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| <b>Tab 1</b> | <b>SB 7002</b> by <b>HP</b> ; (Identical to H 07003) OGSR/Alzheimer's Disease Research Grant Advisory Board |
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| <b>Tab 2</b> | <b>SB 7004</b> by <b>HP</b> ; (Identical to H 07009) OGSR/Department of Health Personnel |
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| <b>Tab 3</b> | <b>SB 246</b> by <b>Hooper</b> ; (Similar to H 00101) Public Construction |
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| <b>Tab 4</b> | <b>SPB 7028</b> by <b>GO</b> ; Judicial Retirement |
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**The Florida Senate**  
**COMMITTEE MEETING EXPANDED AGENDA**

**GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY**

**Senator Hooper, Chair**  
**Senator Rader, Vice Chair**

**MEETING DATE:** Tuesday, February 12, 2019

**TIME:** 4:00—5:30 p.m.

**PLACE:** 301 Senate Building

**MEMBERS:** Senator Hooper, Chair; Senator Rader, Vice Chair; Senators Albritton, Bean, and Torres

| TAB                             | BILL NO. and INTRODUCER  | BILL DESCRIPTION and<br>SENATE COMMITTEE ACTIONS  | COMMITTEE ACTION   |
|---------------------------------|--|---|--|
| 1                               | <b>SB 7002</b><br>Health Policy<br>(Identical H 7003)                          | OGSR/Alzheimer's Disease Research Grant Advisory Board; Amending provisions relating to an exemption from the public records and meeting requirements for applications provided to the Alzheimer's Disease Research Grant Advisory Board within the Department of Health and the review of such applications; removing the scheduled repeal of the exemption, etc.<br><br>GO 02/12/2019 Favorable<br>RC | Favorable<br>Yeas 4 Nays 0   |
| 2                               | <b>SB 7004</b><br>Health Policy<br>(Identical H 7009, Compare H 203, CS/S 248) | OGSR/Department of Health Personnel; Amending provisions relating to an exemption from the public records requirements for personal identifying and location information and photographs of certain Department of Health personnel; removing the scheduled repeal of the exemption, etc.<br><br>GO 02/12/2019 Favorable<br>RC   | Favorable<br>Yeas 4 Nays 0   |
| 3                               | <b>SB 246</b><br>Hooper<br>(Similar H 101)                                     | Public Construction; Revising requirements for Department of Management Services rules governing certain contracts; revising the amounts of retainage that certain public entities and contractors may withhold from progress payments for any construction services contract, etc.<br><br>GO 02/12/2019 Fav/CS<br>CA<br>AP   | Fav/CS<br>Yeas 4 Nays 0  |
| Consideration of proposed bill: |  |   |  |
| 4                               | <b>SPB 7028</b>  | Judicial Retirement; Modifying provisions authorizing justices or judges to purchase additional service credit in the Florida Retirement System under certain circumstances to conform to the revisions made to the mandatory judicial retirement age established in s. 8, Art. V of the State Constitution, etc.   | Submitted and Reported<br>Favorably as Committee Bill<br>Yeas 4 Nays 0 |

Other Related Meeting Documents

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Tuesday, February 12, 2019, 4:00—5:30 p.m.

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

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

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

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BILL: SB 7002

INTRODUCER: Health Policy Committee

SUBJECT: OGSR/Alzheimer's Disease Research Grant Advisory Board

DATE: February 11, 2019

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

|    | ANALYST                | STAFF DIRECTOR | REFERENCE | ACTION                                |
|----|------------------------|----------------|-----------|---------------------------------------|
|    | Rossitto-Van<br>Winkle | Brown          |           | <b>HP Submitted as Committee Bill</b> |
| 1. | Ponder                 | McVaney        | GO        | <b>Favorable</b>                      |
| 2. |                        |                | RC        |                                       |

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**I. Summary:**

SB 7002 amends s. 381.82(3)(d), F.S., to save from repeal the public records exemptions for information related to the Alzheimer's Disease Research Grant Advisory Board's (the board) receipt and review of research grant applications. The documents received, and those generated by the board during the review process, except final recommendations, are designated as confidential and exempt but may be disclosed under certain circumstances.

The bill also saves from repeal the public meetings exemption for those portions of the board's meetings at which the grant applications are discussed.

The exemptions are subject to the Open Government Sunset Review Act (OGSR) and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill takes effect October 1, 2019.

**II. Present Situation:**

**Public Records Law**

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

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

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

legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that:

[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.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.<sup>9</sup> The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup> A statutory exemption, which does not meet these two criteria, may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

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

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

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

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

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

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

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

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

<sup>11</sup> *Halifax Hosp. Medical Center v. News-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 public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>12</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

### Open Meetings Laws

The Florida Constitution also provides that the public has a right to access governmental meetings.<sup>14</sup> 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.<sup>15</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>16</sup>

Public policy regarding access to government meetings is also addressed in the Florida Statutes. Section 286.011, F.S., which is also known as the “Government in the Sunshine Law,”<sup>17</sup> or the “Sunshine Law,”<sup>18</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken, to be open to the public.<sup>19</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>20</sup> 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.<sup>21</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>22</sup>

Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>23</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>24</sup>

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of both the Senate and the House of Representatives.<sup>25</sup> The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>26</sup> A statutory

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

<sup>14</sup> FLA. CONST. art. I, s. 24(b).

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

<sup>16</sup> 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.”

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

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

<sup>19</sup> Section 286.011(1)-(2), F.S.

<sup>20</sup> *Id.*

<sup>21</sup> Section 286.011(6), F.S.

<sup>22</sup> Section 286.011(2), F.S.

<sup>23</sup> Section 286.011(1), F.S.

<sup>24</sup> Section 286.011(3), F.S.

<sup>25</sup> FLA. CONST. art. I, s. 24(c).

<sup>26</sup> *Id.*

exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>27</sup>

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

The OGSR prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>28</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>29</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>30</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>31</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>32</sup> or
- It protects trade or business secrets.<sup>33</sup>

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

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.<sup>35</sup> If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then

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<sup>27</sup> See *supra*, note 11.

<sup>28</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

<sup>29</sup> Section 119.15(3), F.S.

<sup>30</sup> Section 119.15(6)(b), F.S.

<sup>31</sup> Section 119.15(6)(b)1., F.S.

<sup>32</sup> Section 119.15(6)(b)2., F.S.

<sup>33</sup> Section 119.15(6)(b)3., F.S.

