

Tab 1 **SB 738** by **Perry**; (Similar to CS/H 00411) Public Records and Public Meetings/Firesafety System Plans

Tab 2 **CS/SB 862** by **CJ, Bracy**; (Identical to H 00921) Public Records/Sealing of Criminal History Records

Tab 3 **CS/SB 1018** by **CU, Bean (CO-INTRODUCERS) Stargel**; (Similar to CS/H 01167) Lifeline Service

666478	D	S	RCS	GO, Bean	Delete everything after	02/06 04:42 PM
494990	AA	S	RCS	GO, Bean	Delete L.47:	02/06 04:42 PM
842668	AA	S	RCS	GO, Bean	Delete L.134:	02/06 04:42 PM

Tab 4 **CS/SB 1212** by **CF, Book (CO-INTRODUCERS) Rader**; (Similar to CS/H 00417) Public Records/Child Advocacy Centers

Tab 5 **SB 7016** by **AG**; (Identical to H 07011) OGSR/School Food and Nutrition Service Program

Tab 6 **SB 7018** by **EE**; OGSR/Agency Investigations

Tab 7 **SB 7020** by **EE**; (Identical to H 07041) OGSR/Complaints of Violations and Referrals

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Baxley, Chair
Senator Mayfield, Vice Chair

MEETING DATE: Tuesday, February 6, 2018
TIME: 11:00 a.m.—12:30 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	SB 738 Perry (Similar CS/H 411)	Public Records and Public Meetings/Firesafety System Plans; Providing an exemption from public records requirements for firesafety system plans held by an agency; providing an exemption from public records and public meetings requirements for information relating to firesafety systems for certain properties and meetings relating to such systems and information; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. BI 01/23/2018 Favorable GO 02/06/2018 Favorable RC	Favorable Yeas 5 Nays 0
2	CS/SB 862 Criminal Justice / Bracy (Identical H 921, Compare H 919, S 690, S 692, Linked CS/S 860)	Public Records/Sealing of Criminal History Records; Expanding an existing public records exemption to include the administrative sealing of specified criminal history records; providing for future review and repeal of the expanded exemption; providing a statement of public necessity, etc. CJ 01/29/2018 Fav/CS GO 02/06/2018 Favorable RC	Favorable Yeas 5 Nays 0
3	CS/SB 1018 Communications, Energy, and Public Utilities / Bean (Similar CS/H 1167)	Lifeline Service; Revising the term "eligible telecommunications carrier" to include commercial mobile radio service providers under a specified circumstance, etc. CU 01/10/2018 Fav/CS GO 02/06/2018 Fav/CS RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, February 6, 2018, 11:00 a.m.—12:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 1212 Children, Families, and Elder Affairs / Book (Similar CS/H 417)	Public Records/Child Advocacy Centers; Providing an exemption from public records requirements to certain identifying and location information of current or former directors, managers, supervisors, and clinical employees of child advocacy centers that meet certain standards and requirements, members of a child protection team, and the spouses and children thereof; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CF 01/16/2018 Fav/CS GO 02/06/2018 Favorable RC	Favorable Yeas 5 Nays 0
5	SB 7016 Agriculture (Identical H 7011)	OGSR/School Food and Nutrition Service Program; Amending provisions relating to an exemption from public record requirements for personal identifying information of an applicant for or participant in a school food and nutrition service program; removing the scheduled repeal of the exemption, etc. GO 02/06/2018 Favorable RC	Favorable Yeas 5 Nays 0
6	SB 7018 Ethics and Elections	OGSR/Agency Investigations; Amending provisions which provides an exemption from public records requirements for complaints of misconduct filed with an agency against an agency employee, and all information obtained pursuant to an agency investigation of such complaints; removing the scheduled repeal of the exemption, etc. GO 02/06/2018 Favorable RC	Favorable Yeas 5 Nays 0
7	SB 7020 Ethics and Elections (Identical H 7041)	OGSR/Complaints of Violations and Referrals; Amending provisions which provides exemptions from public records and public meetings requirements for complaints alleging a violation of part III of ch. 112, F.S., and related records that are held by the Commission on Ethics or its agents and specified local government entities, for written referrals and related records that are held by the commission or its agents, the Governor, the Department of Law Enforcement, and state attorneys, and for portions of meetings at which complaints or referrals are discussed or acted upon; removing the scheduled repeal of the exemptions, etc. GO 02/06/2018 Favorable RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Tuesday, February 6, 2018, 11:00 a.m.—12:30 p.m.

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
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Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.

Investment Advisory Council

8	McGould, Sean (North Palm Beach)	02/01/2020	Recommend Confirm Yeas 5 Nays 0
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Executive Director, Agency for State Technology

9	Larson, Eric (Tallahassee)	Pleasure of Governor	Recommend Confirm Yeas 5 Nays 0
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TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 738

INTRODUCER: Senator Perry

SUBJECT: Public Records and Public Meetings/Firesafety System Plans

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	Favorable
2.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 738 makes confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the Florida Constitution, firesafety system plans for any state owned or leased property and any privately owned or leased property and information relating to such systems that are held by a state agency. The bill also makes confidential and exempt from public meeting requirements any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements. The exemption is incorporated into the existing public records and public meeting exemptions for security systems.

The exemptions are necessitated because firesafety systems are often integrated with security systems. It is believed that disclosure of sensitive information relating to the firesafety systems could result in identification of vulnerabilities in the firesafety or security systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

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

The bill has an effective date of upon becoming law and provides for repeal of the exemption on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

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.¹ This applies to the official business

¹ FLA. CONST., art. I, s. 24(a).

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.²

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

[i]t 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.⁵

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.⁶ 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.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ 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.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

² *Id.*

³ 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.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So.2d 633, 640 (Fla. 1980).

⁸ s. 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *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.

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² 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.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.²⁵ The exemption must explicitly lay out

¹² 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).

¹³ 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).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ *Id.*

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the exemption.²⁶ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.²⁸ 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.²⁹ 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.³⁰ 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;³¹
- 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;³² or
- It protects trade or business secrets.³³

The OGSR also requires specified questions to be considered during the review process.³⁴ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

²⁶ *Id.*

²⁷ *See supra* note 11.

²⁸ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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.

²⁹ Section 119.15(3), F.S.

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

³⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.³⁵ 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 otherwise provided for by law.³⁶

Exemptions Related to Security Systems

Current law provides public record and public meeting exemptions for certain information related to security systems. The law specifies the circumstances under which the information may be disclosed and to whom it may be disclosed.

Public Records and Public Meeting Exemptions for Security System Plans

Section 119.071(3)(a)1., F.S., defines “security system plan” to include all:

- Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the physical security of the facility or revealing security systems;
- Threat assessments conducted by any agency or any private entity;
- Threat response plans;
- Emergency evacuation plans;
- Sheltering arrangements; or
- Manuals for security personnel, emergency equipment, or security training.

A security system plan or any portion thereof that is held by an agency is confidential and exempt from public record requirements if the plan is for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.³⁷

An agency is authorized to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency’s official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.³⁸

Section 281.301, F.S., provides that information relating to security systems that is in the possession of an agency is confidential and exempt from public record and public meeting requirements if the security systems are for:

- Any property owned by or leased to the state or any of its political subdivisions; or
- Any privately owned or leased property.

³⁵ FLA. CONST., art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ Section 119.071(3)(a)2., F.S.

³⁸ Section 119.071(3)(a)3., F.S.

The law specifies that the protected information includes all records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to or revealing such systems or information.

An agency is authorized to disclose the confidential and exempt information:

- To the property owner or leaseholder;
- In furtherance of the official duties and responsibilities of the agency holding the information;
- To another local, state, or federal agency in furtherance of that agency's official duties and responsibilities; or
- Upon a showing of good cause before a court of competent jurisdiction.

Section 286.0113, F.S., provides any portion of a meeting that would reveal a security system plan or portion thereof is exempt from public meeting requirements.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(3), F.S., to make confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, firesafety system plans for any state owned or leased property or any of its political subdivisions and any privately owned or leased property and information relating to such systems that are held by a state agency.

The bill specifies that the public record exemption must be given retroactive application because it is remedial in nature. Thus, records of firesafety system plans and records relating to firesafety systems in existence prior to the effective date of the bill will be protected by the exemption.

This section is subject to the OGSR in accordance with s. 119.15, F.S., and stands repealed on Oct. 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2 amends s. 281.301, F.S., to make confidential and exempt from public records requirements in s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, firesafety system plans for any state owned or leased property or any of its political subdivisions and any privately owned or leased property and information relating to such systems that are held by a state agency.

The bill also makes confidential and exempt from public meeting requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements.

Section 3 amends s. 286.0113, F.S., to make confidential and exempt from public meeting requirements in s. 286.011, F.S., and s. 24(b), Art. I of the State Constitution, any portion of a meeting that would reveal a firesafety system plan that is exempt from public records requirements.

This section is subject to the OGSR in accordance with s. 119.15, F.S., and stands repealed on Oct. 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 4 provides a public necessity statement as required by the State Constitution, specifying that as firesafety systems become more integrated with security systems, disclosure of sensitive information relating to the firesafety systems could result in identification of vulnerabilities in the systems and allow a security breach that could damage the systems and disrupt their safe and reliable operation.

Section 5 provides that the bill is effective upon becoming 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 public records exemptions to pass.

Public Necessity Statement

Article I, Section 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public records exemption. The Florida Constitution provides that an exemption must state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the public health and safety and economic well-being of the state and to prevent disclosure of sensitive information relating to firesafety systems that could result in identification of vulnerabilities in such systems and allow a security breach that could damage firesafety systems and disrupt their safe and reliable operation.

Breadth of Exemption

Article I, Section 24(c) of the Florida Constitution requires a newly created or expanded public records exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill exempts firesafety system plans for any state owned or leased property and any privately owned or leased property and information relating to such systems that are held by a state agency. 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:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 119.071, 281.301, and 286.0113.

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

8-00823-18

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A bill to be entitled

An act relating to public records and public meetings; amending s. 119.071, F.S.; providing an exemption from public records requirements for firesafety system plans held by an agency; amending s. 281.301, F.S.; providing an exemption from public records and public meetings requirements for information relating to firesafety systems for certain properties and meetings relating to such systems and information; amending s. 286.0113, F.S.; providing an exemption from public meetings requirements for portions of meetings that would reveal firesafety system plans held by an agency; providing for retroactive application; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (a) of subsection (3) of section 119.071, Florida Statutes, is amended to read:

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

(3) SECURITY AND FIRESAFETY.—

(a)1. As used in this paragraph, the term "security or firesafety system plan" includes all:

a. Records, information, photographs, audio and visual presentations, schematic diagrams, surveys, recommendations, or consultations or portions thereof relating directly to the

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physical security or firesafety of the facility or revealing security or firesafety systems;

b. Threat assessments conducted by any agency or any private entity;

c. Threat response plans;

d. Emergency evacuation plans;

e. Sheltering arrangements; or

f. Manuals for security or firesafety personnel, emergency equipment, or security or firesafety training.

2. A security or firesafety system plan or portion thereof for:

a. Any property owned by or leased to the state or any of its political subdivisions; or

b. Any privately owned or leased property

held by an agency is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption is remedial in nature, and it is the intent of the Legislature that this exemption apply to security or firesafety system plans held by an agency before, on, or after the effective date of this paragraph. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

3. Information made confidential and exempt by this paragraph may be disclosed:

a. To the property owner or leaseholder;

b. In furtherance of the official duties and responsibilities of the agency holding the information;

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59 c. To another local, state, or federal agency in
60 furtherance of that agency's official duties and
61 responsibilities; or

62 d. Upon a showing of good cause before a court of competent
63 jurisdiction.

64 Section 2. Section 281.301, Florida Statutes, is amended to
65 read:

66 281.301 Security and firesafety systems; records and
67 meetings exempt from public access or disclosure.—

68 (1) Information relating to the security or firesafety
69 systems for any property owned by or leased to the state or any
70 of its political subdivisions, and information relating to the
71 security or firesafety systems for any privately owned or leased
72 property which is in the possession of any agency as defined in
73 s. 119.011(2), including all records, information, photographs,
74 audio and visual presentations, schematic diagrams, surveys,
75 recommendations, or consultations or portions thereof relating
76 directly to or revealing such systems or information is
77 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
78 of the State Constitution, and any portion of a meeting ~~all~~
79 meetings relating directly to or that would reveal such systems
80 or information is ~~are~~ confidential and exempt from s. 286.011
81 and s. 24(b), Art. I of the State Constitution, ~~ss. 119.07(1)~~
82 and 286.011 and other laws and rules requiring public access or
83 disclosure. This subsection is subject to the Open Government
84 Sunset Review Act in accordance with s. 119.15 and shall stand
85 repealed on October 2, 2023, unless reviewed and saved from
86 repeal through reenactment by the Legislature.

87 (2) Information made confidential and exempt by this

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88 section may be disclosed:

89 (a) To the property owner or leaseholder;

90 (b) In furtherance of the official duties and
91 responsibilities of the agency holding the information;

92 (c) To another local, state, or federal agency in
93 furtherance of that agency's official duties and
94 responsibilities; or

95 (d) Upon a showing of good cause before a court of
96 competent jurisdiction.

97 Section 3. Subsection (1) of section 286.0113, Florida
98 Statutes, is amended to read:

99 286.0113 General exemptions from public meetings.—

100 (1) That portion of a meeting that would reveal a security
101 or firesafety system plan or portion thereof made confidential
102 and exempt by s. 119.071(3)(a) is exempt from s. 286.011 and s.
103 24(b), Art. I of the State Constitution. This subsection is
104 subject to the Open Government Sunset Review Act in accordance
105 with s. 119.15 and shall stand repealed on October 2, 2023,
106 unless reviewed and saved from repeal through reenactment by the
107 Legislature.

108 Section 4. (1) The Legislature finds that it is a public
109 necessity that:

110 (a) Firesafety system plans held by an agency be made
111 confidential and exempt from s. 119.07(1), Florida Statutes, and
112 s. 24(a), Article I of the State Constitution.

113 (b) Information relating to firesafety systems for any
114 property owned by or leased to the state or any of its political
115 subdivisions or which is in the possession of an agency be made
116 confidential and exempt from s. 119.07(1), Florida Statutes, and

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117 s. 24(a), Article I of the State Constitution, and any portion
 118 of a meeting relating directly to or that would reveal such
 119 systems or information be made confidential and exempt from s.
 120 286.011, Florida Statutes, and s. 24(b), Article I of the State
 121 Constitution.

122 (c) Any portion of a meeting revealing firesafety system
 123 plans held by an agency be made confidential and exempt from s.
 124 286.011, Florida Statutes, and s. 24(b), Article I of the State
 125 Constitution.

126 (2) As firesafety systems become more connected and
 127 integrated with security systems, this connectivity and
 128 integration exposes such systems to threats intended to disable
 129 their operation. Disabling a firesafety system could impact the
 130 safety of individuals within the building and the integrity of
 131 the building's security system. Maintaining safe and reliable
 132 firesafety systems is vital to protecting the public health and
 133 safety and ensuring the economic well-being of the state.
 134 Disclosure of sensitive information relating to firesafety
 135 systems could result in identification of vulnerabilities in
 136 such systems and allow a security breach that could damage
 137 firesafety systems and disrupt their safe and reliable
 138 operation, adversely impacting the public health and safety and
 139 economic well-being of the state. Because of the interconnected
 140 nature of firesafety and security systems, such a security
 141 breach may also impact security systems. As a result, the
 142 Legislature finds that the public and private harm in disclosing
 143 the information made exempt by this act outweighs any public
 144 benefit derived from the disclosure of such information. The
 145 protection of information made exempt by this act will ensure

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146 that firesafety systems are better protected against security
 147 threats and will bolster efforts to develop more resilient
 148 firesafety systems. Therefore, the Legislature finds that it is
 149 a public necessity to make firesafety system plans held by an
 150 agency and information relating to firesafety systems for
 151 certain properties exempt from public records and public
 152 meetings requirements.

