notice; and a statement as to whether, based on the statement of  
 50 the estimated regulatory costs or other information expressly  
 51 relied upon and described by the agency if no statement of  
 52 regulatory costs is required, the proposed rule is expected to  
 53 require legislative ratification pursuant to s. 120.541(3). The  
 54 notice must state the procedure for requesting a public hearing  
 55 on the proposed rule. Except when the intended action is the  
 56 repeal of a rule, the notice must include a reference both to  
 57 the date on which and to the place where the notice of rule  
 58 development that is required by subsection (2) appeared.

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59 2. The notice shall be published in the Florida  
60 Administrative Register not less than 28 days prior to the  
61 intended action. The proposed rule shall be available for  
62 inspection and copying by the public at the time of the  
63 publication of notice.

64 3. The notice shall be mailed to all persons named in the  
65 proposed rule and to all persons who, at least 14 days prior to  
66 such mailing, have made requests of the agency for advance  
67 notice of its proceedings. The agency shall also give such  
68 notice as is prescribed by rule to those particular classes of  
69 persons to whom the intended action is directed.

70 4. The adopting agency shall file with the committee, at  
71 least 21 days prior to the proposed adoption date, a copy of  
72 each rule it proposes to adopt; a copy of any material  
73 incorporated by reference in the rule; a detailed written  
74 statement of the facts and circumstances justifying the proposed  
75 rule; a copy of any statement of estimated regulatory costs that  
76 has been prepared pursuant to s. 120.541; a statement of the  
77 extent to which the proposed rule relates to federal standards  
78 or rules on the same subject; and the notice required by  
79 subparagraph 1.

80 (b) *Special matters to be considered in rule adoption.*—

81 1. Statement of estimated regulatory costs.—Before the  
82 adoption ~~or~~ amendment, ~~or~~ repeal of any rule other than an  
83 emergency rule, an agency ~~must~~ is encouraged to prepare a  
84 statement of estimated regulatory costs of the proposed rule, as  
85 provided by s. 120.541. However, an agency is not required to  
86 prepare a statement of estimated regulatory costs for a rule  
87 repeal unless such repeal would impose a regulatory cost. In any

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88 challenge to a rule repeal, such rule repeal must be considered  
89 presumptively correct by the Administrative Procedures  
90 Committee, in any proceeding before the Division of  
91 Administrative Hearings, or in any proceeding before a court of  
92 competent jurisdiction. ~~However, an agency must prepare a~~  
93 statement of estimated regulatory costs of the proposed rule, as  
94 provided by s. 120.541, if:

95 a. ~~The proposed rule will have an adverse impact on small~~  
96 ~~business; or~~

97 b. ~~The proposed rule is likely to directly or indirectly~~  
98 ~~increase regulatory costs in excess of \$200,000 in the aggregate~~  
99 ~~in this state within 1 year after the implementation of the~~  
100 ~~rule.~~

101 2. Small businesses, small counties, and small cities.—

102 a. Each agency, before the adoption, amendment, or repeal  
103 of a rule, shall consider the impact of the rule on small  
104 businesses as defined by s. 288.703 and the impact of the rule  
105 on small counties or small cities as defined by s. 120.52.  
106 Whenever practicable, an agency shall tier its rules to reduce  
107 disproportionate impacts on small businesses, small counties, or  
108 small cities to avoid regulating small businesses, small  
109 counties, or small cities that do not contribute significantly  
110 to the problem the rule is designed to address. An agency may  
111 define "small business" to include businesses employing more  
112 than 200 persons, may define "small county" to include those  
113 with populations of more than 75,000, and may define "small  
114 city" to include those with populations of more than 10,000, if  
115 it finds that such a definition is necessary to adapt a rule to  
116 the needs and problems of small businesses, small counties, or

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117 small cities. The agency shall consider each of the following  
 118 methods for reducing the impact of the proposed rule on small  
 119 businesses, small counties, and small cities, or any combination  
 120 of these entities:

121 (I) Establishing less stringent compliance or reporting  
 122 requirements in the rule.