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

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

<sup>35</sup> FLA. CONST. art. I, s. 24(c).

a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.<sup>36</sup>

### **Ed and Ethel Moore Alzheimer's Disease Research Program**

The Ed and Ethel Moore Alzheimer's Research Program is established within the Florida Department of Health to fund research to help prevent or cure Alzheimer's disease.<sup>37</sup> Applications for research funding under the program are submitted from universities and established research institutes in the state.<sup>38</sup> Awards must be made through a competitive, peer-reviewed process in any of the following categories:

- Investigator-initiated research;
- Institutional research;
- Predoctoral and postdoctoral research fellowships; and
- Collaborative research.

The board annually provides the State Surgeon General input on the scope of the research program and its recommendations for proposals to be funded.<sup>39</sup> The State Surgeon General, in turn, awards grants, after consulting with the board, on the basis of scientific merit. The board may also advise on program priorities, assist in developing linkages with nonacademic entities, and develop and provide oversight of mechanisms for disseminating research results.

Applicants must apply through an online system that includes the following items of information:

- Principal Investigator information: name, address, telephone number, email address, suffix/academic or professional title, institution name, and mailing address;
- Names of other research personnel;
- Name, address, telephone number, and email address of the Sponsored Research Official;
- Lead organization;
- Collaborating institutions and collaborating research personnel, if any;
- Project information, including descriptive title of proposed research, research priority area, grant category, grant funds requested, general audience abstract, scientific abstract, research site, survey instruments, and disclosure of research activities involving human subjects, vertebrate animals, recombinant DNA molecules, and stem cells;
- Key words;
- Collaborator information;
- Signed approval letter from the Principal Investigator's Office of Sponsored Research;
- Budget and budget narrative; and
- Biographical sketch.<sup>40</sup>

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<sup>36</sup> Section 119.15(7), F.S.

<sup>37</sup> Section 381.82(1), F.S.

<sup>38</sup> Section 381.82(1)(b), F.S.

<sup>39</sup> Section 381.82(3), F.S.

<sup>40</sup> The Department of Health, *Open Government Sunset Review Questionnaire*, (Aug. 6, 2018), at p. 2 (on file with the Senate Committee on Health Policy).

The board holds an annual, in-person meeting to review and select the grant proposals by December 15 of each year to be recommended to the state surgeon general for funding.<sup>41</sup> Those portions of the meeting are “closed” and exempt from public meeting requirements. The records generated by the board relating to review of the grant applications are also exempt from public records law and may include:

- A recommended list of research grants to receive funding;<sup>42</sup>
- Assessment of Alzheimer’s disease relatedness;
- Health impact;
- Budget request and narrative; and
- Research category.<sup>43</sup>

Other responsibilities of the board may include, but are not limited to, providing advice on program priorities and emphases; assisting in the development of appropriate linkages to nonacademic entities, such as voluntary organizations, health care delivery institutions, industry, government agencies, and public officials; and developing and providing oversight regarding mechanisms for the dissemination of research results.<sup>44</sup>

The board reports annually to the Governor, President of the Senate, Speaker of the House of Representatives, and the State Surgeon General on elements of the program’s implementation, its impact on leveraging additional funding, progress towards its goals, and recommendations to further its mission.<sup>45</sup> The annual meetings are not publicly noticed. The only information discussed during the meetings pertains to the research grant applications for the purpose of selecting the list of recommended grant recipients.

Section 381.82(3)(d), F.S., creates a public records exemption for grant applications submitted to the board and the records generated by the board during its review, except the final recommendations. The information is confidential and exempt.<sup>46</sup> The records may be released, however, with the express written consent of the person to whom the information pertains or the person’s legally authorized representative, or by court order upon a showing of good cause.

Section 381.82(3)(d), F.S., also provides that those portions of the board’s meetings at which the grant applications are discussed are exempt from the public meetings law. The statute requires

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<sup>41</sup> The Department of Health, Provider and Partner Resources, *Alzheimer’s Disease Research Grant Advisory Board*, available at: <http://www.floridahealth.gov/%5C/provider-and-partner-resources/adrgab/index.html> (last visited Dec. 17, 2018).

<sup>42</sup> *Id.*. This list with peer review scores and abstracts is forwarded to the state surgeon general for finalizing the research grant awards.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.*.

<sup>45</sup> Section 381.82, F.S.

<sup>46</sup> There is a difference between records the Legislature designates as exempt from public record requirements and those the Legislature deems confidential and exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. See *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 1994); *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. See Attorney General Opinion 85-62 (August 1, 1985).

that the closed portions of the meetings be recorded, and the recordings may be released under the same circumstances as apply to the exempt records.

While the Department of Health (DOH) has not received any requests for exempt records or meeting recordings from 2014 through the present, related to the Ed and Ethel Moore Alzheimer's Disease Research Grant Program, the public record and public meeting exemption ensures that the Principal Investigators' personal information is kept confidential, personal reputation is protected, and that the integrity of the research is not compromised. Research grants awarded through this program often include proprietary information such as information relating to patents, investigational new drugs, and investigational new equipment. The exemptions enable the board to openly discuss and evaluate each research grant submitted. The DOH requests the reenactment of the exemption.<sup>47</sup>

Section 381.82(3)(d), F.S., provides for the repeal of the exemptions pursuant to the OGSR on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

### III. Effect of Proposed Changes:

This bill saves from repeal the public records exemption for information received by, or created by, the board relating to its review of research grant applications. Grant applications and supporting documentation provided to the board for Alzheimer's disease research, and any records generated by the board relating to review of such applications, except final recommendations, will continue to be confidential and exempt from public disclosure.

This bill also saves from repeal the public meeting exemption for those closed portions of a meeting of the board during which applications for Alzheimer's disease research grants are discussed.

The effective date of the bill is October 1, 2019.

### IV. Constitutional Issues:

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

None.

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

##### *Vote Requirement*

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

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<sup>47</sup> The Department of Health, *Open Government Sunset Review Questionnaire*, (Aug. 6, 2018), at p. 2 (on file with the Senate Committee on Health Policy).

***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of this law is to maintain keep confidential research grant applications, and records generated by the board related to review of the applications, which contain information of a confidential nature, including ideas and processes, the disclosure of which could injure the affected researchers. Further, closing access to those portions of the meetings of the board during which the Alzheimer's disease research grant applications are discussed serves the purpose of ensuring decisions are based upon merit without bias or undue influence. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None identified.

**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 381.82(3)(d), Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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By the Committee on Health Policy

588-00835-19

20197002\_\_

1 A bill to be entitled  
 2 An act relating to a review under the Open Government  
 3 Sunset Review Act; amending s. 381.82, F.S., relating  
 4 to an exemption from the public records and meeting  
 5 requirements for applications provided to the  
 6 Alzheimer's Disease Research Grant Advisory Board  
 7 within the Department of Health and the review of such  
 8 applications; removing the scheduled repeal of the  
 9 exemption; providing an effective date.