153 (3) The Legislature further finds that these public
 154 meetings and public records exemptions must be given retroactive
 155 application because they are remedial in nature.

156 Section 5. This act shall take effect upon becoming a law.

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The Florida Senate

Committee Agenda Request

To: Senator Dennis Baxley, Chair
Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 26, 2018

I respectfully request that **Senate Bill #738**, relating to Public Records/Fire System Plans, 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".

Senator Keith Perry
Florida Senate, District 8

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 862

INTRODUCER: Criminal Justice Committee and Senator Bracy

SUBJECT: Public Records/Sealing of Criminal History Records

DATE: February 5, 2018 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Storch	Jones	CJ	Fav/CS
2.	Peacock	Caldwell	GO	Favorable
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 862, which is linked to the passage of CS/SB 860, expands an existing public records exemption to include administratively sealed criminal history records.

An administratively sealed record is a criminal history record of a minor arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency that is sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict.

The expansion of the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2023, unless reviewed and saved from repeal by the Legislature. The bill provides a statement of public necessity as required by the State Constitution.

The Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for final passage because it expands an existing public records exemption.

The bill takes effect on the same date that CS/SB 860 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes law.

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.¹ 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.²

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

[i]t 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.⁵

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.⁶ 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.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to public records requirements.⁹ An exemption must pass by a two-thirds vote of the House and the Senate.¹⁰ In addition, an exemption must explicitly lay out the public necessity justifying the exemption, and the exemption must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹ A statutory

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ 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 Legislatures are primarily located in s. 11.0431(2)-(3), F.S.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(2), F.S., defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *Id.*

exemption which does not meet these criteria may be unconstitutional and may not be judicially saved.¹²

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”¹³ 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” are not required to be made available for public inspection, but may be released at the discretion of the records custodian under certain circumstances.¹⁴

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSR) prescribes a legislative review process for newly created or substantially amended public records.¹⁵ 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.¹⁶ 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.¹⁷ 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;¹⁸
- 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;¹⁹ or
- It protects trade or business secrets.²⁰

¹² *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.

¹³ 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).

¹⁴ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁵ Section 119.15, F.S. According to s. 119.15(4)(b), F.S., a substantially amended exemption is one that 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.

¹⁶ Section 119.15(3), F.S.

¹⁷ Section 119.15(6)(b), F.S.

¹⁸ Section 119.15(6)(b)1., F.S.

¹⁹ Section 119.15(6)(b)2., F.S.

²⁰ Section 119.15(6)(b)3., F.S.

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

If the Legislature expands an exemption, then a public necessity statement and a two-thirds vote for passage are required.²² 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 otherwise provided for by law.²³

Court-ordered Sealing of Criminal History Records

Florida law makes adult criminal history records accessible to the public unless the record has been sealed or expunged.²⁴ Section 943.059, F.S., provides the procedure for sealing a criminal history record, which places a record under highly restricted access pursuant to court order.²⁵

A person seeking to have his or her criminal history record sealed must obtain a certificate of eligibility for sealing pursuant to requirements set forth in s. 943.059(2), F.S., and subsequently petition the court to seal the record.²⁶

A criminal history record of a minor or an adult which is ordered sealed by a court pursuant to s. 943.059, F.S., is confidential and exempt from the provisions of s. 119.07(1), F.S., and Article I, s. 24(a) of the State Constitution.²⁷ Such record is available only to:

- The person who is the subject of the record;
- The subject's attorney;
- Criminal justice agencies for their respective criminal justice purposes;
- Judges in the state courts system for the purpose of assisting them in their case-related decision making responsibilities; and
- Specified entities set forth in s. 943.059(4)(a), F.S., for their respective licensing, access authorization, and employment purposes.²⁸

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

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

²² FLA. CONST., art. I, s. 24(c).

²³ Section 119.15(7), F.S.

²⁴ Florida Department of Law Enforcement, *Seal and Expunge Process*, available at <http://www.fdle.state.fl.us/Seal-and-Expunge-Process/Seal-and-Expunge-Home.aspx> (last visited January 22, 2018). *See* s. 943.053, F.S.

²⁵ "Sealing of a criminal history record" is the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

²⁶ Section 943.059, F.S.

²⁷ Section 943.059(4), F.S.

²⁸ *Id.*

The person who has their criminal history record sealed may lawfully deny or fail to acknowledge the records that were sealed, unless they are:

- A defendant in a criminal prosecution;
- Seeking appointment as a guardian, a position with a criminal justice agency, or a license by the Division of Insurance Agent and Agency Services within the Department of Financial Services;
- Seeking to be employed or licensed by or to contract with the Department of Children and Families, the Division of Vocational Education within the Department of Education, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Health, the Department of Elderly Affairs, or the Department of Juvenile Justice or to be employed or used by such contractor or licensee in a sensitive position having direct contact with children, the disabled, or the elderly;
- Seeking to be employed or licensed by the Department of Education, a district school board, a university laboratory school, a charter school, a private or parochial school, or a local governmental entity that licenses child care facilities;
- Petitioning to have a court-ordered criminal history record expunged or sealed²⁹ or petitioning for relief under s. 943.0583, F.S.;³⁰
- A candidate for admission to The Florida Bar;
- Attempting to purchase a firearm from a licensed imported, licensed manufacturer, or licensed dealer and is subject to a criminal history check under state or federal law; or
- Seeking to be licensed by the Bureau of License Issuance of the Division of Licensing within the Department of Agriculture and Consumer Services to carry a concealed weapon or concealed firearm.³¹

The Florida Department of Law Enforcement (FDLE) must disclose the sealed criminal history record to the entities listed above for their respective licensing, access authorization, and employment purposes. An employee of an entity listed above may only disclose information relating to the existence of a sealed criminal history record to the person to whom the criminal history record relates or to persons having direct responsibility for employment, access authorization, or licensure decisions.³²

If a person has his or her criminal record sealed, he or she may not be held under any provision of law of this state to commit perjury or otherwise be liable for giving a false statement for failure to acknowledge a sealed criminal history record.³³

Administrative Sealing

CS/SB 860, which is linked to CS/SB 862, creates a process for the administrative sealing of certain criminal history records of a minor.

²⁹ Section 943.0585, F.S.

³⁰ Section 943.0583, F.S., provides for expunction of criminal history record for victims of human trafficking.

³¹ Section 943.059(4)(a), F.S.

³² Section 943.059(4)(c), F.S.

³³ This is subject to the exceptions enumerated in s. 943.059(4)(a), F.S., whereby a person must acknowledge a sealed criminal history record under certain circumstances. *See* s. 943.059(4)(b), F.S.

A criminal history record of a minor arrested or charged with a felony, misdemeanor, or violation of a comparable rule or ordinance by a state, county, municipal, or other law enforcement agency is administratively sealed upon notification by the clerk of the court that all the charges related to the arrest or incident of alleged criminal activity:

- Were declined to be filed by the state attorney or statewide prosecutor;
- Were dismissed or nolle prosequi before trial; or
- Resulted in a judgment of acquittal or a not guilty verdict.

Additionally, all appeals must have been exhausted by the prosecution or the time to file an appeal must have expired in order for a record to be administratively sealed.

III. Effect of Proposed Changes:

Section 1 expands the public records exemption for sealed records in s. 943.059, F.S., to include records administratively sealed pursuant to s. 943.0586, F.S.

An administratively sealed criminal history record would be treated the same as a record sealed pursuant to s. 943.059, F.S., making such record confidential and exempt and only available to certain people. Additionally, the person who is the subject of the criminal history record that is administratively sealed would be permitted to lawfully deny or fail to acknowledge the existence of the record, with limited exceptions.³⁴

The bill repeals the expansion of the exemption on October 2, 2023, unless reviewed and saved from repeal by the Legislature.

The bill provides that s. 943.059, F.S., shall revert to that in existence on June 30, 2018, if the expansion of the exemption is not saved from repeal. The bill provides that any amendments made to s. 943.059, F.S., shall be preserved and continue to operate to the extent that such amendments are not dependent upon the portions of text which are not saved from repeal.

Section 2 provides a statement of public necessity as required by the Florida Constitution.³⁵ The statement includes the following findings:

- The presence of a criminal history record in a minor's past which has not been validated through criminal proceedings can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to become a productive, contributing, self-sustaining member of society; and
- Such negative consequences are unwarranted in cases in which a minor was not found to have committed the offense that is the subject of the sealed criminal history record.

Section 3 provides that the bill takes effect on the same date that CS/SB 860 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof, and becomes law.

³⁴ See s. 943.059(4), F.S.

³⁵ Article I, s. 24(c), FLA. CONST.

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:

This bill expands a public records exemption. Therefore, the following constitutional requirements apply.

Substance of the Bill

Article I, s. 24(c) of the State Constitution requires that laws enacted to exempt records from public inspection must contain only exemptions and relate to one subject. This bill expands a public records exemption related to sealed criminal history records.

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created public record or public meeting exemption. The bill expands a public records exemption; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill expands a public records exemption and includes a public necessity statement for the expansion.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a public records exemption to be no broader than necessary to accomplish the stated purpose of the law. Based on the legislative findings in the statement of public necessity, this expansion of a public records exemption appears to be no broader than necessary to accomplish the stated purpose.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on agencies responsible for complying with public records requests and redacting confidential and exempt information prior to releasing a record. However, these costs should be able to be absorbed with existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

CS/SB 860 is the related administrative sealing bill linked to this bill.

VIII. Statutes Affected:

This bill substantially amends section 943.059 of the Florida Statutes.

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

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

CS by Criminal Justice on January 29, 2018:

The Committee Substitute updates a reference to CS/SB 860.

B. Amendments:

None.

By the Committee on Criminal Justice; and Senator Bracy

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 943.059, F.S.; expanding an existing public records
 4 exemption to include the administrative sealing of
 5 specified criminal history records; conforming
 6 provisions to changes made by the act; providing for
 7 future review and repeal of the expanded exemption;
 8 providing for reversion of specified language if the
 9 exemption is not saved from repeal; providing a
 10 statement of public necessity; providing a contingent
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsection (4) of section 943.059, Florida
 16 Statutes, is amended to read:

17 943.059 Court-ordered sealing of criminal history records.-
 18 The courts of this state shall continue to have jurisdiction
 19 over their own procedures, including the maintenance, sealing,
 20 and correction of judicial records containing criminal history
 21 information to the extent such procedures are not inconsistent
 22 with the conditions, responsibilities, and duties established by
 23 this section. Any court of competent jurisdiction may order a
 24 criminal justice agency to seal the criminal history record of a
 25 minor or an adult who complies with the requirements of this
 26 section. The court shall not order a criminal justice agency to
 27 seal a criminal history record until the person seeking to seal
 28 a criminal history record has applied for and received a
 29 certificate of eligibility for sealing pursuant to subsection

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30 (2). A criminal history record that relates to a violation of s.
 31 393.135, s. 394.4593, s. 787.025, chapter 794, former s. 796.03,
 32 s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071,
 33 chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135,
 34 s. 916.1075, a violation enumerated in s. 907.041, or any
 35 violation specified as a predicate offense for registration as a
 36 sexual predator pursuant to s. 775.21, without regard to whether
 37 that offense alone is sufficient to require such registration,
 38 or for registration as a sexual offender pursuant to s.
 39 943.0435, may not be sealed, without regard to whether
 40 adjudication was withheld, if the defendant was found guilty of
 41 or pled guilty or nolo contendere to the offense, or if the
 42 defendant, as a minor, was found to have committed or pled
 43 guilty or nolo contendere to committing the offense as a
 44 delinquent act. The court may only order sealing of a criminal
 45 history record pertaining to one arrest or one incident of
 46 alleged criminal activity, except as provided in this section.
 47 The court may, at its sole discretion, order the sealing of a
 48 criminal history record pertaining to more than one arrest if
 49 the additional arrests directly relate to the original arrest.
 50 If the court intends to order the sealing of records pertaining
 51 to such additional arrests, such intent must be specified in the
 52 order. A criminal justice agency may not seal any record
 53 pertaining to such additional arrests if the order to seal does
 54 not articulate the intention of the court to seal records
 55 pertaining to more than one arrest. This section does not
 56 prevent the court from ordering the sealing of only a portion of
 57 a criminal history record pertaining to one arrest or one
 58 incident of alleged criminal activity. Notwithstanding any law

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59 to the contrary, a criminal justice agency may comply with laws,
60 court orders, and official requests of other jurisdictions
61 relating to sealing, correction, or confidential handling of
62 criminal history records or information derived therefrom. This
63 section does not confer any right to the sealing of any criminal
64 history record, and any request for sealing a criminal history
65 record may be denied at the sole discretion of the court.

66 (4) EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A criminal
67 history record of a minor or an adult which is ordered sealed by
68 a court pursuant to this section or sealed administratively
69 pursuant to s. 943.0586 is confidential and exempt from the
70 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
71 Constitution and is available only to the person who is the
72 subject of the record, to the subject's attorney, to criminal
73 justice agencies for their respective criminal justice purposes,
74 which include conducting a criminal history background check for
75 approval of firearms purchases or transfers as authorized by
76 state or federal law, to judges in the state courts system for
77 the purpose of assisting them in their case-related
78 decisionmaking responsibilities, as set forth in s. 943.053(5),
79 or to those entities set forth in subparagraphs (a)1., 4., 5.,
80 6., 8., 9., and 10. for their respective licensing, access
81 authorization, and employment purposes.

82 (a) The subject of a criminal history record sealed under
83 this section, under s. 943.0586, or under other provisions of
84 law, including former s. 893.14, former s. 901.33, and former s.
85 943.058, may lawfully deny or fail to acknowledge the arrests
86 covered by the sealed record, except when the subject of the
87 record:

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- 88 1. Is a candidate for employment with a criminal justice
89 agency;
90 2. Is a defendant in a criminal prosecution;
91 3. Concurrently or subsequently petitions for relief under
92 this section, s. 943.0583, or s. 943.0585;
93 4. Is a candidate for admission to The Florida Bar;
94 5. Is seeking to be employed or licensed by or to contract
95 with the Department of Children and Families, the Division of
96 Vocational Rehabilitation within the Department of Education,
97 the Agency for Health Care Administration, the Agency for
98 Persons with Disabilities, the Department of Health, the
99 Department of Elderly Affairs, or the Department of Juvenile
100 Justice or to be employed or used by such contractor or licensee
101 in a sensitive position having direct contact with children, the
102 disabled, or the elderly;
103 6. Is seeking to be employed or licensed by the Department
104 of Education, a district school board, a university laboratory
105 school, a charter school, a private or parochial school, or a
106 local governmental entity that licenses child care facilities;
107 7. Is attempting to purchase a firearm from a licensed
108 importer, licensed manufacturer, or licensed dealer and is
109 subject to a criminal history check under state or federal law;
110 8. Is seeking to be licensed by the Division of Insurance
111 Agent and Agency Services within the Department of Financial
112 Services;
113 9. Is seeking to be appointed as a guardian pursuant to s.
114 744.3125; or
115 10. Is seeking to be licensed by the Bureau of License
116 Issuance of the Division of Licensing within the Department of

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117 Agriculture and Consumer Services to carry a concealed weapon or
 118 concealed firearm. This subparagraph applies only in the
 119 determination of an applicant's eligibility under s. 790.06.