123 (II) Establishing less stringent schedules or deadlines in  
 124 the rule for compliance or reporting requirements.

125 (III) Consolidating or simplifying the rule's compliance or  
 126 reporting requirements.

127 (IV) Establishing performance standards or best management  
 128 practices to replace design or operational standards in the  
 129 rule.

130 (V) Exempting small businesses, small counties, or small  
 131 cities from any or all requirements of the rule.

132 b.(I) If the agency determines that the proposed action  
 133 will affect small businesses as defined by the agency as  
 134 provided in sub-subparagraph a., the agency shall send written  
 135 notice of the rule to the rules ombudsman in the Executive  
 136 Office of the Governor at least 28 days before the intended  
 137 action.

138 (II) Each agency shall adopt those regulatory alternatives  
 139 offered by the rules ombudsman in the Executive Office of the  
 140 Governor and provided to the agency no later than 21 days after  
 141 the rules ombudsman's receipt of the written notice of the rule  
 142 which it finds are feasible and consistent with the stated  
 143 objectives of the proposed rule and which would reduce the  
 144 impact on small businesses. When regulatory alternatives are  
 145 offered by the rules ombudsman in the Executive Office of the

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146 Governor, the 90-day period for filing the rule in subparagraph  
 147 (e)2. is extended for a period of 21 days.

148 (III) If an agency does not adopt all alternatives offered  
 149 pursuant to this sub-subparagraph, it shall, before rule  
 150 adoption or amendment and pursuant to subparagraph (d)1., file a  
 151 detailed written statement with the committee explaining the  
 152 reasons for failure to adopt such alternatives. Within 3 working  
 153 days after the filing of such notice, the agency shall send a  
 154 copy of such notice to the rules ombudsman in the Executive  
 155 Office of the Governor.

156 Section 2. Paragraph (b) of subsection (1) of section  
 157 120.541, Florida Statutes, is amended, and subsection (6) is  
 158 added to that section, to read:

159 120.541 Statement of estimated regulatory costs.—

160 (1)

161 (b) If a proposed rule will have an adverse impact on small  
 162 business or if the proposed rule is likely to directly or  
 163 indirectly increase regulatory costs ~~in excess of \$200,000 in~~  
 164 ~~the aggregate within 1 year after the implementation of the~~  
 165 ~~rule~~, the agency shall prepare a statement of estimated  
 166 regulatory costs as required by s. 120.54(3)(b).

167 (6) The Department of State shall include on the Florida  
 168 Administrative Register website the agency website addresses  
 169 where statements of estimated regulatory costs can be viewed in  
 170 their entirety.

171 (a) An agency that prepares a statement of estimated  
 172 regulatory costs must provide, as part of the notice required  
 173 under s. 120.54(3)(a), the agency website address where the  
 174 statement of estimated regulatory cost can be read in its

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175 entirety to the department for publication in the Florida  
176 Administrative Register.

177 (b) An agency that revises a statement of estimated  
178 regulatory costs must provide a notice that a revision has been  
179 made and an agency website address where the revision can be  
180 viewed for publication in the Florida Administrative Register.

181 Section 3. This act shall take effect July 1, 2018.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

1-16-18

Meeting Date

912

Bill Number (if applicable)

Topic Agency Rulemaking

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave

Phone \_\_\_\_\_

Street

Tallahassee

City

FL

State

Zip

Email \_\_\_\_\_

Speaking:  For  Against  Information

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

Representing Americans for Prosperity

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

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BILL: SB 1078

INTRODUCER: Senator Perry

SUBJECT: Public Records/United States Census Bureau

DATE: January 12, 2018

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	<u>Favorable</u>
2.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

Senate Bill 1078 creates a public records exemption for certain address information maintained by the United States Census Bureau and held by an agency. Specifically, the bill makes confidential and exempt the following information held by an agency pursuant to the federal Local Update of Census Addresses Program (LUCA):

- United States Census Bureau address information, including maps showing structure location points;
- Agency records that verify addresses; and
- Agency records that identify address errors or omissions.