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

11  
 12  
 13 Section 1. Paragraph (d) of subsection (3) of section  
 14 381.82, Florida Statutes, is amended to read:

15 381.82 Ed and Ethel Moore Alzheimer's Disease Research  
 16 Program.—

17 (3) There is created within the Department of Health the  
 18 Alzheimer's Disease Research Grant Advisory Board.

19 (d)1. Applications provided to the board for Alzheimer's  
 20 disease research grants under this section, and any records  
 21 generated by the board relating to review of such applications,  
 22 except final recommendations, are confidential and exempt from  
 23 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

24 2. Those portions of a meeting of the board during which  
 25 applications for Alzheimer's disease research grants under this  
 26 section are discussed are exempt from s. 286.011 and s. 24(b),  
 27 Art. I of the State Constitution. The closed portion of a  
 28 meeting must be recorded. The recording shall be maintained by  
 29 the board and shall be subject to disclosure in accordance with

Page 1 of 2

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

588-00835-19

20197002\_\_

30 subparagraph 3.  
 31 3. Information that is held confidential and exempt under  
 32 this paragraph may be disclosed with the express written consent  
 33 of the individual to whom the information pertains or the  
 34 individual's legally authorized representative, or by court  
 35 order upon a showing of good cause.

36 ~~4. This paragraph is subject to the Open Government Sunset~~  
 37 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~  
 38 ~~on October 2, 2019, unless reviewed and saved from repeal~~  
 39 ~~through reenactment by the Legislature.~~

40 Section 2. This act shall take effect October 1, 2019.

Page 2 of 2

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



**THE FLORIDA SENATE**  
**COMMITTEE ON HEALTH POLICY**

*Location*

530 Knott Building

*Mailing Address*

404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5824

Senator Gayle Harrell, *Chair*  
Senator Lori Berman, *Vice Chair*

*Professional Staff:* Allen Brown, *Staff Director*

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

January 31, 2019

Senator Ed Hooper  
Chairman  
Governmental Oversight and Accountability  
Committee  
404 South Monroe Street  
303 Knott Building  
Tallahassee, FL 32399-1100

Dear Chairman Hooper:

I am requesting that SB 7002 (OGSR/Alzheimer's Disease Research Grant Advisory Board), a Health Policy committee bill, be placed on the agenda of the committee's next scheduled meeting. Your consideration would be greatly appreciated.

If you have questions, please call 487-5824.

Respectively,

Gail Harrell  
State Senator, District 25

cc: Joe McVaney, Staff Director  
Governmental Oversight and Accountability  
Committee

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/12/2019  
Meeting Date

7002  
Bill Number (if applicable)

2-121  
Amendment Barcode (if applicable)

Topic \_\_\_\_\_

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S

Street

Phone 727/897-9291

St. Petersburg

City

FL

State

3

Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

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

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

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

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BILL: SB 7004  
INTRODUCER: Health Policy Committee  
SUBJECT: OGSR/Department of Health Personnel  
DATE: February 11, 2019 REVISED: \_\_\_\_\_

|    | ANALYST             | STAFF DIRECTOR | REFERENCE | ACTION                                |
|----|---------------------|----------------|-----------|---------------------------------------|
|    | Rossitto-Van Winkle | Brown          |           | <b>HP Submitted as Committee Bill</b> |
| 1. | Ponder              | McVaney        | GO        | <b>Favorable</b>                      |
| 2. |                     |                | RC        |                                       |

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**I. Summary:**

SB 7004 amends s. 119.071(4)(d)2.o., F.S., to save from repeal a public records exemption for certain personal identification and location information of certain Department of Health (DOH) personnel, their spouses, and children. The exemption applies to records of DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities.

The exemption is subject to the Open Government Sunset Review Act (OGSR) and will stand repealed on October 2, 2019, unless saved from repeal by the Legislature.

The bill takes effect October 1, 2019.

**II. Present Situation:**

**Public Records Law**

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

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

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

legislative and executive branch records.<sup>3</sup> Chapter 119, F.S., constitutes the main body of public records laws, and is known as the Public Records Act.<sup>4</sup> The Public Records Act states that

[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.<sup>5</sup>

According to the Public Records Act, a public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted public records as being “any material prepared in connection with official agency business which is intended to perpetuate, communicate or formalize knowledge of some type.”<sup>7</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>8</sup>

The Legislature may create an exemption to public records requirements by passing a general law by a two-thirds vote of each of the House and the Senate.<sup>9</sup> The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>10</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>11</sup>

When creating a public records exemption, the Legislature may provide that a record is “confidential and exempt” or “exempt.”<sup>12</sup> Records designated as “confidential and exempt” may be released by the records custodian only under the circumstances defined by the Legislature.

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

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

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

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

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

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

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

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

<sup>11</sup> *Halifax Hosp. Medical Center v. News-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 public records statute was to create a public records exemption. The *Baker County Press* court found that since the law did not contain a public necessity statement, it was unconstitutional. *Id.* at 196.

<sup>12</sup> If the Legislature designates a record as confidential, such record may not be released to anyone other than the persons or entities specifically designated in the statutory exemption. *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.<sup>13</sup>

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

The OGSR prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.<sup>14</sup> The OGSR provides that an exemption automatically repeals on October 2nd of the fifth year after creation or substantial amendment. In order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.<sup>15</sup> In practice, many exemptions are continued by repealing the sunset date rather than reenacting the exemption.

The OGSR provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.<sup>16</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;<sup>17</sup>
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;<sup>18</sup> or
- It protects trade or business secrets.<sup>19</sup>

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

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

<sup>14</sup> Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings. The OGSR does not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System pursuant to s. 119.15(2), F.S.

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

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

<sup>17</sup> Section 119.15(6)(b)1., F.S.

<sup>18</sup> Section 119.15(6)(b)2., F.S.

<sup>19</sup> Section 119.15(6)(b)3., F.S.

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

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

## Public Records Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for identification and location information of certain current or former government personnel and their spouses and children.<sup>21</sup> Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;
- Firefighters;
- Justices and judges;
- Local and statewide prosecuting attorneys;
- Magistrates, administrative law judges, and child support hearing officers;<sup>22</sup>
- Local government agency and water management district human resources administrators;
- Code enforcement officers;
- Guardians ad litem;<sup>23</sup>
- Specified Department of Juvenile Justice personnel;
- Public defenders and criminal conflict and civil regional counsel;
- Investigators or inspectors of the Department of Business and Professional Regulation; and
- County tax collectors.