120 (b) Subject to the exceptions in paragraph (a), a person
 121 who has been granted a sealing under this section, s. 943.0586,
 122 former s. 893.14, former s. 901.33, or former s. 943.058 may not
 123 be held under any provision of law of this state to commit
 124 perjury or to be otherwise liable for giving a false statement
 125 by reason of such person's failure to recite or acknowledge a
 126 sealed criminal history record.

127 (c) Information relating to the existence of a sealed
 128 criminal record provided in accordance with the provisions of
 129 paragraph (a) is confidential and exempt from the provisions of
 130 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
 131 except that the department shall disclose the sealed criminal
 132 history record to the entities set forth in subparagraphs (a)1.,
 133 4., 5., 6., 8., 9., and 10. for their respective licensing,
 134 access authorization, and employment purposes. An employee of an
 135 entity set forth in subparagraph (a)1., subparagraph (a)4.,
 136 subparagraph (a)5., subparagraph (a)6., subparagraph (a)8.,
 137 subparagraph (a)9., or subparagraph (a)10. may not disclose
 138 information relating to the existence of a sealed criminal
 139 history record of a person seeking employment, access
 140 authorization, or licensure with such entity or contractor,
 141 except to the person to whom the criminal history record relates
 142 or to persons having direct responsibility for employment,
 143 access authorization, or licensure decisions. A person who
 144 violates the provisions of this paragraph commits a misdemeanor
 145 of the first degree, punishable as provided in s. 775.082 or s.

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146 775.083.

147 (d) The expansion of the public records exemption under
 148 this subsection to include records sealed administratively under
 149 s. 943.0586 is subject to the Open Government Sunset Review Act
 150 in accordance with s. 119.15 and shall stand repealed on October
 151 2, 2023, unless reviewed and saved from repeal through
 152 reenactment by the Legislature. If the expansion of the
 153 exemption is not saved from repeal, this subsection shall revert
 154 to that in existence on June 30, 2018, except that any
 155 amendments to such text other than by this act shall be
 156 preserved and continue to operate to the extent that such
 157 amendments are not dependent upon the portions of text which
 158 expire pursuant to this paragraph.

159 Section 2. The Legislature finds that it is a public
 160 necessity that the criminal history records of a minor which
 161 have been administratively sealed pursuant to s. 943.0586,
 162 Florida Statutes, because a case was not filed, was dismissed or
 163 nolle prosequi, or resulted in the granting of a judgment of
 164 acquittal or verdict of not guilty be made confidential and
 165 exempt from s. 119.07(1), Florida Statutes, and s. 24(a),
 166 Article I of the State Constitution. The presence of a criminal
 167 history record in a minor's past which has not been validated
 168 through criminal proceedings can jeopardize his or her ability
 169 to obtain education, employment, and other opportunities
 170 necessary to becoming a productive, contributing, self-
 171 sustaining member of society. Such negative consequences are
 172 unwarranted in cases in which the minor was not found to have
 173 committed the offense that is the subject of the sealed criminal
 174 history record. For these reasons, the Legislature finds that it

Page 6 of 7

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

591-02589-18

2018862c1

175 is a public necessity that the criminal history records of
176 minors which have been administratively sealed be confidential
177 and exempt from public records requirements.

178 Section 3. This act shall take effect on the same date that
179 SB 860 or similar legislation takes effect, if such legislation
180 is adopted in the same legislative session or an extension
181 thereof and becomes law.



The Florida Senate

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 30, 2018

I respectfully request that **Senate Bill #862**, relating to Public Records/Sealing of Criminal History Records, be placed on the:

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

A handwritten signature in black ink, appearing to read "Randolph Bracy".

Senator Randolph Bracy
Florida Senate, District 11

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 1018

INTRODUCER: Governmental Oversight and Accountability Committee; Communications, Energy, and Public Utilities Committee and Senator Bean

SUBJECT: Lifeline Service

DATE: February 6, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2.	<u>Caldwell</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

I. Summary:

CS/CS/SB 1018 amends s. 364.10, F.S., relating to Lifeline services, to authorize the Public Service Commission (PSC) to designate a commercial mobile radio service (CMRS) provider as an eligible telecommunications carrier, upon petition, for the limited purpose of providing Lifeline service. The section conforms to federal Lifeline service guidelines by:

- Requiring a subscriber to present proof of continued eligibility upon request of the eligible telecommunications carrier.
- Revising the income eligibility test to 135 from 150 percent or less of federal poverty income guidelines.

The bill removes obsolete language, and makes technical and conforming changes.

Section 364.107, F.S., relating to public records exemptions, is amended to clarify that the Federal Communication Commission or its designee may receive confidential and exempt information for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

This bill takes effect July 1, 2018.

II. Present Situation:

The Lifeline program was created by the federal government in 1985 to provide phone service discounts for qualifying low-income consumers as part of the federal Universal Service Program. In 2016, the Federal Communications Commission (FCC) adopted a comprehensive modernization reform adding broadband access to the Lifeline program. As a result, qualifying households may either receive up to a \$9.25 discount on their monthly phone or broadband bill or receive a free Lifeline cell phone and limited voice or broadband from certain wireless carriers.^{1, 2}

In Florida, the PSC oversees the Lifeline program³ and Lifeline services are provided to eligible customers by an “eligible telecommunications carrier,” a term defined to mean “a telecommunications company, as defined by s. 364.02, which is designated as an eligible telecommunications carrier by the commission pursuant to 47 C.F.R. s. 54.201.”⁴

The commission only evaluates applications for eligible telecommunications carrier (ETC) designation from wireline companies, leaving wireless applications to be evaluated by the FCC.⁵ The commission explains this position as follows: “The Florida 2011 Legislature (HB 1231), removed the FPSC authority to designate ETC wireless providers. Effective July 1, 2012, wireless providers must directly apply for Florida ETC designation with the FCC.”⁶

In 2011, the Florida Legislature passed the “Regulatory Reform Act,” completing its deregulation of retail landline telecommunications service providers. Prior to this Act, s. 364.011, F.S., in part, exempted wireless communications from PSC jurisdiction except as “specifically authorized by federal law.” The Act deleted the quoted language from this statute.⁷ This appears to be the statutory change that the PSC refers to as removing its authority to designate a wireless carrier as an ETC.

Section 364.107, F.S., provides that personal identifying information of a participant in a telecommunications carrier’s Lifeline Assistance Plan under s. 364.10, F.S., held by the Public Service Commission is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. Information made confidential and exempt may be released to the applicable telecommunications carrier for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

¹ Florida Public Service Commission, *Florida Lifeline Assistance: Number of Customers Subscribing to Lifeline Service And the Effectiveness of Procedures to Promote Participation*, pg. 3(Dec. 2017).

² The FCC had already expanded the Lifeline program to include wireless voice communications services in 2005 to accommodate shifting consumer demand. *Lifeline Program for Low-Income Consumers*, available at: <https://www.fcc.gov/general/lifeline-program-low-income-consumers> (last visited Jan. 31, 2017).

³ Section 364.10, F.S.

⁴ Section 364.10(1)(a), F.S.

⁵ Fla. Public Service Commission, *supra* note 2 at 3.

⁶ Fla. Public Service Commission, *supra* note 2 at 3, FN 13.

⁷ Section 3, Ch. 2011-36, L.O.F.

III. Effect of Proposed Changes:

Section 1 amends s. 364.10, F.S., on Lifeline services, to authorize the PSC to designate a commercial mobile radio service (CMRS) provider as an eligible telecommunications carrier, upon petition, for the limited purpose of providing Lifeline service.

The bill conforms the section to federal Lifeline service guidelines by:

- Requiring a subscriber to present proof of continued eligibility upon request of the eligible telecommunications carrier.
- Revising the income eligibility test to 135 from 150 percent or less of federal poverty income guidelines.

The bill removes obsolete language, and makes technical and conforming changes.

Section 2 amends s. 364.107, F.S., relating to public records exemptions, to clarify that the Federal Communication Commission or its designee may receive confidential and exempt information for purposes directly connected with eligibility for, verification related to, or auditing of a Lifeline Assistance Plan.

The bill takes effect 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:

The bill should allow wireless communications services providers to obtain an eligible telecommunications carrier designation quicker, thereby allowing them to provide

Lifeline service to eligible customers and obtain Universal Service payments quicker. This should benefit both the carriers and customers.

C. **Government Sector Impact:**

The PSC may incur costs associated with designating these carriers as eligible telecommunications carriers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 364.10 of the Florida Statutes.

IX. Additional Information:

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

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

CS/CS by Governmental Oversight and Accountability on February 6, 2018:

- Retains the original intent of authorizing the Public Service Commission to certify a commercial mobile radio service provider as an eligible telecommunications carrier for the limited purpose of providing Lifeline services, but rewrites the language for clarity.
- Makes further changes to s. 364.10, F.S., as requested by the commission, to update the statute to conform to changes in the industry and in federal law;
- Amends s. 364.107, F.S., on public records relating to Lifeline services, as requested by the commission, to authorize the commission to release confidential and exempt information to the Federal Communications Commission or the Federal Communications Commission designee; and
- Makes technical and conforming changes to both statutes.

CS by Communications, Energy, and Public Utilities on January 10, 2018:

For purposes of providing Lifeline services under s. 364.10, F.S., any commercial mobile radio service provider that is certified as an eligible telecommunications carrier by the Public Service Commission is included in the term “eligible telecommunications carrier.” The provision authorizing the commission to make the designation was moved from s. 364.011, F.S.

B. Amendments:

None.

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



666478

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
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	.	

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

1 **Senate Amendment (with title amendment)**

2 Delete everything after the enacting clause
3 and insert:

4 Section 1. Section 364.10, Florida Statutes, is amended to
5 read:

6 364.10 Lifeline service.—

7 (1) (a) An eligible telecommunications carrier shall provide
8 a Lifeline Assistance Plan to qualified residential subscribers,
9 as defined in the eligible telecommunications carrier's



666478

10 published schedules. For the purposes of this section, the term
11 "eligible telecommunications carrier" means a telecommunications
12 company, as defined by s. 364.02, which is designated as an
13 eligible telecommunications carrier by the commission pursuant
14 to 47 C.F.R. s. 54.201. Notwithstanding the provision of s.
15 364.011 that exempts certain commercial mobile radio service
16 providers from commission oversight, the term "eligible
17 telecommunications carrier" includes any commercial mobile radio
18 service provider designated by the commission pursuant to 47
19 C.F.R. s. 54.201 and the commission is authorized to make such a
20 designation, upon petition, for the limited purpose of providing
21 Lifeline service.

22 (b) An eligible telecommunications carrier must ~~shall~~ offer
23 a consumer who applies for or receives Lifeline service the
24 option of blocking all toll calls or, if technically capable,
25 placing a limit on the number of toll calls a consumer can make.
26 The eligible telecommunications carrier may not charge the
27 consumer an administrative charge or other additional fee for
28 blocking the service.

29 (c) An eligible telecommunications carrier may not collect
30 a service deposit in order to initiate Lifeline service if the
31 qualifying low-income consumer voluntarily elects toll blocking
32 or toll limitation. If the qualifying low-income consumer elects
33 not to place toll blocking on the line, an eligible
34 telecommunications carrier may charge a service deposit.

35 (d) An eligible telecommunications carrier may not charge
36 Lifeline subscribers a monthly number-portability charge.

37 (e)1. An eligible telecommunications carrier must notify a
38 Lifeline subscriber of impending termination of Lifeline service



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39 if the company has a reasonable basis for believing that the
40 subscriber no longer qualifies for such service. Notification of
41 pending termination must be in the form of a letter that is
42 separate from the subscriber's bill.

43 ~~2. An eligible telecommunications carrier shall allow a~~
44 ~~subscriber 60 days following the date of the pending termination~~
45 ~~letter to demonstrate continued eligibility.~~ The subscriber must
46 present proof of continued eligibility upon request of the
47 eligible telecommunications carrier. An eligible
48 telecommunications carrier may transfer a subscriber off of
49 Lifeline service, pursuant to its tariff, if the subscriber
50 fails to demonstrate continued eligibility.

51 3. The commission shall establish procedures for such
52 notification and termination.

53 (f) An eligible telecommunications carrier must ~~shall~~
54 timely credit a consumer's bill with the Lifeline Assistance
55 credit as soon as practicable, but no later than 60 days
56 following receipt of notice of eligibility from the Office of
57 Public Counsel or proof of eligibility from the consumer.

58 (2) (a) ~~An Each local exchange telecommunications company~~
59 ~~that has more than 1 million access lines and that is designated~~
60 ~~as an eligible telecommunications carrier, including shall, and~~
61 any commercial mobile radio service provider designated as an
62 eligible telecommunications carrier pursuant to 47 U.S.C. s.
63 214(e) may, ~~upon filing a notice of election to do so with the~~
64 ~~commission,~~ provide Lifeline service to any otherwise eligible
65 customer or potential customer who meets an income eligibility
66 test at 135 ~~150~~ percent or less of the federal poverty income
67 guidelines for Lifeline customers. ~~Such a test for eligibility~~



666478

68 ~~must augment, rather than replace, the eligibility standards~~
69 ~~established by federal law and based on participation in certain~~
70 ~~low income assistance programs. Each intrastate interexchange~~
71 ~~telecommunications company shall file or publish a schedule~~
72 ~~providing at a minimum the intrastate interexchange~~
73 ~~telecommunications company's current Lifeline benefits and~~
74 ~~exemptions to Lifeline customers who meet the income eligibility~~
75 ~~test set forth in this subsection.~~ The Office of Public Counsel
76 shall certify and maintain claims submitted by a customer for
77 eligibility under the income test authorized by this subsection.

78 (b) Each eligible telecommunications carrier subject to
79 this subsection must ~~shall~~ provide to each state and federal
80 agency providing benefits to persons eligible for Lifeline
81 service applications, brochures, pamphlets, or other materials
82 that inform the persons of their eligibility for Lifeline, and
83 each state agency providing the benefits shall furnish the
84 materials to affected persons at the time they apply for
85 benefits.

86 (c) An eligible telecommunications carrier may not
87 discontinue basic local telecommunications service to a
88 subscriber who receives Lifeline service because of nonpayment
89 by the subscriber of charges for nonbasic services billed by the
90 telecommunications company, including, but not limited to, long-
91 distance service. A subscriber who receives Lifeline service
92 must ~~shall~~ pay all applicable basic local telecommunications
93 service fees, including the subscriber line charge, E-911,
94 telephone relay system charges, and applicable state and federal
95 taxes.

96 (d) An eligible telecommunications carrier may not refuse



666478

97 to connect, reconnect, or provide Lifeline service because of
98 unpaid toll charges or nonbasic charges other than basic local
99 telecommunications service.

100 (e) An eligible telecommunications carrier may require that
101 payment arrangements be made for outstanding debt associated
102 with basic local telecommunications service, subscriber line
103 charges, E-911, telephone relay system charges, and applicable
104 state and federal taxes.