The bill authorizes release of the information to another agency or governmental entity in furtherance of its duties and responsibilities under the program. Additionally, the bill authorizes agencies operating at the direction of the program to access any other confidential or exempt information held by another agency if necessary for the agency, to perform its program duties and responsibilities.

The public necessity statement provides as justification for the exemption that the federal LUCA requires this address information to be kept confidential. As such, all individuals directly involved in reviewing the information or who otherwise have access to the information must sign a confidentiality agreement. Without the exemption, agencies would be denied participation in the program, which could result in a negative fiscal impact for the state.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

## II. Present Situation:

### Public Records Law

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.<sup>1</sup> This applies to the official business of any public body, officer, or employee of the state, including all three branches of state government, local governmental entities, and any person acting on behalf of the government.<sup>2</sup>

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

it is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.<sup>5</sup>

An agency is defined 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 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 a public agency.<sup>6</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>7</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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

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

<sup>3</sup> The Public Records Act does not apply to legislative or judicial records. *Locke v. Hawkes*, 595 So. 2d 32 (Fla. 1992). Also see *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995). The Legislature’s records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are primarily located in s. 11.0431(2)-(3), F.S.

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

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

<sup>6</sup> Section 119.011(2), F.S.

<sup>7</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

<sup>8</sup> *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

<sup>9</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House of Representatives and the Senate.<sup>10</sup> The exemption must explicitly lay out the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>11</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>12</sup>

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’<sup>13</sup> Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature. Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.<sup>14</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>15</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption.<sup>16</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

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>17</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>18</sup>

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

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

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

<sup>13</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

<sup>14</sup> A record classified as exempt from public disclosure may be disclosed under certain circumstances. *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

<sup>15</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>16</sup> Section 119.15(3), F.S.

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

<sup>18</sup> Section 119.15(6)(b)1., F.S.

- 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>19</sup> or
- It protects trade or business secrets.<sup>20</sup>

The OGSR also requires specified questions to be considered during the review process.<sup>21</sup> In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>22</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>23</sup>

### United States Census Bureau

The United States Census Bureau (USCB), based in Maryland, is part of the United States Department of Commerce.<sup>24</sup> Amongst its other research duties, the USCB conducts the decennial census. The decennial census is the comprehensive population and housing count of all 50 states, the District of Columbia, Puerto Rico, and the U.S. islands. Thomas Jefferson ordered the first census in 1790, and the federal government has conducted it every 10 years since.

Results of the decennial census determine the number of seats for each state in the U.S. House of Representatives and are relied upon in drawing congressional and state legislative districts. The census is critical to the annual distribution of more than \$675 billion in federal funds.<sup>25</sup> Moreover, information collected during the census are used not only by all levels of government, but also by businesses, non-profits, and policy makers.<sup>26</sup>

Federal law protects the confidentiality of any and all information collected during the census.<sup>27</sup>

<sup>19</sup> Section 119.15(6)(b)2., F.S.

<sup>20</sup> Section 119.15(6)(b)3., F.S.

<sup>21</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>22</sup> FLA. CONST. art. I, s. 24(c).

<sup>23</sup> Section 119.15(7), F.S.

<sup>24</sup> U.S. Census Bureau, *Who We Are*, available at: <https://www.census.gov/about/who.html> (last visited Jan. 11, 2018).

<sup>25</sup> U.S. Census Bureau, *About the Bureau, U.S. Census Bureau at a Glance*, available at: <https://www.census.gov/about/what/census-at-a-glance.html#censuses> (last visited Jan. 11, 2018).

<sup>26</sup> Patrick R. Potyondy, National Conference of State Legislatures, *LegisBrief: The 2020 Census, What You Need to Know About the 2020 Census* (Nov. 2017), available at: <http://www.ncsl.org/research/redistricting/what-you-need-to-know-about-the-2020-census.aspx> (last visited Jan. 11, 2018).

<sup>27</sup> U.S. Census Bureau, *supra* note 25.