Although the types of exempt information vary, the following information is exempt<sup>24</sup> from public records requirements for all personnel listed above:

- Home addresses and telephone numbers<sup>25</sup> of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and
- Names and locations of schools and day care facilities attended by their children.

If exempt information is held by an agency<sup>26</sup> that is not the employer of the protected person, he or she must submit a written request to that agency to maintain the public records exemption.<sup>27</sup>

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<sup>21</sup> See s. 119.071(4)(d), F.S.

<sup>22</sup> See s. 119.071(4)(d)2.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

<sup>23</sup> See s. 119.071(4)(d)2.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. A guardian ad litem may be a public employee, volunteer, or contract or appointed attorney. See s. 39.820(1), F.S.

<sup>24</sup> See *supra* note 6.

<sup>25</sup> The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

<sup>26</sup> 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.

<sup>27</sup> Section 119.071(4)(d)3., F.S.

## Department of Health

### *Regulation of Professions*

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.<sup>28</sup> Practitioner regulation is conducted by the Division of Medical Quality Assurance (MQA) and includes the following professions:

- Emergency Medical Technicians and Paramedics (part III of ch. 401, F.S.);
- Acupuncture (ch. 457, F.S.);
- Allopathic Medicine, (ch. 458, F.S.);
- Osteopathic Medicine, (ch. 459, F.S.);
- Chiropractic Medicine, (ch. 460, F.S.);
- Podiatric Medicine (ch. 461, F.S.);
- Naturopathy (ch. 462, F.S.);
- Optometry (ch. 463, F.S.);
- Nursing, including Certified Nursing Assistants (ch. 464, F.S.);
- Pharmacy (ch. 465, F.S.);
- Dentistry (ch. 466, F.S.);
- Midwifery (ch. 467, F.S.);
- Speech-Language Pathology and Audiology (part I of ch. 468, F.S.);
- Nursing Home Administration (part II of ch. 468, F.S.);
- Occupational Therapy (part III of ch. 468, F.S.);
- Radiology (part IV of ch. 468, F.S.);
- Respiratory Therapy (part V of ch. 468, F.S.);
- Dietetics and Nutrition (part X of ch. 468, F.S.);
- Athletic Training (part XIII of ch. 468, F.S.);
- Orthotics, Prosthetics, and Pedorthics (part XIV of ch. 468, F.S.);
- Electrolysis (ch. 478, F.S.);
- Massage Therapy, (ch. 480, F.S.);
- Clinical Laboratory Personnel (part III of ch. 483, F.S.);
- Medical Physicists (part IV of ch. 483, F.S.);
- Opticianry (part I of ch. 484, F.S.);
- Hearing Aid Specialists (part II of ch. 484, F.S.);
- Physical Therapy Practice (ch. 486, F.S.);
- Psychology (ch. 490, F.S.); and
- Clinical Social Work, Marriage and Family Therapy, and Mental Health Counseling (ch. 491, F.S.).

The following facilities are also regulated or inspected by MQA:<sup>29</sup>

- Body Piercing Establishments (s. 381.0075, F.S.);
- Brain and Spinal Cord Injury Programs (ss. 381.739 - 381.79, F.S.);
- Counterfeit-proof Prescription Vendors (s. 456.42(2), F.S.);

<sup>28</sup> Section 20.43(1)(g), F.S.

<sup>29</sup> Other entities regulated by the DOH, although not the MQA, include tanning facilities, X-ray sites, and radioactive materials users, among others.

- Dental Laboratories (ch. 466, F.S.);
- Electrology Facilities (ch. 478, F.S.);
- Electrolysis Training Programs (ch. 478, F.S.);
- EMS Education Programs (ch. 401, F.S.);
- EMS Vehicle Permittees (ch. 401, F.S.);
- Environmental Testing Laboratories (s. 403.0625, F.S.);
- Massage Establishments (ch. 480, F.S.);
- Massage Schools (ch. 480, F.S.);
- Nursing Education Programs (ch. 464, F.S.);
- Office Surgery Sites (ch. 458 and ch. 459, F.S.);
- Optical Establishments (part I of ch. 484, F.S.);
- Pain Management Clinics (ch. 458 and ch. 459, F.S.);
- Pharmacies (ch. 465, F.S.); and
- Trauma Centers (part II of ch. 395, F.S.).

As part of its enforcement responsibilities, the DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant,<sup>30</sup> and legally sufficient,<sup>31</sup> and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.<sup>32</sup> The DOH also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.<sup>33</sup>

The Consumer Services Unit (CSU) within MQA is the central intake for all complaints. The CSU includes investigators and analysts assigned to specific professions. Staff reviews each complaint for possible violations of laws and rules and forwards only those complaints that are legally sufficient for investigation.<sup>34</sup>

The Investigative Services Unit (ISU) is the investigative arm of MQA. Generally, an investigation includes the following steps:

- Obtaining medical records, documentation, and evidence related to the complaint;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses;

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<sup>30</sup> The DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. *See* s. 456.073(1), F.S.

<sup>31</sup> A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred. *See* s. 456.073(1), F.S.

<sup>32</sup> Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board. *See* s. 456.073(2), F.S. If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee. If the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. *See* s. 456.073(4), F.S.

<sup>33</sup> Section 456.066, F.S.

<sup>34</sup> Florida Department of Health, *Consumer Services*, (last modified May 25, 2017), available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Dec. 12, 2018).

- Drafting and serving subpoenas for necessary information; and
- Drafting the investigative report.

The ISU also conducts the required initial health care facility inspections before a facility begins operation and re-inspects on a periodic basis.<sup>35</sup>

### ***Disability Determinations***

The Division of Disability Determinations (DDD) within DOH is responsible for making the determination of medical eligibility for disability benefits under the federal Social Security Administration (SSA) disability programs (Social Security Disability-Title II and Supplemental Security Income-Title XVI). The DDD is also responsible for the periodic Continuing Disability Review of all SSA disability beneficiaries to determine if they continue to meet medical eligibility criteria.

Applications for Social Security disability benefits are filed at the claimant's local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant's medical sources.

If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant's alleged disability. The claimant is also contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information.

After the claim file is documented and a determination of medical eligibility is made, the DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due to the claimant.<sup>36</sup>

### ***Personal Identification and Location Information of DOH Personnel***

Section 119.071(4)(d)2.o., F. S., created a public records exemption for identification and location information of certain current and former personnel of the DOH, their spouses, and their children. The exemption applies to records of those personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities. The information that is exempt includes:

- The home addresses, telephone numbers, dates of birth, and photographs of the DOH personnel;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and

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<sup>35</sup> Florida Department of Health, *Investigative Services Unit Brochure*, (updated March 18, 2015) available at [http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/\\_documents/isu-brochure.pdf](http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/_documents/isu-brochure.pdf) (last visited Dec. 12, 2018).