105 (f) An eligible telecommunications carrier may block a
106 Lifeline service subscriber's access to all long-distance
107 service, except for toll-free numbers, and may block the ability
108 to accept collect calls if ~~when~~ the subscriber owes an
109 outstanding amount for long-distance service or amounts
110 resulting from collect calls. However, the eligible
111 telecommunications carrier may not impose a charge for blocking
112 long-distance service. The eligible telecommunications carrier
113 shall remove the block at the request of the subscriber without
114 additional cost to the subscriber upon payment of the
115 outstanding amount. An eligible telecommunications carrier may
116 charge a service deposit before removing the block.

117 (g)1. ~~By December 31, 2010,~~ Each state agency that provides
118 benefits to persons eligible for Lifeline service shall
119 undertake, in cooperation with the Department of Children and
120 Families, ~~the Department of Education,~~ the commission, the
121 Office of Public Counsel, and telecommunications companies
122 designated eligible telecommunications carriers providing
123 Lifeline services, the development of procedures to promote
124 Lifeline participation. The department ~~departments,~~ the
125 commission, and the Office of Public Counsel may exchange



666478

126 sufficient information with the appropriate eligible
127 telecommunications carriers or the Federal Communications
128 Commission, or its designee and any commercial mobile radio
129 service provider electing to provide Lifeline service under
130 paragraph (a), such as a person's name, date of birth, service
131 address, and telephone number, so that eligible customers ~~the~~
132 ~~carriers can be enrolled~~ identify and enroll an eligible person
133 in the Lifeline and Link-Up programs. The information remains
134 confidential pursuant to s. 364.107 and may only be used for
135 purposes of determining eligibility and enrollment in the
136 Lifeline and Link-Up programs.

137 2. If any state agency determines that a person is eligible
138 for Lifeline services, the agency shall immediately forward the
139 information to the commission to ensure that the person is
140 automatically enrolled in the program with the appropriate
141 eligible telecommunications carrier. The state agency shall
142 include an option for an eligible customer to choose not to
143 subscribe to the Lifeline service. The Public Service Commission
144 and the Department of Children and Families shall, ~~no later than~~
145 ~~December 31, 2007,~~ adopt rules creating procedures to
146 automatically enroll eligible customers in Lifeline service.

147 3. ~~By December 31, 2010,~~ The commission, the Department of
148 Children and Families, the Office of Public Counsel, and each
149 eligible telecommunications carrier offering Lifeline and Link-
150 Up services shall convene a Lifeline Workgroup to discuss how
151 the eligible subscriber information in subparagraph 1. will be
152 shared, the obligations of each party with respect to the use of
153 that information, and the procedures to be implemented to
154 increase enrollment and verify eligibility in these programs.



666478

155 (h) The commission shall report to the Governor, the
156 President of the Senate, and the Speaker of the House of
157 Representatives by December 31 each year on the number of
158 customers who are subscribing to Lifeline service and the
159 effectiveness of any procedures to promote participation.

160 (i) The commission may undertake appropriate measures to
161 inform low-income consumers of the availability of the Lifeline
162 and Link-Up programs.

163 (j) The commission shall adopt rules to administer this
164 section.

165 Section 2. Subsection (2) of section 364.107, Florida
166 Statutes, is amended to read:

167 364.107 Public records exemption; Lifeline Assistance Plan
168 participants.—

169 (2) Information made confidential and exempt under
170 subsection (1) may be released to the applicable
171 telecommunications carrier, the Federal Communications
172 Commission, or the Federal Communications Commission designee
173 for purposes directly connected with eligibility for,
174 verification related to, or auditing of a Lifeline Assistance
175 Plan.

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

177
178 ===== T I T L E A M E N D M E N T =====

179 And the title is amended as follows:

180 Delete everything before the enacting clause
181 and insert:

182 A bill to be entitled
183 An act relating to designation of eligible



666478

184 telecommunications carriers; amending s. 364.10, F.S.;

185 revising the term "eligible telecommunications

186 carrier"; authorizing the Public Service Commission to

187 designate any commercial mobile radio service provider

188 as an eligible telecommunications carrier for the

189 purpose of providing Lifeline service; deleting a

190 provision requiring carriers to allow subscribers to

191 demonstrate continued eligibility for Lifeline service

192 under certain conditions; requiring subscribers to

193 furnish proof of eligibility upon request from

194 carrier; revising the carriers that may provide

195 Lifeline service; revising Lifeline service

196 eligibility; deleting obsolete provisions; revising

197 the entities with which the commission may exchange

198 certain information; amending s. 364.107, F.S.;

199 revising the entities to which certain information

200 relating to Lifeline service eligibility may be

201 released; providing an effective date.



494990

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (666478) (with title amendment)

Delete line 47
and insert:
eligible telecommunications carrier or the Federal Communications Commission or its designee. An eligible

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

And the title is amended as follows:



494990

11 Delete line 194
12 and insert:
13 the carrier or the Federal Communications Commission
14 or its designee; revising the carriers that may
15 provide



842668

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/06/2018	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (666478)

Delete line 134

and insert:

confidential and exempt pursuant to s. 364.107 and may only be
used for

By the Committee on Communications, Energy, and Public
Utilities; and Senator Bean

579-01985-18

20181018c1

1 A bill to be entitled
2 An act relating to Lifeline service; amending s.
3 364.10, F.S.; revising the term "eligible
4 telecommunications carrier" to include commercial
5 mobile radio service providers under a specified
6 circumstance; providing an effective date.
7
8 Be It Enacted by the Legislature of the State of Florida:
9
10 Section 1. Paragraph (a) of subsection (1) of section
11 364.10, Florida Statutes, is amended to read:
12 364.10 Lifeline service.—
13 (1) (a) An eligible telecommunications carrier shall provide
14 a Lifeline Assistance Plan to qualified residential subscribers,
15 as defined in the eligible telecommunications carrier's
16 published schedules. For the purposes of this section, the term
17 "eligible telecommunications carrier" means a telecommunications
18 company, as defined by s. 364.02, or, for the limited purpose of
19 qualification to provide Lifeline service, any commercial mobile
20 radio service provider. Such company or provider must also be
21 ~~which is~~ designated as an eligible telecommunications carrier by
22 the commission pursuant to 47 C.F.R. s. 54.201.
23 Section 2. This act shall take effect July 1, 2018.

APPEARANCE RECORD

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

2/6/18
Meeting Date

CS/SB 1018
Bill Number (if applicable)

Topic Lifeline Service

Amendment Barcode (if applicable)

Name Cameron Yarbrough

Job Title Government Relations

Address 215 S. Monroe St., Suite 601
Street

Phone 850-521-1980

Tallahassee FL 32301
City State Zip

Email cyarbrough@gunster.com

Speaking: For Against Information

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

Representing Q-Link Wireless

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

Committee Agenda Request

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

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill # 1018**, relating to Lifeline Services, be placed on the:

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

A handwritten signature in blue ink that reads "Aaron Bean".

Senator Aaron Bean
Florida Senate, District 4

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1212

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Book

SUBJECT: Public Records/Child Advocacy Centers

DATE: February 5, 2018

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1212 makes exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of current and former employees of a child advocacy center (CAC). This same information of current or former child protection team (CPT) members whose duties are related to child abuse and neglect investigations is also made exempt under the bill. The bill additionally exempts names, home addresses, telephone numbers, photographs, dates of birth, places of employment, and schools and day care facilities of spouses and children.

In the required public necessity statement, the bill provides as justification for the exemption that the exemption is needed to keep personnel and their families safe from persons disgruntled by the actions of CACs and CPTs and who may commit violence against them.

The bill includes a provision for an Open Government Sunset Review and provides an automatic repeal date of October 2, 2023, unless the Legislature reviews and saves the exemption from repeal before that date.

The bill requires a two-thirds vote from each chamber to pass.

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.¹ 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.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ 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.⁵

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.⁶ 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.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ 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.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ 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.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *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

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² 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.¹³

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.¹⁴ 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.¹⁵ 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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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.
¹² 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).

¹³ 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).

¹⁴ 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.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

- What specific records or meetings are affected by 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.²¹ 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.²²

Child Advocacy Centers (CAC)

Child advocacy centers (CAC) are community-based, child-focused facilities where child victims of abuse or neglect are interviewed and may receive medical exams, therapy, and other critical services.²³ Professionals at CACs consult about investigations, treatment, and prosecution of child abuse cases. The primary function of a CAC is to minimize trauma for child victims, improve prosecutions and provide efficient and thorough provision of necessary services to the child victim and the child's family.²⁴ CACs provide services such as:

- Forensic interviews conducted in a non-threatening, child-friendly environment.
- Crisis intervention and emotional support for victims and non-offending family members.
- Counseling for victims and non-offending family members.
- Medical evaluations and services.
- Multidisciplinary review of cases by a team of professionals, such as law enforcement officials, child protection teams, prosecutors, medical professionals, mental health professionals, victim assistance staff, and child advocates.
- Evidence-based prevention and intervention programs to reduce the likelihood of child maltreatment and to provide safe and caring homes for children.
- Professional training and community education on child abuse.²⁵

The Florida Network of Children's Advocacy Centers (FNCAC) is the statewide membership organization for all local CACs in Florida.²⁶ Currently, Florida provides 27 CACs throughout the state.²⁷

To receive funding, a CAC must appropriately screen employees and volunteers²⁸, and:

- Be a private, nonprofit incorporated agency or a governmental entity; and

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

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ Florida Network of Child Advocacy Centers, *What is a CAC?*, available at: <https://www.fncac.org/what-cac> (last visited Jan. 29, 2018).

²⁴ *Id.*

²⁵ *Id.*

²⁶ Florida Network of Child Advocacy Centers, *About Us*, available at: <https://www.fncac.org/about-us> (last visited Jan. 29, 2018).

²⁷ *Id.*

²⁸ Section 39.035(2), F.S.

- Be a child protection team, or by written agreement incorporate the participation and services of a child protection team, with established community protocols that meet the requirements of the National Network of Children's Advocacy Centers, Inc.

Further, a CAC must provide:

- A neutral, child-focused facility where joint department and law enforcement interviews take place with children in cases of suspected child sexual abuse or physical abuse.
- Staff subject to supervision of a board of directors or governmental entity.
- A case review team that regularly meets or as the caseload requires, with representatives from the Office of the State Attorney, the Department of Children and Families (department), the child protection team, mental health services, law enforcement, and the child advocacy center staff. Medical personnel and a victim's advocate may participate.
- Case tracking and data collection on child abuse cases by sex, race, age, and other relevant data; cases referred for prosecution; and cases referred for mental health therapy.
- Community training and referrals for medical exams and mental health therapy.
- A written, interagency commitment, on a multidisciplinary approach to the handling of child sexual abuse and serious physical abuse cases.²⁹

Child Protection Teams

A child protection team (CPT) is a medically directed, multidisciplinary team that supplements the child protective investigation efforts of the department and local sheriffs' offices in cases of child abuse and neglect.³⁰ CPTs provide expertise in evaluating alleged child abuse and neglect, assess risk and protective factors, and provide recommendations for interventions to protect children and enhance a caregiver's capacity to provide a safer environment.³¹ The Department of Health (DOH) Children's Medical Services (CMS) program contracts for CPT services with local community-based programs. CPTs, located in each of the 15 service circuits of the department, are supervised by one or more child protection team medical directors.³²

The following reports made to the department central abuse hotline that must be referred to a CPT for assessment are:

- Injuries to the head, bruises to the neck or head, burns, or fractures in a child of any age.
- Bruises on a child five years of age or younger.
- Allegations of sexual abuse of a child.
- Any sexually transmitted disease in a prepubescent child.
- Reported malnutrition or failure of a child to thrive.
- Reported medical neglect of a child.
- A sibling or other child remaining in a home where one or more children have been pronounced dead on arrival or have been injured and later died as a result of suspected abuse, abandonment, or neglect.

²⁹ Section 39.3035(1), F.S.

³⁰ Florida Department of Health, Children's Medical Services. *Child Protection Teams*, available at: http://www.floridahealth.gov/AlternateSites/CMS-Kids/families/child_protection_safety/child_protection_teams.html (last visited Jan. 30, 2018).

³¹ *Id.*

³² Section 39.303(1), F.S.

- Symptoms of serious emotional problems in a child when emotional or other abuse, abandonment, or neglect is suspected.³³

Upon referral from the department or law enforcement, the CPT may provide:

- Medical diagnoses and evaluations;
- Child forensic interviews;
- Child and family assessments;
- Multidisciplinary staffings;
- Psychological and psychiatric evaluations; and
- Expert court testimony.³⁴

III. Effect of Proposed Changes:

Section 1 amends s. 119.071, F.S., to exempt from public records requirements the home addresses, telephone numbers, dates of birth, and photographs of:

- Current or former directors, managers, supervisors, and clinical employees of a CAC that meets statutory requirements;
- Current or former CPT employees whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or providing services as part of a multidisciplinary case review team; and
- Spouses and children of CAC and CPT personnel, and including the places of employment, schools, and day care facilities attended by these family members.

The bill also provides that the public records exemption is subject to an Open Government Sunset Review and will stand repealed October 2, 2023, unless reviewed and saved from repeal by the Legislature before that date.

Section 2 provides a public necessity statement for the exemption, specifying that CAC and CPT personnel and their families may be in danger of physical and emotional harm from disgruntled individuals who may react inappropriately and violently to actions taken by the personnel. The bill further finds that the risk continues after the personnel no longer holds a position at a CAC or CPT. The bill finds that the harm that may result from the release of such personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.

Section 3 provides that the bill takes effect 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.

³³ Section 39.303(4), F.S.

³⁴ Section 39.303(3), F.S.

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.

Public Necessity Statement

Article I, section 24(c) of the Florida Constitution requires a public records exemption bill to contain a public necessity statement for a newly created or expanded public record or public meeting exemption and to state with specificity the public necessity of the exemption. The public necessity statement provides that the exemption is needed to protect the safety of personnel of the CAC and CPT and their families from potential violence by persons disgruntled by the actions of the CAC and CPT.

Breadth of Exemption

Article I, section 24(c) of the Florida Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill seeks to prevent the disclosure of specified identifying information of CPT and CAC personnel and their families to protect their safety. Therefore, the bill appears to be no broader than necessary to accomplish the public necessity of the exemption.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on January 16, 2018:

The amendment does the following:

- Removes the reference to “social security numbers” from the exemption and the public necessity statement because there is currently a general exemption for social security numbers.
- Adds the names of spouses and children of exempted personnel to the information to be held exempt. This will standardize information to be held exempt.
- Alters the public necessity statement to more closely mirror the substance of the bill by adding the qualifying phrase “whose duties include supporting the investigation of child abuse or sexual abuse, child abandonment, child neglect, or child exploitation or to provide services as a part of a multidisciplinary case review team” in reference to child protection team members.

- B. **Amendments:**

None.

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

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1 A bill to be entitled
2 An act relating to public records; amending s.
3 119.071, F.S.; providing an exemption from public
4 records requirements for certain identifying and
5 location information of current or former directors,
6 managers, supervisors, and clinical employees of child
7 advocacy centers that meet certain standards and
8 requirements, members of a child protection team, and
9 the spouses and children thereof; providing for
10 retroactive application; providing for future
11 legislative review and repeal of the exemption;
12 providing a statement of public necessity; providing
13 an effective date.

14
15 Be It Enacted by the Legislature of the State of Florida:

16
17 Section 1. Paragraph (d) of subsection (4) of section
18 119.071, Florida Statutes, is amended to read:
19 119.071 General exemptions from inspection or copying of
20 public records.—

21 (4) AGENCY PERSONNEL INFORMATION.—

22 (d)1. For purposes of this paragraph, the term "telephone
23 numbers" includes home telephone numbers, personal cellular
24 telephone numbers, personal pager telephone numbers, and
25 telephone numbers associated with personal communications
26 devices.