## Local Update of Census Addresses Program (LUCA)

LUCA is a program offered once every ten years to state and local governments by the United States Census Bureau in preparation for the decennial census. Specifically, LUCA enables states and local entities to update address information on a master list maintained by the LUCA, to make the decennial census as accurate as possible. Participants must sign a confidentiality agreement.

Entities eligible to participate in LUCA are:

- States;
- Counties;
- Cities;
- Townships; and
- Federally recognized tribes with a reservation and/or off-reservation trust lands.<sup>28</sup>

Census 2000 provided the first opportunity for tribal and local governments to access individual residential, rather than block address lists, provided they signed the confidentiality agreement.<sup>29</sup>

On June 29, 2017, the United States Census Bureau announced that starting in July of 2017 governments across the country could initiate the process of sharing address information through the 2020 Census Local Update of Census Addresses operation.<sup>30</sup> All entities intending to participate must sign the Confidentiality Agreement Form provided by the LUCA.<sup>31</sup>

## Public Records Law on United States Census Bureau Address Information

The 2007 Legislature passed a public records bill<sup>32</sup> to provide an exemption for U.S. Census Bureau address information.<sup>33</sup> The bill made confidential and exempt from disclosure United States Census Bureau address information held by an agency pursuant to the federal LUCA. Included in the bill was a provision that made the exemption subject to the Open Government Sunset Review Act. As such, the exemption would repeal October 2, 2012, unless the Legislature reviewed and reenacted the exemption by that date. The 2012 Legislature approved an Open Government Sunset Review in 2012, and based on the review, voted to repeal the public records exemption. The bill analyses of the OGSR stated that the LUCA program, upon which the

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<sup>28</sup> United States Census Bureau, *2020 Census Local Update of Census Addresses Operation (LUCA)*, available at <https://www.census.gov/geo/partnerships/luca.html> (last visited Jan. 11, 2018).

<sup>29</sup> United States Census Bureau, *The Census Address List Improvement Act of 1994 (P.L. 103-430)(LUCA)*, available at: <https://www.census.gov/geo/partnerships/luca-pl-103-430.html> (last visited Jan. 11, 2018).

<sup>30</sup> United States Census Bureau, *2020 Census Local Update of Census Addresses Operation to Begin* (June 29, 2017), available at: <https://www.census.gov/newsroom/press-releases/2017/cb17-109-luca.html> (last visited Jan. 10, 2018).

<sup>31</sup> The Confidentiality Agreement Form requires signators to agree to keep confidential all information provided through LUCA, including maps that contain structure points showing the location of living quarters. A signature on the form acknowledges recognition that the penalty for a wrongful disclosure is punishable by up to 5 years in prison and a \$250,000 fine. Further, the signator must agree to destroy or return all materials received from the Census Bureau at the conclusion of LUCA. United States Census 2020, Form D-2005, *Confidentiality Agreement Form, 2020 Census Local Update of Census Addresses Operation (LUCA)*(on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>32</sup> House Bill 7193.

<sup>33</sup> Chapter 2007-250, L.O.F.

exemption was based, expired March 31, 2010.<sup>34</sup> Based on there no longer being a need for the exemption, staff recommended, and the Legislature approved, a repeal of the public records exemption. Therefore, the public records exemption repealed on October 12, 2012.<sup>35</sup>

### III. Effect of Proposed Changes:

This bill creates a public records exemption for certain address information maintained by the United States Census Bureau and held by an agency. Specifically, the bill makes confidential and exempt the following information held by an agency pursuant to the Local Update of Census Addresses Program (LUCA):

- United States Census Bureau address information, including maps showing structure location points;
- Agency records that verify addresses; and
- Agency records that identify address errors or omissions.

The bill authorizes release of the information to another agency or governmental entity in furtherance of its duties and responsibilities under the program. Additionally, the bill authorizes agencies operating at the direction of the program to access any other confidential or exempt information held by another agency if necessary for the agency to perform its program duties and responsibilities.