<sup>36</sup> Social Security Disability Resource Center, *Applying for Disability in Florida*, available at: <https://www.ssdrc.com/state-florida-fl-getting-started.html> (last visited Dec. 17, 2018).

- The names and locations of schools and day care facilities attended by the children of the DOH personnel.

The DOH reports that it currently has 2,711 personnel that meet the criteria of s. 119.071(4)(d)2.o., F.S., and has received 210 public record requests for information about those personnel via phone, email, written, online, and in person since the statute's enactment. Exempt information has been released pursuant only to subpoena or court order, or if authorized by the individual with written consent and/or a signed disclosure form.

The DOH also indicates that the exemptions should continue for all listed personnel to ensure their safety in the workplace and prevent injury violence or harassment from disgruntled regulated individuals at home. The DOH further suggests an additional exemption for the same information for parents of listed personnel but does not cite any specific basis or need for the additional information exemption.<sup>37</sup>

Section 119.071(4)(d)2.o., F.S., is subject to the OGSR and will stand repealed on October 2, 2019, unless saved from repeal by the Legislature.

### III. Effect of Proposed Changes:

The bill saves from repeal the public records exemptions in s. 119.071(4)(d)2.o., F.S., which makes confidential and exempt from s. 119.07(1), F.S., and s. 24, Art. I of the State Constitution, the following agency personnel's information:

- The home addresses, telephone numbers, dates of birth, and photographs;
- The names, home addresses, telephone numbers, dates of birth, and places of employment of their spouses and children; and
- The names and locations of schools and day care facilities attended by the children of the DOH personnel.

The bill takes effect October 1, 2019.

### IV. Constitutional Issues:

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

None.

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

##### *Vote Requirement*

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill continues a current public records exemption

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<sup>37</sup> The Department of Health, *Response to Open Government Sunset Review Questionnaire* (Aug. 13, 2018) (on file with the Senate Committee on Health Policy).

beyond its current date of repeal; thus, the bill does not require an extraordinary vote for enactment.

***Public Necessity Statement***

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion. Thus, a statement of public necessity is not required.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of this law to protect certain personal identifying and location information of current or former DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost, to the extent imposed, associated with an agency making redactions in response to the public records request.

C. Government Sector Impact:

Governmental entities will continue to incur costs related to the redaction of records in response to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 119.071(4)(d)2.o., Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

By the Committee on Health Policy

588-00836-19

20197004\_\_

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 119.071, F.S., relating to an exemption from the public records requirements for personal identifying and location information and photographs of certain Department of Health personnel; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

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

(4) AGENCY PERSONNEL INFORMATION.—

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

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and

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personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative

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

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

84 e. The home addresses, dates of birth, and telephone  
 85 numbers of current or former justices of the Supreme Court,  
 86 district court of appeal judges, circuit court judges, and  
 87 county court judges; the names, home addresses, telephone

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

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

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

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

140 i. The home addresses, telephone numbers, dates of birth,  
 141 and photographs of current or former code enforcement officers;  
 142 the names, home addresses, telephone numbers, dates of birth,  
 143 and places of employment of the spouses and children of such  
 144 personnel; and the names and locations of schools and day care  
 145 facilities attended by the children of such personnel are exempt

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146 from s. 119.07(1) and s. 24(a), Art. I of the State  
 147 Constitution.

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

160 k. The home addresses, telephone numbers, dates of birth,  
 161 and photographs of current or former juvenile probation  
 162 officers, juvenile probation supervisors, detention  
 163 superintendents, assistant detention superintendents, juvenile  
 164 justice detention officers I and II, juvenile justice detention  
 165 officer supervisors, juvenile justice residential officers,  
 166 juvenile justice residential officer supervisors I and II,  
 167 juvenile justice counselors, juvenile justice counselor  
 168 supervisors, human services counselor administrators, senior  
 169 human services counselor administrators, rehabilitation  
 170 therapists, and social services counselors of the Department of  
 171 Juvenile Justice; the names, home addresses, telephone numbers,  
 172 dates of birth, and places of employment of spouses and children  
 173 of such personnel; and the names and locations of schools and  
 174 day care facilities attended by the children of such personnel

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175 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State  
176 Constitution.

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

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

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

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

231 p. The home addresses, telephone numbers, dates of birth,  
232 and photographs of current or former impaired practitioner

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

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

259 r. The home addresses, telephone numbers, dates of birth,  
 260 and photographs of current or former personnel employed in an  
 261 agency's office of inspector general or internal audit

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

274 s. The home addresses, telephone numbers, dates of birth,  
 275 and photographs of current or former directors, managers,  
 276 supervisors, nurses, and clinical employees of an addiction  
 277 treatment facility; the home addresses, telephone numbers,  
 278 photographs, dates of birth, and places of employment of the  
 279 spouses and children of such personnel; and the names and  
 280 locations of schools and day care facilities attended by the  
 281 children of such personnel are exempt from s. 119.07(1) and s.  
 282 24(a), Art. I of the State Constitution. For purposes of this  
 283 sub-subparagraph, the term "addiction treatment facility" means  
 284 a county government, or agency thereof, that is licensed  
 285 pursuant to s. 397.401 and provides substance abuse prevention,  
 286 intervention, or clinical treatment, including any licensed  
 287 service component described in s. 397.311(26). This sub-  
 288 subparagraph is subject to the Open Government Sunset Review Act  
 289 in accordance with s. 119.15 and shall stand repealed on October  
 290 2, 2023, unless reviewed and saved from repeal through

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291 reenactment by the Legislature.

292 t. The home addresses, telephone numbers, dates of birth,

293 and photographs of current or former directors, managers,

294 supervisors, and clinical employees of a child advocacy center

295 that meets the standards of s. 39.3035(1) and fulfills the

296 screening requirement of s. 39.3035(2), and the members of a

297 child protection team as described in s. 39.303 whose duties

298 include supporting the investigation of child abuse or sexual

299 abuse, child abandonment, child neglect, and child exploitation

300 or to provide services as part of a multidisciplinary case

301 review team; the names, home addresses, telephone numbers,

302 photographs, dates of birth, and places of employment of the

303 spouses and children of such personnel and members; and the

304 names and locations of schools and day care facilities attended

305 by the children of such personnel and members are exempt from s.