27 2.a. The home addresses, telephone numbers, dates of birth,
28 and photographs of active or former sworn or civilian law
29 enforcement personnel, including correctional and correctional

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30 probation officers, personnel of the Department of Children and
31 Families whose duties include the investigation of abuse,
32 neglect, exploitation, fraud, theft, or other criminal
33 activities, personnel of the Department of Health whose duties
34 are to support the investigation of child abuse or neglect, and
35 personnel of the Department of Revenue or local governments
36 whose responsibilities include revenue collection and
37 enforcement or child support enforcement; the names, home
38 addresses, telephone numbers, photographs, dates of birth, and
39 places of employment of the spouses and children of such
40 personnel; and the names and locations of schools and day care
41 facilities attended by the children of such personnel are exempt
42 from s. 119.07(1) and s. 24(a), Art. I of the State
43 Constitution. This sub-subparagraph is subject to the Open
44 Government Sunset Review Act in accordance with s. 119.15 and
45 shall stand repealed on October 2, 2022, unless reviewed and
46 saved from repeal through reenactment by the Legislature.
47 b. The home addresses, telephone numbers, dates of birth,
48 and photographs of current or former nonsworn investigative
49 personnel of the Department of Financial Services whose duties
50 include the investigation of fraud, theft, workers' compensation
51 coverage requirements and compliance, other related criminal
52 activities, or state regulatory requirement violations; the
53 names, home addresses, telephone numbers, dates of birth, and
54 places of employment of the spouses and children of such
55 personnel; and the names and locations of schools and day care
56 facilities attended by the children of such personnel are exempt
57 from s. 119.07(1) and s. 24(a), Art. I of the State
58 Constitution. This sub-subparagraph is subject to the Open

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59 Government Sunset Review Act in accordance with s. 119.15 and
60 shall stand repealed on October 2, 2021, unless reviewed and
61 saved from repeal through reenactment by the Legislature.

62 c. The home addresses, telephone numbers, dates of birth,
63 and photographs of current or former nonsworn investigative
64 personnel of the Office of Financial Regulation's Bureau of
65 Financial Investigations whose duties include the investigation
66 of fraud, theft, other related criminal activities, or state
67 regulatory requirement violations; the names, home addresses,
68 telephone numbers, dates of birth, and places of employment of
69 the spouses and children of such personnel; and the names and
70 locations of schools and day care facilities attended by the
71 children of such personnel are exempt from s. 119.07(1) and s.
72 24(a), Art. I of the State Constitution. This sub-subparagraph
73 is subject to the Open Government Sunset Review Act in
74 accordance with s. 119.15 and shall stand repealed on October 2,
75 2022, unless reviewed and saved from repeal through reenactment
76 by the Legislature.

77 d. The home addresses, telephone numbers, dates of birth,
78 and photographs of current or former firefighters certified in
79 compliance with s. 633.408; the names, home addresses, telephone
80 numbers, photographs, dates of birth, and places of employment
81 of the spouses and children of such firefighters; and the names
82 and locations of schools and day care facilities attended by the
83 children of such firefighters are exempt from s. 119.07(1) and
84 s. 24(a), Art. I of the State Constitution. This sub-
85 subparagraph is subject to the Open Government Sunset Review Act
86 in accordance with s. 119.15, and shall stand repealed on
87 October 2, 2022, unless reviewed and saved from repeal through

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88 reenactment by the Legislature.

89 e. The home addresses, dates of birth, and telephone
90 numbers of current or former justices of the Supreme Court,
91 district court of appeal judges, circuit court judges, and
92 county court judges; the names, home addresses, telephone
93 numbers, dates of birth, and places of employment of the spouses
94 and children of current or former justices and judges; and the
95 names and locations of schools and day care facilities attended
96 by the children of current or former justices and judges are
97 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
98 Constitution. This sub-subparagraph is subject to the Open
99 Government Sunset Review Act in accordance with s. 119.15 and
100 shall stand repealed on October 2, 2022, unless reviewed and
101 saved from repeal through reenactment by the Legislature.

102 f. The home addresses, telephone numbers, dates of birth,
103 and photographs of current or former state attorneys, assistant
104 state attorneys, statewide prosecutors, or assistant statewide
105 prosecutors; the names, home addresses, telephone numbers,
106 photographs, dates of birth, and places of employment of the
107 spouses and children of current or former state attorneys,
108 assistant state attorneys, statewide prosecutors, or assistant
109 statewide prosecutors; and the names and locations of schools
110 and day care facilities attended by the children of current or
111 former state attorneys, assistant state attorneys, statewide
112 prosecutors, or assistant statewide prosecutors are exempt from
113 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

114 g. The home addresses, dates of birth, and telephone
115 numbers of general magistrates, special magistrates, judges of
116 compensation claims, administrative law judges of the Division

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117 of Administrative Hearings, and child support enforcement
 118 hearing officers; the names, home addresses, telephone numbers,
 119 dates of birth, and places of employment of the spouses and
 120 children of general magistrates, special magistrates, judges of
 121 compensation claims, administrative law judges of the Division
 122 of Administrative Hearings, and child support enforcement
 123 hearing officers; and the names and locations of schools and day
 124 care facilities attended by the children of general magistrates,
 125 special magistrates, judges of compensation claims,
 126 administrative law judges of the Division of Administrative
 127 Hearings, and child support enforcement hearing officers are
 128 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 129 Constitution. This sub-subparagraph is subject to the Open
 130 Government Sunset Review Act in accordance with s. 119.15 and
 131 shall stand repealed on October 2, 2022, unless reviewed and
 132 saved from repeal through reenactment by the Legislature.

133 h. The home addresses, telephone numbers, dates of birth,
 134 and photographs of current or former human resource, labor
 135 relations, or employee relations directors, assistant directors,
 136 managers, or assistant managers of any local government agency
 137 or water management district whose duties include hiring and
 138 firing employees, labor contract negotiation, administration, or
 139 other personnel-related duties; the names, home addresses,
 140 telephone numbers, dates of birth, and places of employment of
 141 the spouses and children of such personnel; and the names and
 142 locations of schools and day care facilities attended by the
 143 children of such personnel are exempt from s. 119.07(1) and s.
 144 24(a), Art. I of the State Constitution.

145 i. The home addresses, telephone numbers, dates of birth,

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146 and photographs of current or former code enforcement officers;
 147 the names, home addresses, telephone numbers, dates of birth,
 148 and places of employment of the spouses and children of such
 149 personnel; and the names and locations of schools and day care
 150 facilities attended by the children of such personnel are exempt
 151 from s. 119.07(1) and s. 24(a), Art. I of the State
 152 Constitution.

153 j. The home addresses, telephone numbers, places of
 154 employment, dates of birth, and photographs of current or former
 155 guardians ad litem, as defined in s. 39.820; the names, home
 156 addresses, telephone numbers, dates of birth, and places of
 157 employment of the spouses and children of such persons; and the
 158 names and locations of schools and day care facilities attended
 159 by the children of such persons are exempt from s. 119.07(1) and
 160 s. 24(a), Art. I of the State Constitution. This sub-
 161 subparagraph is subject to the Open Government Sunset Review Act
 162 in accordance with s. 119.15 and shall stand repealed on October
 163 2, 2022, unless reviewed and saved from repeal through
 164 reenactment by the Legislature.

165 k. The home addresses, telephone numbers, dates of birth,
 166 and photographs of current or former juvenile probation
 167 officers, juvenile probation supervisors, detention
 168 superintendents, assistant detention superintendents, juvenile
 169 justice detention officers I and II, juvenile justice detention
 170 officer supervisors, juvenile justice residential officers,
 171 juvenile justice residential officer supervisors I and II,
 172 juvenile justice counselors, juvenile justice counselor
 173 supervisors, human services counselor administrators, senior
 174 human services counselor administrators, rehabilitation

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175 therapists, and social services counselors of the Department of
 176 Juvenile Justice; the names, home addresses, telephone numbers,
 177 dates of birth, and places of employment of spouses and children
 178 of such personnel; and the names and locations of schools and
 179 day care facilities attended by the children of such personnel
 180 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 181 Constitution.

182 l. The home addresses, telephone numbers, dates of birth,
 183 and photographs of current or former public defenders, assistant
 184 public defenders, criminal conflict and civil regional counsel,
 185 and assistant criminal conflict and civil regional counsel; the
 186 names, home addresses, telephone numbers, dates of birth, and
 187 places of employment of the spouses and children of such
 188 defenders or counsel; and the names and locations of schools and
 189 day care facilities attended by the children of such defenders
 190 or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 191 the State Constitution.

192 m. The home addresses, telephone numbers, dates of birth,
 193 and photographs of current or former investigators or inspectors
 194 of the Department of Business and Professional Regulation; the
 195 names, home addresses, telephone numbers, dates of birth, and
 196 places of employment of the spouses and children of such current
 197 or former investigators and inspectors; and the names and
 198 locations of schools and day care facilities attended by the
 199 children of such current or former investigators and inspectors
 200 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 201 Constitution. This sub-subparagraph is subject to the Open
 202 Government Sunset Review Act in accordance with s. 119.15 and
 203 shall stand repealed on October 2, 2022, unless reviewed and

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204 saved from repeal through reenactment by the Legislature.

205 n. The home addresses, telephone numbers, and dates of
 206 birth of county tax collectors; the names, home addresses,
 207 telephone numbers, dates of birth, and places of employment of
 208 the spouses and children of such tax collectors; and the names
 209 and locations of schools and day care facilities attended by the
 210 children of such tax collectors are exempt from s. 119.07(1) and
 211 s. 24(a), Art. I of the State Constitution. This sub-
 212 subparagraph is subject to the Open Government Sunset Review Act
 213 in accordance with s. 119.15 and shall stand repealed on October
 214 2, 2022, unless reviewed and saved from repeal through
 215 reenactment by the Legislature.

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

232 p. The home addresses, telephone numbers, dates of birth,

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233 and photographs of current or former impaired practitioner
 234 consultants who are retained by an agency or current or former
 235 employees of an impaired practitioner consultant whose duties
 236 result in a determination of a person's skill and safety to
 237 practice a licensed profession; the names, home addresses,
 238 telephone numbers, dates of birth, and places of employment of
 239 the spouses and children of such consultants or their employees;
 240 and the names and locations of schools and day care facilities
 241 attended by the children of such consultants or employees are
 242 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 243 Constitution. This sub-subparagraph is subject to the Open
 244 Government Sunset Review Act in accordance with s. 119.15 and
 245 shall stand repealed on October 2, 2020, unless reviewed and
 246 saved from repeal through reenactment by the Legislature.

247 q. The home addresses, telephone numbers, dates of birth,
 248 and photographs of current or former emergency medical
 249 technicians or paramedics certified under chapter 401; the
 250 names, home addresses, telephone numbers, dates of birth, and
 251 places of employment of the spouses and children of such
 252 emergency medical technicians or paramedics; and the names and
 253 locations of schools and day care facilities attended by the
 254 children of such emergency medical technicians or paramedics are
 255 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 256 Constitution. This sub-subparagraph is subject to the Open
 257 Government Sunset Review Act in accordance with s. 119.15 and
 258 shall stand repealed on October 2, 2021, unless reviewed and
 259 saved from repeal through reenactment by the Legislature.

260 r. The home addresses, telephone numbers, dates of birth,
 261 and photographs of current or former personnel employed in an

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262 agency's office of inspector general or internal audit
 263 department whose duties include auditing or investigating waste,
 264 fraud, abuse, theft, exploitation, or other activities that
 265 could lead to criminal prosecution or administrative discipline;
 266 the names, home addresses, telephone numbers, dates of birth,
 267 and places of employment of spouses and children of such
 268 personnel; and the names and locations of schools and day care
 269 facilities attended by the children of such personnel are exempt
 270 from s. 119.07(1) and s. 24(a), Art. I of the State
 271 Constitution. This sub-subparagraph is subject to the Open
 272 Government Sunset Review Act in accordance with s. 119.15 and
 273 shall stand repealed on October 2, 2021, unless reviewed and
 274 saved from repeal through reenactment by the Legislature.

275 s. The home addresses, telephone numbers, dates of birth,
 276 and photographs of current or former directors, managers,
 277 supervisors, and clinical employees of a child advocacy center
 278 that meets the standards of s. 39.3035(1) and fulfills the
 279 screening requirement of s. 39.3035(2), and the members of a
 280 child protection team as described in s. 39.303 whose duties
 281 include supporting the investigation of child abuse or sexual
 282 abuse, child abandonment, child neglect, and child exploitation
 283 or to provide services as part of a multidisciplinary case
 284 review team; the names, home addresses, telephone numbers,
 285 photographs, dates of birth, and places of employment of the
 286 spouses and children of such personnel and members; and the
 287 names and locations of schools and day care facilities attended
 288 by the children of such personnel and members are exempt from s.
 289 119.07(1) and s. 24(a), Art. I of the State Constitution. This
 290 sub-subparagraph is subject to the Open Government Sunset Review

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291 Act in accordance with s. 119.15 and shall stand repealed on
 292 October 2, 2023, unless reviewed and saved from repeal through
 293 reenactment by the Legislature.

294 3. An agency that is the custodian of the information
 295 specified in subparagraph 2. and that is not the employer of the
 296 officer, employee, justice, judge, or other person specified in
 297 subparagraph 2. shall maintain the exempt status of that
 298 information only if the officer, employee, justice, judge, other
 299 person, or employing agency of the designated employee submits a
 300 written request for maintenance of the exemption to the
 301 custodial agency.

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

305 Section 2. (1) The Legislature finds that it is a public
 306 necessity that the following identifying and location
 307 information be exempt from s. 119.07(1), Florida Statutes, and
 308 s. 24(a), Article I of the State Constitution:

309 (a) The home addresses, telephone numbers, dates of birth,
 310 and photographs of current or former directors, managers,
 311 supervisors, and clinical employees of a child advocacy center
 312 that meets the standards of s. 39.3035(1), Florida Statutes, and
 313 fulfills the screening requirement of s. 39.3035(2), Florida
 314 Statutes.

315 (b) The home addresses, telephone numbers, dates of birth,
 316 and photographs of current or former members of a child
 317 protection team as described in s. 39.303, Florida Statutes,
 318 whose duties include supporting the investigation of child
 319 abuse, or sexual abuse, child abandonment, child neglect, or

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320 child exploitation or to provide services as part of a
 321 multidisciplinary case review team.

322 (c) The names, home addresses, telephone numbers,
 323 photographs, dates of birth, and places of employment of the
 324 spouses and children of personnel and members identified in
 325 paragraphs (a) and (b).

326 (d) The names and locations of schools and day care
 327 facilities attended by the children of such personnel and
 328 members.

329 (2) The Legislature finds that the release of such
 330 identifying and location information may place current or former
 331 directors, managers, supervisors, and clinical employees of a
 332 child advocacy center that meets the standards of s. 39.3035(1),
 333 Florida Statutes, and fulfills the screening requirement of s.
 334 39.3035(2), Florida Statutes, and the members of a child
 335 protection team as described in s. 39.303, Florida Statutes,
 336 whose duties include supporting the investigation of child
 337 abuse, or sexual abuse, child abandonment, child neglect, or
 338 child exploitation or to provide services as part of a
 339 multidisciplinary case review team, and the family members of
 340 such personnel, in danger of physical and emotional harm from
 341 hostile persons who may react inappropriately and violently to
 342 actions taken by such directors, managers, supervisors, or
 343 clinical employees of a child advocacy center or a member of a
 344 child protection team. These personnel and members provide
 345 services that are necessary and appropriate for abused,
 346 abandoned, neglected, and exploited children. In addition, these
 347 personnel and members provide valuable and supportive services
 348 to the state's most vulnerable residents. Despite the value of

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349 such services, some persons may become hostile toward these
350 personnel and members and may pose a threat to them
351 indefinitely. The harm that may result from the release of such
352 personal identifying and location information outweighs any
353 public benefit that may be derived from the disclosure of the
354 information.