The public necessity statement provides as justification for the exemption that the LUCA program requires this address information to be kept confidential. As such, all individuals directly involved in reviewing the information or who otherwise have access to the information must sign a confidentiality agreement. Without the exemption, agencies would be denied participation in the program, which could result in a negative fiscal impact for the state.

The bill provides that the exemption is subject to the Open Government Sunset Review Act and will repeal October 2, 2023, unless the Legislature reviews and reenacts the exemption by that date.

The bill takes effect upon becoming a law.

### IV. Constitutional Issues:

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

None.

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

##### **Voting Requirement**

Article I, Section 24(c) of the Florida Constitution requires a two-thirds vote of each chamber for a public records exemption to pass.

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<sup>34</sup> Florida House of Representatives, *Staff Analysis for HB 7013* (2012); Florida Senate, *Staff Analysis for SB 2078* (2012).

<sup>35</sup> Chapter 2012-216, L.O.F.; House Bill 7013.



**Breadth of Exemption**

Article I, Section 24(c) of the Florida Constitution requires a newly created public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts certain address information maintained by the United States Census Bureau and provided to an agency. The public necessity statement for the exemption provides that the federal LUCA requires this information to be kept confidential. Without the exemption, agencies would be denied participation in LUCA, which could result in a negative fiscal impact for the state. This bill appears to be no broader than necessary to accomplish the public necessity for this public records exemption.

## C. Trust Funds Restrictions:

None.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

**Florida's Level of Participation in the 2010 LUCA**

The history of Florida's participation in the last U.S. Census Bureau LUCA in preparation for the 2010 Census is significant. Overall, 252 Florida governmental units registered for LUCA. In total, Florida's participants added, submitted, or modified over 4 million addresses. In fact, in its final report, LUCA specifically acknowledged Florida for its substantial level of participation:

After the drop out phase, 57 of the 66 eligible counties or 86.4 percent remained active. Of the 57 counties, 54 or 94.7 percent returned files with 3,244,186 address records processed of the 3,275,790 records submitted.<sup>36</sup>

**Florida's Level of Participation in the 2020 LUCA**

Due to the natural disaster that affected Florida, the federal government extended the deadline to January 31, 2018 for entities to sign up for LUCA. Currently, 42 Florida counties and 118 Florida cities have indicated participation in the 2020 LUCA program.<sup>37</sup>

<sup>36</sup> United States Census Bureau, *2010 Census Local Update of Census Addresses Assessment*, No. 199 (Reissue), pg. 62 (Sept. 11, 2012)(on file with the Senate Committee on Governmental Oversight and Accountability).

<sup>37</sup> Florida Office of Economic & Demographic Research, *Fiscal Year 2017-2018, Adjustments in Responsibilities Issue, Local Update of Census Addresses Program* (on file with the Senate Committee on Governmental Oversight and Accountability).

Although fiscal impact is unknown at this time, to the extent that the public records exemption makes Florida entities eligible to participate in LUCA and add address information to the master list, the state would likely financially benefit from the provisions of this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

By Senator Perry

8-01677-18

20181078\_\_

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; creating an exemption from public records requirements for specified United States Census Bureau address information held by an agency; providing an exception to the exemption; authorizing access to other related confidential or exempt information; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

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

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

(1) AGENCY ADMINISTRATION.—

(g)1. United States Census Bureau address information, including maps showing structure location points, agency records that verify addresses, and agency records that identify address errors or omissions, which is held by an agency pursuant to the Local Update of Census Addresses Program authorized under 13 U.S.C. s. 16, is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

2. Such information may be released to another agency or governmental entity in the furtherance of its duties and responsibilities under the Local Update of Census Addresses Program.

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

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3. An agency performing duties and responsibilities under the Local Update of Census Addresses Program shall have access to any other confidential or exempt information held by another agency if such access is necessary in order to perform its duties and responsibilities under the program.

4. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that United States Census Bureau address information, including maps showing structure location points, agency records that verify addresses, and agency records that identify address errors or omissions, which is held by an agency be made confidential and exempt from public records requirements. Pursuant to the Local Update of Census Addresses Program authorized under 13 U.S.C. s. 16, United States Census Bureau address information must be kept confidential. Further, all individuals directly involved in reviewing such information and any individuals with access to such information are required to sign a confidentiality agreement to preserve the confidentiality of the address information. Without this exemption, agencies would be prevented from participating in the program. As such, the effective and efficient administration of the Local Update of Census Addresses Program would be hindered at the federal level. Further, it could result in a negative fiscal impact on the state. For the foregoing reasons, the Legislature finds that such information must be made confidential and exempt from public records requirements.

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



The Florida Senate

## Committee Agenda Request

**To:** Senator Dennis Baxley, Chair  
Committee on Governmental Oversight and Accountability

**Subject:** Committee Agenda Request

**Date:** December 14, 2017

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I respectfully request that **Senate Bill #1078** relating to Public Records/United States Census Bureau, be placed on the:

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

A handwritten signature in black ink that reads "W. Keith Perry".

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Senator Keith Perry  
Florida Senate, District 8

# CourtSmart Tag Report

Room: SB 401  
Caption: Senate Governmental Oversight and Accountability Committee

Type:  
Judge:

Started: 1/16/2018 4:02:49 PM  
Ends: 1/16/2018 4:38:50 PM Length: 00:36:02

4:02:53 PM Meeting called to order  
4:03:12 PM Quorum present  
4:03:38 PM Chair directions for audience and members  
4:03:48 PM Tab 3 - SB 538 by Sen. Garcia, State and Local Governmental Relations with the Government of Venezuela  
4:05:22 PM Chair. Questions?  
4:05:24 PM Sen. Stewart, no expiration date on how long will go on?  
4:05:39 PM Response, the Governor  
4:06:12 PM Sen. Rader, Securities? State contracts with Venezeula?  
4:06:47 PM Response  
4:06:56 PM Sen. Rader - Contracts with State of FLA SBA  
4:07:34 PM Appearance cards?  
4:07:41 PM Kimberly Resspie, Deputy Leg. Affairs Director, CFO Patronis, waives in support  
4:07:55 PM Debate? None  
4:08:08 PM Sen. Rader, next stop maybe state contracts as well.  
4:08:26 PM No Debate  
4:08:35 PM Sen. Garcia to close on bill  
4:09:09 PM Roll Call on SB 538 - favorable  
4:09:23 PM Tab 4 - SB 722 - Sen. Garcia, Retirement  
4:10:19 PM Questions? None  
4:10:24 PM Appearance forms?  
4:10:29 PM Matt Puckett, FPBA, speaking in support  
4:11:13 PM Rocco Salvatori, Firefighter, Fla. Professional Firefighters, speaking for bill  
4:12:31 PM Kimberly Renspie, Deputy Leg. Affairs Director, CFO Patronis, waive in support  
4:12:34 PM Debate? None.  
4:12:40 PM Sen. Garcia waives to close  
4:12:43 PM Roll Call SB 722 favorably  
4:13:05 PM  
4:13:14 PM Tab 7 - SB 1078, by Sen. Perry, Public Records/United States Census Bureau  
4:13:29 PM Questions? None  
4:13:36 PM Appearance - None  
4:13:40 PM Debate? None  
4:13:44 PM Sen. Perry waives to close  
4:13:57 PM Roll Call on SB 1078 - favorable  
4:14:41 PM Tab 6- SB 912 - By Sen. Broxson, Agency Rulemaking  
4:14:48 PM Questions? None  
4:14:57 PM Appearance Forms?  
4:15:04 PM Andrew Hosek, Policy Analyst, Americans for Prosperity, waives in support  
4:15:09 PM Debate? None  
4:15:15 PM Sen. Broxson waives to close  
4:15:22 PM Roll Call on SB 912, favorable  
4:15:41 PM Tab 2 -CS/SB 268 by Sen. Passidomo, Public Records/Public Guardians/Employees with Fiduciary Responsibility  
4:16:25 PM Questions. None.  
4:16:42 PM Amendment #287538 by Sen. Passidomo  
4:17:22 PM Questions on amendment? None  
4:17:27 PM Appearance? None  
4:17:31 PM Debate on amendment? None  
4:17:41 PM Amendment is adopted  
4:17:46 PM Back on bill as amended  
4:17:49 PM Questions? None.  
4:17:57 PM Appearance cards. None