306 119.07(1) and s. 24(a), Art. I of the State Constitution. This

307 sub-subparagraph is subject to the Open Government Sunset Review

308 Act in accordance with s. 119.15 and shall stand repealed on

309 October 2, 2023, unless reviewed and saved from repeal through

310 reenactment by the Legislature.

311 3. An agency that is the custodian of the information

312 specified in subparagraph 2. and that is not the employer of the

313 officer, employee, justice, judge, or other person specified in

314 subparagraph 2. shall maintain the exempt status of that

315 information only if the officer, employee, justice, judge, other

316 person, or employing agency of the designated employee submits a

317 written request for maintenance of the exemption to the

318 custodial agency.

319 4. The exemptions in this paragraph apply to information

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320 held by an agency before, on, or after the effective date of the

321 exemption.

322 Section 2. This act shall take effect October 1, 2019.

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**THE FLORIDA SENATE**  
**COMMITTEE ON HEALTH POLICY**

*Location*  
530 Knott Building

*Mailing Address*  
404 South Monroe Street  
Tallahassee, Florida 32399-1100  
(850) 487-5824

Senator Gayle Harrell, *Chair*  
Senator Lori Berman, *Vice Chair*

*Professional Staff:* Allen Brown, *Staff Director*

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

January 31, 2019

Senator Ed Hooper  
Chairman  
Governmental Oversight and Accountability  
Committee  
404 South Monroe Street  
303 Knott Building  
Tallahassee, FL 32399-1100

Dear Chairman Hooper:

I am requesting that SB 7004 (OGSR/Department of Health Personnel), a Health Policy committee bill, be placed on the agenda of the committee's next scheduled meeting. Your consideration would be greatly appreciated.

If you have questions, please call 487-5824.

Respectively,

Gail Harrell  
State Senator, District 25

cc: Joe McVaney, Staff Director  
Governmental Oversight and Accountability  
Committee

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/12/2019  
Meeting Date

7004  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Trustee

Address 1119 Newton Ave S.  
Street

Phone 727/897-9291

St. Petersburg FL 33705  
City State Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

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

Representing Justice-2-Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

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**BILL:** CS/SB 246

**INTRODUCER:** Governmental Oversight and Accountability Committee and Senator Hooper

**SUBJECT:** Public Construction

**DATE:** February 13, 2019      **REVISED:** \_\_\_\_\_

|    | ANALYST       | STAFF DIRECTOR | REFERENCE | ACTION        |
|----|---------------|----------------|-----------|---------------|
| 1. | <u>Ponder</u> | <u>McVaney</u> | <u>GO</u> | <u>Fav/CS</u> |
| 2. | _____         | _____          | <u>CA</u> | _____         |
| 3. | _____         | _____          | <u>AP</u> | _____         |

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 246 reduces the amount (referred to as retainage<sup>1</sup>) a state or local governmental entity may withhold from payment to a contractor for construction services. The retainage amount is reduced from 10 percent to 5 percent for construction projects until the project is at least 50-percent complete. The bill also reduces the retainage from 5 percent to 2.5 percent for construction projects after the project has reached 50-percent completion. These changes will have a positive fiscal impact on the private sector contractors who will receive a higher percentage of payment as work is completed for construction services.

The bill revises the requirements for Department of Management Services' rules governing certain contracts to align with the reduced retainage cap.

The bill provides the act does not apply to any contract for construction services entered into or pending approval by a public entity or to any construction services project advertised for bid by the public entity, on or before July 1, 2019. Additionally, the bill specifies that the amendments to sections 255.05 and 255.078, F.S., made by this act do not apply to contracts executed under ch. 337, F.S.

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<sup>1</sup> The term "retainage" means a "percentage of what a landowner pays a contractor, withheld until the construction has been satisfactorily completed and all mechanic's liens are released or have expired." BLACK'S LAW DICTIONARY (10<sup>th</sup> ed. 2014)

The state may incur additional costs as a result of the reduced retainage cap if a contractor or subcontractor fails to adequately perform construction services as contracted.

The bill takes effect July 1, 2019.

## II. Present Situation:

### Public Construction Project Bonds

Section 255.05, F.S., requires any person contracting with the state or any local government, or other public authority, for construction or repair of a public building, must provide a payment and performance bond. The bond is conditioned upon the contractor's timely performance and prompt payment to all subcontractors or materialmen.<sup>2</sup> The section was created to afford protection to the laborers and materialmen who cannot perfect a mechanic's lien on public property.<sup>3</sup> The public, who is, in effect, the owner of the public works project, is also protected by the payment and performance bond requirements. The payment portion of the bond provides the surety insurer's undertaking to guarantee prompt payment to all subcontractors and materialmen, and the performance bond ensures full performance.<sup>4</sup>

Contracts for construction services with the state in the amount of \$100,000 or less are specifically exempted from the requirement of a payment and performance bond.<sup>5</sup> Additionally, the Secretary of Management Services may delegate authority to state agencies to exempt payment and performance bond for projects more than \$100,000 but not more than \$200,000.<sup>6</sup> When the construction services are for a county, city, political subdivision, or public authority, the official or board awarding the contract for \$200,000 or less has the discretion to exempt such project from the execution of the payment and performance bond.<sup>7</sup>

The Department of Management Services is charged with adopting rules with respect to all contracts in the amount of \$200,000 or less, to provide procedures for retainage of each request for payment submitted by a contractor for the first half of the contract and procedures for determining disbursements from the retainage for claims made by subcontractors or materialmen.<sup>8</sup>

Section 337.18, F.S., requires a successful bidder for a Department of Transportation construction or maintenance contract to obtain a surety. This section also provides for department project bonds. Section 337.18(1)(f), F.S., specifies that s. 255.05, F.S., is not applicable to the statutory bonds issued pursuant to this section.

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<sup>2</sup> Section 255.05(1)(c), F.S.

<sup>3</sup> *American Home Assurance Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 363 (Fla. 2005) (citation omitted).

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

<sup>5</sup> Section 255.05(1)(d), F.S.

<sup>6</sup> *Id.*; See Rule 60D-50041, F.A.C.

<sup>7</sup> Section 255.05(1)(d), F.S.

<sup>8</sup> Section 255.05(1)(f), F.S.

## The Florida Prompt Payment Act and the Local Government Prompt Payment Act

Sections 255.0705 through 255.078, F.S., known as the Florida Prompt Payment Act, govern the timely payment for construction services by the state.<sup>9</sup> Local governmental entities as defined under s. 218.72, F.S., are specifically excluded from the application of those sections.