355 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)

2/6/18

Meeting Date

1212

Bill Number (if applicable)

Topic PUBLIC RECORDS/CHILD ADVOCACY CENTERS

Amendment Barcode (if applicable)

Name DAPHNEE SAINVIL

Job Title POLICY ADVISOR

Address 115 S. ANDREWS AVE.

Phone 954-253-7320

Street

FT. LAUDERDALE FL 33301

Email dsainvil@broward.org

City

State

Zip

Speaking: For Against Information

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

Representing BROWARD COUNTY GOVT

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)

APPEARANCE RECORD

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

2/6/18

Meeting Date

1212

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title Saving families 7@ Gmail.com

Address 9166 Sunrise Dr

Phone _____

Street

Largo

City

Fl.

State

33773

Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on the
Environment and Natural Resources, *Chair*
Appropriations
Appropriations Subcommittee on Health and
Human Services
Education
Environmental Preservation and
Conservation
Health Policy
Rules

SENATOR LAUREN BOOK

Democratic Leader Pro Tempore
32nd District

January 17, 2018

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

Chair Baxley,

I respectfully request that you place CS/SB 1212, relating to Public Records/Child Advocacy Centers, on the agenda of the Committee on Governmental Oversight and Accountability at your earliest convenience.

Should you have any questions or concerns, please feel free to contact my office or me. Thank you in advance for your consideration.

Thank you,

A handwritten signature in cursive script that reads "Lauren Book".

Senator Lauren Book
Senate District 32

cc: Diana Caldwell, Staff Director
Tamra Redig, Administrative Assistant

REPLY TO:

- 967 Nob Hill Road, Plantation, Florida 33324 (954) 424-6674
- 202 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7016

INTRODUCER: Agriculture Committee

SUBJECT: OGSR/School Food and Nutrition Service Program

DATE: February 5, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Akhavein</u>	<u>Becker</u>		AG Submitted as Committee Bill
1.	<u>Brown</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7016 provides an Open Government Sunset Review (OGSR) of a public records exemption for certain personal identifying information of students and families who receive free or reduced cost meals during the school year, including the summer period. Specifically, the public records exemption upon which the OGSR is based makes exempt from disclosure by designated agencies personal identifying information on recipients of free or reduced cost meals.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed to protect information of sensitive, personal nature, the release of which could be defamatory, cause unwarranted damage to reputation, and possibly jeopardize the individual's personal safety. The justification upon which the exemption is based remains valid. Therefore, the bill deletes the repeal date of the public records exemption.

Additionally, agencies identified in the original public records exemption as holding the personal identifying information are the Department of Agriculture and Consumer Services (DACCS), the Department of Children and Families (DCF), and the Department of Education (DOE). The DCF indicates, however, that the agency does not receive information related to applicants and participants in school food and nutrition programs. Therefore, the bill narrows the exemption by removing the reference to the DCF as one of the agencies that holds this personal identifying information.

As the bill continues an existing public records exemption, and narrows rather than expands the exemption, a vote of each house by simply majority for passage is required.

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.¹ 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.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ 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.⁵

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.⁶ 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.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ 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.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ 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.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *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

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² 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.¹³

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.¹⁴ 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.¹⁵ 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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

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.
¹² 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).

¹³ 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).

¹⁴ 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.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

If, in reenacting an exemption, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²¹ 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.²²

School Food and Nutrition Service Programs

Federal law authorizes federal financial assistance to states for the operation of school food and nutrition service programs.²³ The United States Department of Agriculture annually prescribes income guidelines for determining eligibility for free and reduced price meals.²⁴ DACS is the state administrator of school food and nutrition service programs. Programs include the National School Lunch Program, the Special Milk Program, the School Breakfast Program, the Summer Food Service Program, the Fresh Fruit and Vegetable Program, and any other program that relates to school nutrition under the purview of DACS.²⁵

Applicants for, or participants in school food and nutrition service programs provide certain sensitive, personal information to DACS and the DOE. In addition, the DCF receives information from the United States Social Security Administration and determines Medicaid eligibility for Florida and forwards that information to DACS and local education agencies to determine qualification in a school food and nutrition service program. Although DCF shares certain information with DACS, DCF does not receive information related to applicants for, or participants in school food and nutrition service programs.

Public Records Exemption for School Food Programs

Current law provides a public records exemption for personal identifying information of an applicant for, or participant in a school food and nutrition service program for information held by the DACS, the DCF, and the DOE.²⁶ The public records exemption makes exempt from disclosure this information except to another governmental entity in the performance of its official duties and responsibilities, or a person with written consent of the applicant for, or

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

²¹ FLA. CONST. art. I, s. 24(c).

²² Section 119.15(7), F.S.

²³ See the Child Nutrition Act of 1966 (42 U.S.C. 1771 et seq) and the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq).

²⁴ 42 U.S.C.1758(b)(1)(A) and 42 U.S.C. 1773(e)(1)(A); see also USDA Food and Nutrition Service, *Income Eligibility Guidelines*, available at: <https://www.fns.usda.gov/school-meals/income-eligibility-guidelines> (last visited Feb. 1, 2018).

²⁵ Section 595.402(3), F.S.

²⁶ Chapter 2013-217, L.O.F.(HB 7089).

participant in the program. Additionally, a legal guardian may access certain information about participation in the program.

The public necessity statement for the bill provides that the protected information is of a sensitive, personal nature, the release of which could defame the individual, cause unwarranted damage to his or her reputation, and possibly jeopardize his or her safety. Additionally, the state's ability to effectively and efficiently administer the program would be significantly impaired without the exemption.

The bill upon which the exemption is based provides that the exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2018, unless reviewed and saved from repeal by the Legislature before that date.

Staff Review of the Exemption

The Open Government Sunset Review Act requires that a public records exemption must serve an identifiable public purpose in order to be maintained. As part of the Open Government Sunset Review, professional staff of the Senate Agriculture Committee sent a questionnaire to DACS, DOE, and DCF. DACS and DOE recommend continuing the exemption, and DCF does not oppose narrowing the application of the exemption by removing DCF from the exemption.²⁷

III. Effect of Proposed Changes:

The bill provides an Open Government Sunset Review of a public records exemption for certain personal identifying information of students and families who receive free or reduced cost meals during the school year, including the summer period. Specifically, the public records exemption upon which the OGSR is based makes exempt from disclosure by designated agencies personal identifying information on recipients of free or reduced cost meals.

The original public necessity statement of the bill provided that the exemption is needed to protect information of sensitive, personal nature, the release of which could be defamatory, cause unwarranted damage to reputation, and possibly jeopardize the individual's personal safety. The justification upon which the exemption is based remains valid. Therefore, the bill deletes the repeal date of the public records exemption.

Additionally, agencies identified in the original public records exemption as holding the personal identifying information are the DACS, the DCF, and the DOE. The DCF indicates, however, that the agency does not receive information related to applicants and participants in school food and nutrition programs. Therefore, the bill recommends narrowing the exemption by removing the reference to the DCF as one of the agencies that holds this personal identifying information.

As the bill continues an existing public records exemption, and narrows rather than expands the exemption, a vote of each house by simple majority for passage is required.

The bill takes effect October 1, 2018.

²⁷ The survey is on file with the Senate Agriculture Committee.

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:

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. The bill does not create or expand a public records exemption, and actually narrows the existing exemption. Therefore, just a simple majority vote suffices for passage.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 595.409 of the Florida Statutes.

IX. Additional Information:

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

None.

- B. **Amendments:**

None.

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

By the Committee on Agriculture

575-02459A-18

20187016__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 595.409, F.S., relating
 4 to an exemption from public record requirements for
 5 personal identifying information of an applicant for
 6 or participant in a school food and nutrition service
 7 program; removing applicability of the exemption to
 8 such information held by the Department of Children
 9 and Families; removing the scheduled repeal of the
 10 exemption; providing an effective date.

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

15 Section 1. Section 595.409, Florida Statutes, is amended to
 16 read:

17 595.409 Public records exemption.—

18 (1) Personal identifying information of an applicant for or
 19 participant in a school food and nutrition service program, as
 20 defined in s. 595.402, held by the department, ~~the Department of~~
 21 ~~Children and Families,~~ or the Department of Education is exempt
 22 from s. 119.07(1) and s. 24(a), Art. I of the State
 23 Constitution.

24 (2) (a) Such information shall be disclosed to:

25 1. Another governmental entity in the performance of its
 26 official duties and responsibilities; or

27 2. Any person who has the written consent of the applicant
 28 for or participant in such program.

29 (b) This section does not prohibit a participant's legal

Page 1 of 2

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

575-02459A-18

20187016__

30 guardian from obtaining confirmation of acceptance and approval,
 31 dates of applicability, or other information the legal guardian
 32 may request.

33 (3) This exemption applies to any information identifying a
 34 program applicant or participant held by the department, ~~the~~
 35 ~~Department of Children and Families,~~ or the Department of
 36 Education before, on, or after the effective date of this
 37 exemption.

38 ~~(4) This section is subject to the Open Government Sunset~~
 39 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 40 ~~on October 2, 2018, unless reviewed and saved from repeal~~
 41 ~~through reenactment by the Legislature.~~

42 Section 2. This act shall take effect October 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)

2/6/18

Meeting Date

SB 7016

Bill Number (if applicable)

Topic SCHOOL FOOD : NUTRITION PROGRAM

Amendment Barcode (if applicable)

Name DIANA PADGETT

Job Title GOV. CONSULTANT

Address 1492 VIEUX CARRE

Street

Phone 850-212-4204

TALL

City

FL

State

32308

Zip

Email DHP CONSULTING @

EARTHINK.NET

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

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

Representing FL. SCHOOL NUTRITION ASSOCIATION

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

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

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7018
INTRODUCER: Ethics and Elections Committee
SUBJECT: OGSR/Agency Investigations
DATE: February 5, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Carlton</u>	<u>Ulrich</u>		EE Submitted as Committee Bill
1.	<u>Peacock</u>	<u>Caldwell</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7018 is based on an Open Government Sunset Review of a public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct. The bill removes the scheduled October 2, 2018, repeal date.

Since the bill does not create or expand an exemption to public records law, the bill requires a majority vote of each house of the Legislature for passage.

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

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.¹ 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.²

¹ FLA. CONST., Art. I, s. 24(a).

² *Id.*

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

[i]t 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.⁵

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.⁶ 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.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

The Legislature may create an exemption to open meetings requirements by passing a general law by a two-thirds vote of the House and the Senate.⁹ 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.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² Records designated as ‘confidential and exempt’ may be released by the records custodian only under the circumstances defined by the Legislature.

³ 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.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., Art. I, s. 24(c).

¹⁰ *Id.*

¹¹ *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.

¹² 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).

Records designated as ‘exempt’ may be released at the discretion of the records custodian under certain circumstances.¹³

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.¹⁴ 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.¹⁵ 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.¹⁶ 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;¹⁷
- 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;¹⁸ or
- It protects trade or business secrets.¹⁹

The OGSR also requires specified questions to be considered during the review process.²⁰ In examining an exemption, the OGSR asks the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the Legislature expands an exemption, a public necessity statement and a two-thirds vote for passage are required.²¹ 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

¹³ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁴ 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.

¹⁵ Section 119.15(3), F.S.

¹⁶ Section 119.15(6)(b), F.S.

¹⁷ Section 119.15(6)(b)1., F.S.

¹⁸ Section 119.15(6)(b)2., F.S.

¹⁹ Section 119.15(6)(b)3., F.S.

²⁰ Section 119.15(6)(a), F.S. The specified questions are:

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

²¹ FLA. CONST. Art. I, s. 24(c).

not required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²²

Public Record Exemption under Review

Current law requires that complaints of misconduct filed with an agency²³ against an agency employee be kept confidential and exempt²⁴ from public records requirements.²⁵ If an agency investigates such a complaint, the information obtained from the investigation is also confidential and exempt.²⁶ The complaint and the investigative information remain confidential and exempt until either the investigation ceases to be active or the agency provides written notice to the employee who is the subject of the complaint.²⁷ The written notice may be delivered personally or by mail and must state that the agency has concluded the investigation with a finding to proceed with disciplinary action or file charges²⁸ or not to proceed.²⁹

The 2013 public necessity statement³⁰ for the exemption provides the following policy rationale for its enactment:

The disclosure of information, such as the nature of the complaint against an agency employee and testimony and evidence given in the investigation of the complaint, could injure an individual and deter that person from providing information pertaining to internal investigations, thus impairing the ability of an agency to conduct an investigation that is fair and reasonable. In the performance of its lawful duties and responsibilities, an agency may need to obtain information for the purpose of determining an administrative action. Without an exemption from public record requirements to protect information of a sensitive personal nature provided to an agency in the course of an internal investigation, such information becomes a public record when received and must be divulged upon request. Disclosure of information obtained during an internal investigation conducted by an agency inhibits voluntary participation of individuals during internal investigations and makes it difficult if not impossible to determine the truth.³¹

²² Section 119.15(7), F.S.

²³ See *supra* note 6.

²⁴ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (See Attorney General Opinion 85-62, August 1, 1985).

²⁵ Section 119.071(2)(k)1., F.S.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Section 119.071(2)(k)1.b., F.S.

²⁹ Section 119.071(2)(k)1.a., F.S.

³⁰ Article I, s. 24(c), FLA. CONST., requires each public record exemption “state with specificity the public necessity statement justifying” its existence.

³¹ Chapter 2013-248, L.O.F.

The public records exemption regarding complaints of misconduct filed with a state agency against an agency employee will repeal on October 2, 2018, unless reenacted by the Legislature.

Open Government Sunset Review Results

During the 2017 interim, staff with the Senate Committee on Ethics and Elections sent a questionnaire to every state agency, county, city, sheriff's office, public defender's office, and state attorney's office. In all, 62 questionnaire responses were received.³² A majority of respondents recommended that the exemption be reenacted without changes and no respondents recommended letting the exemption repeal. Many respondents reported that their agency had received public record requests for the exempt information. The most common rationale offered for maintaining the exemption was that the temporary confidentiality it afforded the agency allowed it to maintain the fairness and integrity of the investigation that in turn encouraged all parties involved to be candid and forthcoming.

III. Effect of Proposed Changes:

Section 1 amends s. 119.071(2), F.S., to remove the scheduled repeal date of October 2, 2018, in the public records exemption.

Effectively, the bill permits the public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint of misconduct to continue as it currently exists.

Section 2 provides an effective date of October 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:

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

The bill reenacts an existing public records exemption for complaints of misconduct filed with an agency against an agency employee and all information obtained from an investigation by the agency of the complaint. The bill complies with the requirements of article I, s. 24(c) of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

³² The questionnaire and responses are on file with the Senate Committee on Ethics and Elections.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By the Committee on Ethics and Elections

582-02645-18

20187018__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 119.071, F.S., which
 4 provides an exemption from public records requirements
 5 for complaints of misconduct filed with an agency
 6 against an agency employee, and all information
 7 obtained pursuant to an agency investigation of such
 8 complaints; removing the scheduled repeal of the
 9 exemption; providing an effective date.