4:18:07 PM Carolos McDonald, ED, Guardianship Program of Dade County,, waives in support  
4:18:29 PM Karen Campbell, Pres. Public Guardian Coalition,, waives in support  
4:18:51 PM Debate? None.  
4:19:23 PM Chair - comments to guardian ad litem programs  
4:19:31 PM Sen. Passidomo, waives to close.  
4:19:59 PM Roll Call for CS/CS/SB 268 - favorable  
4:20:26 PM Tab 5 - SB 780, by Sen. Brandes, Prohibition Against Contracting with Scrutinized Companies  
4:20:30 PM Questions?  
4:20:46 PM Sen Stewart - Any preventions to Americans from protesting contracts?  
4:20:48 PM Response. Not to my knowledge.  
4:21:09 PM Sen. Rader- is this on the books or is it expiring.  
4:21:19 PM Response. Zero Dollars.  
4:21:47 PM Sen. any contracts between zero and one million dollars?  
4:21:52 PM Response. Not to my knowledge.  
4:22:02 PM Chair - legal term or descriptive  
4:22:12 PM Response - list of companies that aggregate Israel  
4:22:17 PM Questions? None  
4:22:21 PM Appearance?  
4:22:54 PM Carly Cohen, FSU Student, speaks for the bill  
4:24:05 PM Sen. Rader - comments regarding Carly  
4:24:39 PM Chair  
4:25:21 PM Ofir Hagag, FSU student, speaking for the bill  
4:27:13 PM Chair  
4:27:38 PM Rasha Mobodic, Central Fla. Regional Director for Muslim communities, speak in opposition to the bill  
4:31:22 PM Chair  
4:31:38 PM Nick Matthews, Gov. Relations, Fla. Association of Jewish Federations, waives in support.  
4:31:54 PM Debate? None  
4:31:57 PM Sen.Brandes waives to close  
4:32:13 PM Roll Call on SB 780 - favorable  
4:32:45 PM Tab 1 -SB 108 by Sen. Campbell, Florida Kidcare Program  
4:33:04 PM Late filed amendment 933590 by Sen. Campbell to explain  
4:33:31 PM Questions on amendment? None  
4:33:35 PM Appearance forms for amendment?  
4:33:38 PM Paul Sanford, Fla. Insurance Council, waives in support  
4:33:49 PM Debate on amendment?  
4:33:55 PM Sen. Campbell waives close  
4:34:06 PM Objection to late filed amendment - none  
4:34:12 PM Back on bill as amended  
4:34:23 PM Appearance forms on bill as amended?  
4:34:25 PM Chris Schoonover, Fl. Health Kids Corporation speaking for informational purposes  
4:35:26 PM Tara Reid, Children's Movement of Florida, waives in support  
4:35:33 PM Amy Hliem, Fla. Legal Services, waives in support  
4:35:42 PM Karen Woodall, Fla. Center for Fiscal and Economic Policy, waives in support  
4:35:45 PM Paul Sanford, Fla. Ins. Council, waives in support  
4:36:03 PM Back on bill as amended  
4:36:07 PM Debate: None  
4:36:11 PM Sen. Campbell, waives to close  
4:36:31 PM Roll Call for SB 108 - favorable  
4:36:57 PM Sen. Mayfield, Favorable 268, 538, 722, 912, 1078  
4:37:02 PM Chair, without objection.  
4:37:12 PM Sen. Galvano, motion to show support Tabs 2-7  
4:37:56 PM Sen. Stewart - Reconsider to yes vote for SB 780.  
4:38:00 PM No objections  
4:38:12 PM Chair  
4:38:41 PM Sen. Stargel moves to adjourn