Additionally, contracts or work performed for the Department of Transportation are specifically excluded from the definition of “construction services” under the Florida Prompt Payment Act.<sup>10</sup>

Part VII of ch. 218, F.S., is known as The Local Government Prompt Payment Act and governs local governmental entities<sup>11</sup> in contracting for public construction projects. The stated purpose of the Local Government Prompt Payment Act is to provide for the prompt payments by local governmental entities, interest on late payments, and a dispute resolution process.<sup>12</sup> [The Local Government Prompt Payment Act states that it is the policy of this state that “payment for all purchases by local governmental entities be made in a timely manner.”<sup>13</sup>

### Public Construction Retainage

Retainage is a common construction contracting practice whereby a certain percentage of payment is withheld by the project owner from the general contractor and, in turn, by the general contractor from the subcontractors, to ensure satisfactory completion of the project.<sup>14</sup> Both the Florida Prompt Payment Act and Local Government Prompt Payment Act (collectively, the “Prompt Payment Acts”) provide caps on the amount of retainage that may be withheld by a state and local governmental entity. Under the Prompt Payment Acts, up to 10 percent may be withheld by the state or local governmental entity from each progress payment made to the contractor until 50-percent completion of the services.<sup>15</sup> After 50-percent completion, the amount of retainage withheld by the state or local governmental entity may not exceed 5 percent.<sup>16</sup> The term “50-percent completion” has the meaning provided by contract between the state and the contractor, or, if not defined by contract, the point at which the state has expended 50 percent of the total cost of the construction services purchased.<sup>17</sup>

The Prompt Payment Acts specifically provide that state and local governmental entities are not prohibited from contracting with a contractor to withhold a retainage of less than 10 percent of each progress payment, from incrementally reducing the retainage amount, or from releasing, at

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<sup>9</sup> Section 255.073, F.S., defines public entity to mean “the state, or any office, board, bureau, commission, department, branch, division, or institution thereof.”

<sup>10</sup> Section 255.072(2), F.S.

<sup>11</sup> Section 218.72, F.S., for purposes of the Local Prompt Payment Act, defines “local governmental entity” as a “county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.”

<sup>12</sup> Section 218.71, F.S.

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

<sup>14</sup> See OPPAGA *Special Review: Inflexibility in Contracting and Retainage Practices Could Hurt Construction Industry*, Report No. 00-26, December 2000. Available online at <http://www.oppaga.state.fl.us/reports/pdf/0026rpt.pdf>. (Last visited April 13, 2019.)

<sup>15</sup> Sections 278.078(1) and 218.735(8)(a), F.S.

<sup>16</sup> Sections 255.078(2) and 218.735(8)(b), F.S.

<sup>17</sup> *Id.*

any point, any portion of retainage held that is attributable to labor, services or materials supplied for the project.<sup>18</sup>

In accordance with bond requirements found in s. 255.05(1)(f), F.S., Department of Management Services Rule 60D-50041(2), FAC., provides for procedures in instances where a payment and performance bond are not required for a public construction project and requires, in a case where the contractor defaults, the claims made for unpaid bills by laborers, materialmen, and subcontractors of the project be paid from the ten percent (10%) retainage on a pro rata basis.

### III. Effect of Proposed Changes

The bill modifies the retainage cap for public construction projects.

**Section 1** amends s. 218.735, F.S., to reduce the retainage cap a local governmental entity may withhold for construction services from 10 percent to 5 percent for the first portion of the contract, until 50-percent completion. This section also revises the retainage cap from 5 percent to 2.5 percent after 50-percent of the construction services are completed.

**Section 2** amends 255.05, F.S., to align with the new lower retainage amounts provided in section 2 of the bill. The change in the retainage cap revises requirements for the Department of Management Services' rules for contracts under \$200,000.

**Section 3** revises s. 255.078, F.S., to reduce the retainage cap the state may withhold in a contract for construction services from 10 percent to 5 percent for the first portion of the contract, until 50-percent completion. This section also revises the retainage cap from 5 percent to 2.5 percent after 50 percent of the construction services are completed.

**Section 4** specifies that the act does not apply to any contract which is entered into or pending approval by a public entity, or to any construction services project advertised for bid by the public entity, on or before July 1, 2019. This section also provides that the changes made in ss. 255.05 and 255.078, F.S., by this act do not apply to contracts executed under Chapter 337, F.S.

**Section 5** provides that the bill takes effect July 1, 2019.

### IV. Constitutional Issues:

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

None.

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<sup>18</sup> Sections 255.078(5) and 218.735(8)(e), F.S.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

The bill does not impose, authorize, or raise a state tax or fee.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

This bill does not impact state or local taxes or fees.

B. Private Sector Impact:

The reduction in the retainage cap will likely provide a positive fiscal impact for contractors and subcontractors because it provides a more timely payment of a larger percentage of work performed and invoiced.

C. Government Sector Impact:

The state or local governmental entity may incur additional costs as a result of the reduced retainage cap if a contractor or subcontractor fails to adequately perform construction services as contracted. The state or local governmental entity is not required to withhold retainage for construction services; rather, retainage, in most instances, functions as a secondary security device, supplementing the payment and performance bond. For construction services contracts where a payment or performance bond is not required, the lowered retainage cap potentially may not provide adequate leverage to protect the investment by the state or local governmental entity.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends sections 218.0735, 255.05 and 255.078 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on February 12, 2019:**

The committee substitute expands the bill to apply the reduced retainage cap to local governmental entities. It also clarifies that the amendments to ss. 255.05 and 255.078 made by this act do not apply to contracts executed under Chapter 337, F.S.

- B. **Amendments:**

None.



214284

LEGISLATIVE ACTION

| Senate     | . | House |
|------------|---|-------|
| Comm: RCS  | . |       |
| 02/12/2019 | . |       |
|            | . |       |
|            | . |       |
|            | . |       |

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

**Senate Amendment (with title amendment)**

Delete lines 95 - 100

and insert:

Section 3. Subsection (8) of section 218.735, Florida  
Statutes, is amended to read:

218.735 Timely payment for purchases of construction  
services.—

(8) (a) With regard to any contract for construction  
services, a local governmental entity may withhold from each



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11 progress payment made to the contractor an amount not exceeding  
12 5 ~~10~~ percent of the payment as retainage until 50-percent  
13 completion of such services.