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

12
 13 Section 1. Paragraph (k) of subsection (2) of section
 14 119.071, Florida Statutes, is amended to read:

15 119.071 General exemptions from inspection or copying of
 16 public records.—

17 (2) AGENCY INVESTIGATIONS.—

18 (k)~~1~~ A complaint of misconduct filed with an agency
 19 against an agency employee and all information obtained pursuant
 20 to an investigation by the agency of the complaint of misconduct
 21 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 22 I of the State Constitution until the investigation ceases to be
 23 active, or until the agency provides written notice to the
 24 employee who is the subject of the complaint, either personally
 25 or by mail, that the agency has either:

26 1.a Concluded the investigation with a finding not to
 27 proceed with disciplinary action or file charges; or

28 2.b Concluded the investigation with a finding to proceed
 29 with disciplinary action or file charges.

Page 1 of 2

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

582-02645-18

20187018__

30 ~~2. Subparagraph 1. is subject to the Open Government Sunset~~
 31 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
 32 ~~on October 2, 2018, unless reviewed and saved from repeal~~
 33 ~~through reenactment by the Legislature.~~

34 Section 2. This act shall take effect October 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)

2/6/18

Meeting Date

7018

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Greg Pound

Job Title _____

Address 9166 Sunrise Dr

Phone _____

Street

Largo

City

Fl.

State

33773

Zip

Email _____

Speaking: For Against Information

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

Representing Swing Families 7@Gmail.com

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7020

INTRODUCER: Ethics and Elections Committee

SUBJECT: OGSR/Complaints of Violations and Referrals

DATE: February 5, 2018 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Carlton	Ulrich		EE Submitted as Committee Bill
1.	Brown	Caldwell	GO	Favorable
2.			RC	

I. Summary:

SB 7020 is based upon an Open Government Sunset Review (OGSR) of a public records and public meetings exemption for certain information relating to complaints of violations by public officers and public employees. The public records exemption upon which the OGSR is based makes confidential and exempt from public records disclosure a complaint and records relating to a complaint or to any preliminary investigation held by:

- The Commission on Ethics (commission) or its agents;
- A Commission on Ethics and Public Trust established by a county or municipality; or
- A county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics.

The public records exemption additionally applies to written referrals and related records held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to a preliminary investigation of referrals held by the commission.

A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meeting requirements. Similarly, a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meeting requirements.

The above records and meetings are exempt until:

- The complaint is dismissed;
- The alleged violator requests in writing that the records or proceedings be made public;
- The commission determines it will not investigate the referral; or

- The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed as release of the information could defame or otherwise damage the reputation of the individual under investigation, or significantly impair the integrity of the investigation.

The justification upon which the exemption is based remains valid. Additionally, the exemption is time-limited. Therefore, the bill deletes the repeal date of the public records exemption.

As the bill continues an existing public records exemption, a vote of each house by simple majority for passage is required.

The bill takes effect October 1, 2018.

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.¹ 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.²

In addition to the Florida Constitution, the Florida Statutes provide that the public may access legislative and executive branch records.³ Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.⁴ 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.⁵

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.⁶ The Florida Supreme

¹ FLA. CONST., art. I, s. 24(a).

² FLA. CONST., art. I, s. 24(a).

³ 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.

⁴ Public records laws are found throughout the Florida Statutes.

⁵ Section 119.01(1), F.S.

⁶ 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

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.”⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

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.⁹ 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.¹⁰ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.¹¹

When creating a public records exemption, the Legislature may provide that a record is ‘confidential and exempt’ or ‘exempt.’¹² 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.¹³

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁴ Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.¹⁵ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.¹⁶

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.”

⁷ *Shevin v. Byron, Harless, Schaffer, Reid, and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁸ Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ FLA. CONST., art. I, s. 24(c).

¹¹ *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.

¹² 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).

¹³ 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).

¹⁴ FLA. CONST., art. I, s. 24(b).

¹⁵ FLA. CONST., art. I, s. 24(b).

¹⁶ FLA. CONST., art. I, s. 24(b). Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”¹⁷ or the “Sunshine Law,”¹⁸ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.¹⁹ The board or commission must provide the public reasonable notice of such meetings.²⁰ Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.²¹ Minutes of a public meeting must be promptly recorded and open to public inspection.²² Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.²³ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁴

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.²⁵ 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.²⁶ A statutory exemption that does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁷

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.²⁸ 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.²⁹ In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

¹⁷ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

¹⁸ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

¹⁹ Section 286.011(1)-(2), F.S.

²⁰ *Id.*

²¹ Section 286.011(6), F.S.

²² Section 286.011(2), F.S.

²³ Section 286.011(1), F.S.

²⁴ Section 286.011(3), F.S.

²⁵ FLA. CONST., art. I, s. 24(c).

²⁶ FLA. CONST., art. I, s. 24(c).

²⁷ *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.

²⁸ 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.

²⁹ Section 119.15(3), F.S.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁰ 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;³¹
- 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;³² or
- It protects trade or business secrets.³³

The OGSR also requires specified questions to be considered during the review process.³⁴ 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.³⁵ 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.³⁶

Florida Commission on Ethics

The Florida Commission on Ethics (commission) serves as guardian of the standards of conduct for the officers and employees of the state and its political subdivisions.³⁷ It is an independent commission, created by the Florida Constitution,³⁸ responsible for investigating and issuing public reports on complaints of breaches of the public trust³⁹ by public officers and employees. The commission must investigate sworn complaints of violations of the Code of Ethics for Public

³⁰ Section 119.15(6)(b), F.S.

³¹ Section 119.15(6)(b)1., F.S.

³² Section 119.15(6)(b)2., F.S.

³³ Section 119.15(6)(b)3., F.S.

³⁴ Section 119.15(6)(a), F.S. The specified questions are:

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

³⁵ FLA. CONST. art. I, s. 24(c).

³⁶ Section 119.15(7), F.S.

³⁷ Section 112.320, F.S.

³⁸ Article II, s. 8(f), FLA. CONST.

³⁹ Section 112.312(3), F.S., defines "breach of the public trust" as a violation of a provision of the State Constitution or the Code of Ethics which establishes a standard of ethical conduct, a disclosure requirement, or a prohibition applicable to public officers or employees in order to avoid conflicts between public duties and private interests, including, without limitation, a violation of s. 8, Art. II of the State Constitution or of the Code of Ethics.

Officers and Employees (Code of Ethics)⁴⁰ or of any other law over which it has jurisdiction.⁴¹ The commission may initiate an investigation if it receives a sworn complaint.⁴² It may also investigate an alleged violation submitted to the commission via referral from the Governor, Florida Department of Law Enforcement, a state attorney, or a U.S. Attorney.⁴³

Complaints or referrals against a candidate in any election may not be filed, nor may any intention of filing such a complaint or referral be disclosed, on the day of any such election or within the 30 days immediately preceding the date of the election, unless the complaint or referral is based upon personal information or information other than hearsay.

Current law provides that the Code of Ethics does not prohibit the governing body of a political subdivision or an agency from imposing upon its own officers and employees additional or more stringent standards of conduct and disclosure requirements than those specified in the Code of Ethics, provided that those standards of conduct and disclosure requirements do not otherwise conflict with the provisions of the Code of Ethics.⁴⁴

Public Record and Public Meeting Exemptions under Review

Current law provides that the complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county⁴⁵ or by any municipality,⁴⁶ or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics are confidential and exempt⁴⁷ from public records requirements.⁴⁸

Written referrals, and records relating thereto, held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to any preliminary investigation of such referrals held by the commission, are confidential and exempt from public records requirements.⁴⁹

⁴⁰ Chapter 112, Part III, F.S.

⁴¹ Section 112.322(1), F.S.

⁴² Section 112.324(1)(a), F.S.

⁴³ Section 112.324(1)(b), F.S.

⁴⁴ Section 112.326, F.S.

⁴⁵ Section 125.011(1), F.S., defines “county” as a county operating under a home rule charter adopted pursuant to ss. 10, 11, and 24, Art. VIII of the Constitution of 1885, as preserved by Art. VIII, s. 6(e) of the Constitution of 1968, which county, by resolution of its board of county commissioners, elects to exercise the powers herein conferred.

⁴⁶ Section 165.031(3), F.S., defines “municipality” as a municipality created pursuant to general or special law authorized or recognized pursuant to s. 2 or s. 6, Art. VIII of the State Constitution.

⁴⁷ There is a difference between records the Legislature designates exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 683 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in statute. (*See Attorney General Opinion 85-62*, August 1, 1985).

⁴⁸ Section 112.324(2)(a), F.S.

⁴⁹ Section 112.324(2)(b), F.S.

A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meetings requirements.⁵⁰ Additionally, any proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meetings requirements.⁵¹

The above records and meetings are exempt until:

- The complaint is dismissed;
- The alleged violator requests in writing that such records or proceeding be made public;
- The commission determines it will not investigate the referral; or
- The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation, whether probable cause exists to believe that a violation has occurred.⁵²

The 2013 public necessity statement for the public records and public meetings exemption provides as justification that release of this information could:

- Be defamatory to the individual under investigation;
- Cause unwarranted damage to the reputation of the individual under investigation; or
- Significantly impair the integrity of the investigation.

Pursuant to the Open Government Sunset Review Act, the public record and public meeting exemptions will repeal on October 2, 2018, unless reenacted by the Legislature.

Open Government Sunset Review

During the 2017 interim, committee staff sent a questionnaire to the commission and to every county and city in the state. In all, 43 responses were received.⁵³ The commission stated it has received approximately five or six public record requests for the confidential and exempt information, however, the commission has not taken a position on whether the exemptions should be reenacted.

Of those received from the counties and cities, only three attested that they either had a Commission on Ethics and Public Trust or had established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics. Those respondents stated they have received public record requests for the confidential and exempt records and each recommended reenactment of the exemptions.

III. Effect of Proposed Changes:

This bill is based upon an Open Government Sunset Review (OGSR) of a public records and public meetings exemption for certain information relating to complaints of violations by public officers and public employees. The public records exemption upon which the OGSR is based

⁵⁰ Section 112.324(2)(c), F.S.

⁵¹ Section 112.324(2)(d), F.S.

⁵² Section 112.324(2)(e), F.S.

⁵³ The questionnaire and responses are on file with the Senate Committee on Ethics and Elections.

makes confidential and exempt from public records disclosure a complaint and records relating to a complaint or to any preliminary investigation held by:

- The Commission on Ethics (commission) or its agents;
- A Commission on Ethics and Public Trust established by a county or municipality; or
- A county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure requirements than those provided in the Code of Ethics.

The public records exemption additionally applies to written referrals and related records held by the commission, the Governor, the Department of Law Enforcement, or a state attorney, as well as records relating to a preliminary investigation of referrals held by the commission.

A proceeding, or any portion thereof, conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process, pursuant to a complaint or preliminary investigation, is exempt from public meeting requirements. Similarly, a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from public meeting requirements.

The above records and meetings are exempt until:

- The complaint is dismissed;
- The alleged violator requests in writing that the records or proceedings be made public;
- The commission determines it will not investigate the referral; or
- The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established its own investigatory process determines, based on the investigation, whether probable cause exists to believe that a violation has occurred.

The public records exemption is scheduled for repeal October 2, 2018, unless reviewed and saved from repeal before that date.

The original public necessity statement of the bill provided that the exemption is needed as release of the information could defame or otherwise damage the reputation of the individual under investigation, or significantly impair the integrity of the investigation.

The justification upon which the exemption is based remains valid. Additionally, the exemption is time-limited. Therefore, the bill deletes the repeal date of the public records exemption.

As the bill continues an existing public records exemption, a vote of each house by simple majority for passage is required.

The bill takes effect October 1, 2018. 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:

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

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Statutes Affected:

This bill substantially amends section 112.324 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By the Committee on Ethics and Elections

582-02647-18

20187020__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 112.324, F.S., which provides exemptions from public records and public meetings requirements for complaints alleging a violation of part III of ch. 112, F.S., and related records that are held by the Commission on Ethics or its agents and specified local government entities, for written referrals and related records that are held by the commission or its agents, the Governor, the Department of Law Enforcement, and state attorneys, and for portions of meetings at which complaints or referrals are discussed or acted upon; removing the scheduled repeal of the exemptions; providing an effective date.

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

Section 1. Subsection (2) of section 112.324, Florida Statutes, is amended to read:

112.324 Procedures on complaints of violations and referrals; public records and meeting exemptions.—

(2) (a) The complaint and records relating to the complaint or to any preliminary investigation held by the commission or its agents, by a Commission on Ethics and Public Trust established by any county defined in s. 125.011(1) or by any municipality defined in s. 165.031, or by any county or municipality that has established a local investigatory process to enforce more stringent standards of conduct and disclosure

Page 1 of 3

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

582-02647-18

20187020__

requirements as provided in s. 112.326 are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Written referrals and records relating to such referrals held by the commission or its agents, the Governor, the Department of Law Enforcement, or a state attorney, and records relating to any preliminary investigation of such referrals held by the commission or its agents, are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(c) Any portion of a proceeding conducted by the commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process, pursuant to a complaint or preliminary investigation, is exempt from s. 286.011, s. 24(b), Art. I of the State Constitution, and s. 120.525.

(d) Any portion of a proceeding of the commission in which a determination regarding a referral is discussed or acted upon is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution, and s. 120.525.

(e) The exemptions in paragraphs (a)-(d) apply until:

1. The complaint is dismissed as legally insufficient;
2. The alleged violator requests in writing that such records and proceedings be made public;
3. The commission determines that it will not investigate the referral; or
4. The commission, a Commission on Ethics and Public Trust, or a county or municipality that has established such local investigatory process determines, based on such investigation,

Page 2 of 3

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

582-02647-18

20187020__

59 whether probable cause exists to believe that a violation has
60 occurred.

61 (f) A complaint or referral under this part against a
62 candidate in any general, special, or primary election may not
63 be filed nor may any intention of filing such a complaint or
64 referral be disclosed on the day of any such election or within
65 the 30 days immediately preceding the date of the election,
66 unless the complaint or referral is based upon personal
67 information or information other than hearsay.

68 ~~(g) This subsection is subject to the Open Government~~
69 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
70 ~~repealed on October 2, 2018, unless reviewed and saved from~~
71 ~~repeal through reenactment by the Legislature.~~

72 Section 2. This act shall take effect October 1, 2018.

RECEIVED
DEPARTMENT OF STATE
2017 MAY 10 AM 9:17

CERTIFICATION

STATE OF FLORIDA
COUNTY OF Palm Beach

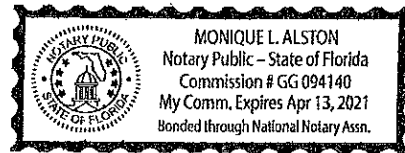
DEPARTMENT OF STATE
DIVISION OF ELECTIONS

Before me, the undersigned Notary Public of Florida, personally appeared Sean McFould, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.

Sean McFould
Signature of Applicant-Affiant

Sworn to and subscribed before me this 9th day of May, 2017.

Monique L. Alston
Signature of Notary Public-State of Florida



(Print, Type, or Stamp Commissioned Name of Notary Public)

My commission expires: _____

Personally Known OR Produced Identification

Type of Identification Produced _____

(seal)

S only

A black and white copy of this document is not official

1280

STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

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

Sean G. McGould

is duly appointed a member of the

Investment Advisory Council

for a term beginning on the Fourteenth day of March, A.D.,
2017, until the First day of February, A.D., 2020 and is subject
to be confirmed by the Senate during the next regular session of
the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Thirtieth day of May, A.D., 2017.*

Ken Detzner

Secretary of State



DSDDE 99 (3/03)

The original document has a reflective line mark in paper. Hold at an angle to view when checking.

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

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



17 APR 18 AM 10:15

D. J. ... HIONS
SECRETARY OF STATE

STATE OF FLORIDA

**PAM BONDI
ATTORNEY GENERAL**

March 13, 2017

Mr. Sean G. McGould
Lighthouse Partners
3801 PGA Boulevard
Suite 500
Palm Beach Gardens, Florida 33410

Dear Mr. McGould:

It is my honor to appoint you to the Investment Advisory Council effective March 14, 2017. Your term will run through February 1, 2020. I know that you will be a valuable addition to the Council.

By copy of this letter, I am advising Ash Williams with the State Board of Administration of your appointment. The Council staff will soon be providing you with an orientation package and meeting schedule. Should you have any questions in the meantime, please feel free to contact me or Kari Glisson at (850)413-1398.

Thank you for your willingness to serve.

Sincerely,

A handwritten signature in cursive script that reads "Pam Bondi".

Pam Bondi

PJB/jrr

Cc: Ash Williams, Executive Director & Chief Investment Officer, Florida State Board of Administration

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE

2017 MAY 10 AM 9:16

STATE OF FLORIDA

County of Palm Beach

DEPARTMENT OF STATE
DIVISION OF ELECTIONS

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

Investment Advisory Council
(Title of Office)

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

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

S m l l
Signature

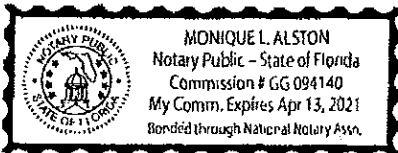
Sworn to and subscribed before me this 9th day of May, 2017.

Monique Alston
Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____



ACCEPTANCE

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

Mailing Address: Home Office

7104 Harbour Isles Place

Street or Post Office Box

N. Palm Beach FL 33410

City, State, Zip Code

SEAN McQuill

Print Name

S m l l

Signature

The Florida Senate
**COMMITTEE RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Governmental Oversight and Accountability
MEETING DATE: Tuesday, February 6, 2018
TIME: 11:00 a.m.—12:30 p.m.
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

TO: The Honorable Joe Negron, President
FROM: Committee on Governmental Oversight and Accountability

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Investment Advisory Council

Appointee: McGould, Sean

Term: 3/14/2017-2/1/2020

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Board of Administration.

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of
Eric Larson
Executive Director, Agency for State Technology


NOTICE OF HEARING

TO: Mr. Eric Larson

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Tuesday, February 6, 2018, in the James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building, commencing at 11:00 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 1st day of February, 2018

Committee on Governmental Oversight and
Accountability



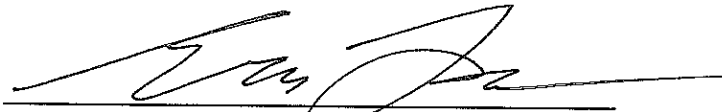
Senator Dennis Baxley
As Chair and by authority of the committee

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

CERTIFICATION

STATE OF FLORIDA
COUNTY OF Leon

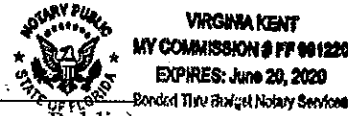
Before me, the undersigned Notary Public of Florida, personally appeared Eric Larson, who, after being duly sworn, say: (1) that he/she has carefully and personally prepared or read the answers to the foregoing questions; (2) that the information contained in said answers is complete and true; and (3) that he/she will, as an appointee, fully support the Constitutions of the United States and of the State of Florida.


Signature of Applicant-Affiant

Sworn to and subscribed before me this 28 day of September, 2017.

Virginia Kent
Signature of Notary Public-State of Florida

Virginia Kent
(Print, Type, or Stamp Commissioned Name of Notary Public)



My commission expires: 6/20/2020

Personally Known **OR** Produced Identification

Type of Identification Produced _____

(seal)

2300

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

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

Eric Larson

is duly appointed Executive Director,

State Chief Information Officer

for a term beginning on the Tenth day of March, A.D., 2017, to
serve at the pleasure of the Governor and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Ninth day of October, A.D., 2017.*



Ken Detzner

Secretary of State

DSDE 99- (3/03)

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

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



RICK SCOTT
GOVERNOR

17 MAR 10 PM 1:02

UNIVERSITY OF FLORIDA
SECRETARY OF STATE

March 10, 2017

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

Dear Secretary Detzner:

Please be advised I have made the following appointment:

Eric Larson

as State Chief Information Officer, succeeding Jason Allison, subject to confirmation by the Senate. This appointment is effective for a term beginning March 10, 2017, and ending at the pleasure of the Governor.

Please prepare the necessary papers and mail to:

Mr. Eric Larson

Thank you for your assistance in this matter.

Sincerely,

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

Rick Scott
Governor

RS/cr

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED
DEPARTMENT OF STATE
17 SEP 29 AM 11:21
DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

County of Leon

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

Executive Director for the Agency for State Technology

(Title of Office)

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

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

[Signature]
Signature

Sworn to and subscribed before me this 28 day of September, 2017.

Virginia Kent
Signature of Officer Administering Oath or of Notary Public

Virginia Kent
Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known OR Produced Identification

Type of Identification Produced _____



ACCEPTANCE

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

Mailing Address: Home Office

Street or Post Office Box

Eric Larson
Print Name

City, State, Zip Code

[Signature]
Signature

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

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

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

WITNESS'S NAME: Eric Larson

ANSWER: "I do."

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

COMMITTEE NAME: Governmental Oversight and Accountability

DATE: February 6, 2018

THE FLORIDA SENATE
APPEARANCE RECORD

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

2-6-18
Meeting Date

Bill Number (if applicable)

Topic Senate confirmation

Amendment Barcode (if applicable)

Name Eric Larson

Job Title Executive Director of State CIO

Address 4050 Espanola way suite 115
Street
Tallahassee, FL 32311
City State Zip

Phone (850) 412-6050

Email eric.larsen@ost.mystrods.com

Speaking: For Against Information

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

Representing Agency for State Technology

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
**COMMITTEE RECOMMENDATION ON
EXECUTIVE APPOINTMENT**

COMMITTEE: Committee on Governmental Oversight and Accountability
MEETING DATE: Tuesday, February 6, 2018
TIME: 11:00 a.m.—12:30 p.m.
PLACE: James E. "Jim" King, Jr. Committee Room, 401 Senate Office Building

TO: The Honorable Joe Negron, President
FROM: Committee on Governmental Oversight and Accountability

The committee was referred the following executive appointment subject to confirmation by the Senate:

Office: Executive Director, Agency for State Technology

Appointee: Larson, Eric

Term: 3/10/2017-Pleasure of Governor

After inquiry and due consideration, the committee recommends that the Senate **confirm** the aforesaid executive appointment made by the Governor.

APPEARANCE RECORD

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

2/6/18

Meeting Date

97

Bill Number (if applicable)

Topic Offices Appointments

Amendment Barcode (if applicable)

Name Greg Round

Job Title _____

Address 9166 Sunrise Dr

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.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Higher Education, *Chair*
Appropriations
Appropriations Subcommittee on Transportation, Tourism, and Economic Development
Education
Governmental Oversight and Accountability
Rules
Transportation

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR BILL GALVANO

21st District

February 6, 2018

Senator Dennis Baxley
404 S. Monroe Street
525 Knott Building
Tallahassee, FL 32399

Dear Chairman Baxley:

I am writing to request approval to be excused from the Committee on Governmental Oversight and Accountability meeting scheduled for today. I apologize for the delay in submitting this request.

I appreciate your consideration in this matter.

Sincerely,

A handwritten signature in blue ink that reads "Bill".

Bill Galvano

cc: Diana Caldwell
Tamra Redig

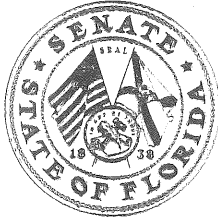
REPLY TO:

- 1023 Manatee Avenue West, Suite 201, Bradenton, Florida 34205 (941) 741-3401
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5021

Senate's Website: www.flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore



THE FLORIDA SENATE

SENATOR DENNIS BAXLEY
12th District

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health and
Human Services
Agriculture
Transportation

SELECT COMMITTEE:
Joint Select Committee on Collective Bargaining

JOINT COMMITTEE:
Joint Legislative Auditing Committee

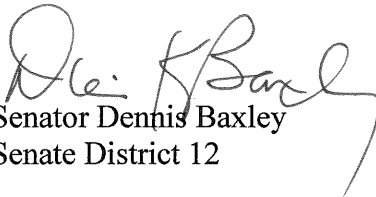
February 6, 2018

Senator Dennis Baxley, Chair
Government Oversight & Accountability
320 Senate Office Building
Tallahassee, Florida 32399

Dear Senator Baxley,

Please excuse my absence from Government Oversight and Accountability Committee meeting today as I was in Community Affairs presenting another bill.

Onward & Upward,


Senator Dennis Baxley
Senate District 12

DKB/dd

320 Senate Office Building, 404 South Monroe St, Tallahassee, Florida 32399-1100 • (850) 487-5012
Email: baxley.dennis@flsenate.gov

JOE NEGRON
President of the Senate

ANITERE FLORES
President Pro Tempore

CourtSmart Tag Report

Room: SB 401

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 2/6/2018 11:05:00 AM

Ends: 2/6/2018 11:49:32 AM

Length: 00:44:33

11:05:04 AM Meeting called to order by Vice Chair Mayfield
11:05:20 AM Roll call - Quorum is present
11:05:36 AM Chair, Comments. Pledge of Allegiance led by Sen. Stargel
11:06:19 AM Recording Paused
11:06:20 AM Informal Recess
11:06:32 AM Recording Resumed
11:06:46 AM Tab 2 - CS/B 862 - Sen. Bracy - Public Records/Sealing of Criminal History Records
11:07:55 AM Questions, Appearance Cards, Debate? None
11:08:01 AM Sen. Bracy waives close
11:08:11 AM Roll call CS/SB 862 - Favorable
11:08:32 AM Recording Paused. Informal Recess
11:10:19 AM Recording Resumed
11:10:21 AM Tab 8 - Senate Confirmation Sean McGould, Appointment to the Investment Advisory Council
11:10:27 AM No debate. No appearance cards. Motion to confirm?
11:10:37 AM Motion by Sen Stargel to Recommend Confirmation
11:10:54 AM Roll Call for Confirmation of Sean McGould - favorable
11:11:17 AM Tab 9 - Eric Laron - Appointment to the Agency for State Technology
11:11:51 AM Eric Larson is sworn in by Chair. Eric addresses the committee
11:14:17 AM Questions? None
11:14:32 AM Greg Pound, constituent, giving information regarding appointments. Nothing against Mr. Larson
11:15:59 AM Chair address Mr. Pound with regard to his questions and concerns.
11:16:33 AM Sen. Stargel is in support of Eric Larson
11:17:12 AM Debate? None.,
11:17:25 AM Sen. Stargel and Sen. Rader make motion to recommend confirmation of Eric Larson as Executive
Director Chief Information Officer, Agency for State Technology
11:17:39 AM Roll Call - Confirmation of Eric Larson - favorable
11:17:57 AM Recording Paused. Informal Recess
11:18:13 AM Recording Resumed
11:18:36 AM Chair recognizes FSU group in audience
11:19:00 AM Student from FSU group - FBLA addresses the committee
11:19:50 AM Sen. Rader to FSU group
11:21:01 AM Student addresses committee
11:21:45 AM Chair to students
11:21:56 AM National President of FBLA
11:22:55 AM Tab 6 - SB 7018 by Sen. Perry - OSGR/Agency Investigations
11:23:20 AM Questions?
11:23:27 AM Sen. Rader, where is the 1st Amendment Foundation on this?
11:23:51 AM Greg Pound, Largo, Does not oppose bill but is speaking to give information on problem with Ethics in
elections office
11:25:29 AM Debate? None.
11:25:35 AM Sen. Perry waives close
11:25:48 AM Roll call on SB 7018 - Favorable
11:26:07 AM Tab 7 - SB 7020 by Sen. Perry - OSGR/Complaints of Violations and Referrals
11:26:29 AM Questions? None.
11:26:36 AM No appearance cards and no debate
11:26:52 AM Roll call SB 7020 - favorable
11:27:09 AM Tab 1 -SB 738 - by Sen. Perry - Public Records and Public Meetings/Firesafety System Plans
11:27:57 AM Questions? Appearance? Debate? None
11:28:02 AM Sen. Perry waives close
11:28:08 AM Roll call SB 738 - favorable
11:28:33 AM Recording Paused. Informal recess.
11:35:23 AM Recording Resumed

11:35:33 AM Chair calls meeting back to order.
11:35:42 AM Tab 4 - SB 1212 by Sen. Book, Public Records/Child Advocacy Centers
11:37:09 AM Questions? None
11:37:18 AM Daphnee Sainvil, Policy Advisor, Broward Co. Gov't. waives in support
11:37:29 AM Greg Pound, citizen, to oppose bill
11:39:14 AM Debate? Questions?
11:39:25 AM Sen. Stargel, question of sponsor. Just personal information?
11:39:31 AM Sen. Book in response
11:39:37 AM Debate
11:39:50 AM Sen. Rader to Sen. Book compliments Sen. Book for being an advocate
11:40:30 AM Sen. Stargel comments that she support the bill
11:41:09 AM Sen. Rouson to Mr. Pound regarding what bill does
11:42:29 AM Chair, echo comments made by Sen. Rader, Sen. Stargel, Sen. Rouson
11:42:39 AM Sen. Book to close
11:43:16 AM Roll call SB 1212 - Favorable
11:44:06 AM Motion by Sen. Rouson to be shown as voting in the affirmative for SB 862, Conf. Tab 8 and Tab 9, SB 7018- SB 7020, SB 738
11:44:16 AM Tab 3 - CS/SB 1018 by Sen. Stargel, Lifeline Service
11:45:05 AM 3 amendments to CS/SB 1018 by Sens. Bean and Stargel
11:45:15 AM Barcode 666478 Strike all amendment
11:45:41 AM Questions? No appearance cards
11:45:57 AM Technical Amendment 494990
11:46:10 AM Questions on amendment to amendment,
11:46:19 AM Amendment to amendment is adopted
11:46:34 AM Technical Amendment 842668 - Adopted
11:46:47 AM Back on main amendment as amended.
11:46:53 AM Debate? None
11:47:01 AM Sen. Stargel waives to close
11:47:08 AM Amendment is adopted
11:47:14 AM Back on bill as amended
11:47:23 AM Cameron Yarbrough, Gov. Relations, Q Link Wireless, waives in support
11:47:32 AM Sen. Stargel to close. Waives close
11:47:50 AM Roll call - CS/CS SB 1018 - Favorable
11:48:01 AM Tab 5 - SB 7016 - Sen. Grimsley to present bill - OSGR/Complaints of Violations and Referrals
11:48:46 AM No questions. No debate.
11:48:51 AM Diana Padgett, Gov. Consultant, FL. School Nutrition Association, waives in support
11:48:57 AM Sen. Grimsley waives close
11:49:08 AM Roll Call on SB 7016 - Favorable
11:49:19 AM Chair - business? None
11:49:24 AM Sen. Rader moves to adjourn