14 (b) After 50-percent completion of the construction  
15 services purchased pursuant to the contract, the local  
16 governmental entity must reduce to 2.5 ~~5~~ percent the amount of  
17 retainage withheld from each subsequent progress payment made to  
18 the contractor. For purposes of this subsection, the term "50-  
19 percent completion" has the meaning set forth in the contract  
20 between the local governmental entity and the contractor or, if  
21 not defined in the contract, the point at which the local  
22 governmental entity has expended 50 percent of the total cost of  
23 the construction services purchased as identified in the  
24 contract together with all costs associated with existing change  
25 orders and other additions or modifications to the construction  
26 services provided for in the contract. However, notwithstanding  
27 this subsection, a municipality having a population of 25,000 or  
28 fewer, or a county having a population of 100,000 or fewer, may  
29 withhold retainage in an amount not exceeding 5 ~~10~~ percent of  
30 each progress payment made to the contractor until final  
31 completion and acceptance of the project by the local  
32 governmental entity.

33 (c) After 50-percent completion of the construction  
34 services purchased pursuant to the contract, the contractor may  
35 elect to withhold retainage from payments to its subcontractors  
36 at a rate higher than 2.5 ~~5~~ percent. The specific amount to be  
37 withheld must be determined on a case-by-case basis and must be  
38 based on the contractor's assessment of the subcontractor's past  
39 performance, the likelihood that such performance will continue,



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40 and the contractor's ability to rely on other safeguards. The  
41 contractor shall notify the subcontractor, in writing, of its  
42 determination to withhold more than 2.5 ~~5~~ percent of the  
43 progress payment and the reasons for making that determination,  
44 and the contractor may not request the release of such retained  
45 funds from the local governmental entity.

46 (d) After 50-percent completion of the construction  
47 services purchased pursuant to the contract, the contractor may  
48 present to the local governmental entity a payment request for  
49 up to one-half of the retainage held by the local governmental  
50 entity. The local governmental entity shall promptly make  
51 payment to the contractor, unless the local governmental entity  
52 has grounds, pursuant to paragraph (f), for withholding the  
53 payment of retainage. If the local governmental entity makes  
54 payment of retainage to the contractor under this paragraph  
55 which is attributable to the labor, services, or materials  
56 supplied by one or more subcontractors or suppliers, the  
57 contractor shall timely remit payment of such retainage to those  
58 subcontractors and suppliers.

59 (e) This section does not prohibit a local governmental  
60 entity from withholding retainage at a rate less than 5 ~~10~~  
61 percent of each progress payment, from incrementally reducing  
62 the rate of retainage pursuant to a schedule provided for in the  
63 contract, or from releasing at any point all or a portion of any  
64 retainage withheld by the local governmental entity which is  
65 attributable to the labor, services, or materials supplied by  
66 the contractor or by one or more subcontractors or suppliers. If  
67 a local governmental entity makes any payment of retainage to  
68 the contractor which is attributable to the labor, services, or



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69 materials supplied by one or more subcontractors or suppliers,  
70 the contractor shall timely remit payment of such retainage to  
71 those subcontractors and suppliers.

72 (f) This section does not require the local governmental  
73 entity to pay or release any amounts that are the subject of a  
74 good faith dispute, the subject of a claim brought pursuant to  
75 s. 255.05, or otherwise the subject of a claim or demand by the  
76 local governmental entity or contractor.

77 (g) The time limitations set forth in this section for  
78 payment of payment requests apply to any payment request for  
79 retainage made pursuant to this section.

80 (h) Paragraphs (a)-(d) do not apply to construction  
81 services purchased by a local governmental entity which are paid  
82 for, in whole or in part, with federal funds and are subject to  
83 federal grantor laws and regulations or requirements that are  
84 contrary to any provision of the Local Government Prompt Payment  
85 Act.

86 (i) This subsection does not apply to any construction  
87 services purchased by a local governmental entity if the total  
88 cost of the construction services purchased as identified in the  
89 contract is \$200,000 or less.

90 Section 4. (1) This act does not apply to any contract for  
91 construction services which is entered into or is pending  
92 approval by a public entity, as defined in s. 255.072, Florida  
93 Statutes, or to any construction services project advertised for  
94 bid by the public entity, on or before July 1, 2019.

95 (2) The amendments made to ss. 255.05 and 255.078, Florida  
96 Statutes, by this act do not apply to contracts executed under  
97 Chapter 337, Florida Statutes.



214284

98           Section 5. This act shall take effect July 1, 2019.

99

100

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

102 And the title is amended as follows:

103           Delete lines 2 - 10

104 and insert:

105           An act relating to public construction; amending  
106           255.05, F.S.; revising requirements for Department of  
107           Management Services rules governing certain contracts;  
108           amending s. 255.078, F.S.; revising the amounts of  
109           retainage that certain public entities and contractors  
110           may withhold from progress payments for any  
111           construction services contract; amending s. 218.735;  
112           revising the amounts of retainage that certain public  
113           entities and contractors may withhold from progress  
114           payments for any construction services contract;  
115           specifying nonapplicability of the act; providing an  
116           effective date.

By Senator Hooper

16-00384-19

2019246\_\_

A bill to be entitled

An act relating to public construction; amending s. 255.05, F.S.; revising requirements for Department of Management Services rules governing certain contracts; amending s. 255.078, F.S.; revising the amounts of retainage that certain public entities and contractors may withhold from progress payments for any construction services contract; specifying nonapplicability of the act; providing an effective date.

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

Section 1. Paragraph (f) of subsection (1) of section 255.05, Florida Statutes, is amended to read:

255.05 Bond of contractor constructing public buildings; form; action by claimants.—

(1) A person entering into a formal contract with the state or any county, city, or political subdivision thereof, or other public authority or private entity, for the construction of a public building, for the prosecution and completion of a public work, or for repairs upon a public building or public work shall be required, before commencing the work or before recommencing the work after a default or abandonment, to execute and record in the public records of the county where the improvement is located, a payment and performance bond with a surety insurer authorized to do business in this state as surety. A public entity may not require a contractor to secure a surety bond under this section from a specific agent or bonding company.

Page 1 of 4

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

16-00384-19

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(f) The Department of Management Services shall adopt rules with respect to all contracts for \$200,000 or less, to provide:

1. Procedures for retaining up to 5 ~~10~~ percent of each request for payment submitted by a contractor and procedures for determining disbursements from the amount retained on a pro rata basis to laborers, materialmen, and subcontractors, as defined in s. 713.01.

2. Procedures for requiring certification from laborers, materialmen, and subcontractors, as defined in s. 713.01, before final payment to the contractor that such laborers, materialmen, and subcontractors have no claims against the contractor resulting from the completion of the work provided for in the contract.

The state is not liable to any laborer, materialman, or subcontractor for any amounts greater than the pro rata share as determined under this section.

Section 2. Subsections (1), (2), (3), and (5) of section 255.078, Florida Statutes, are amended to read:

255.078 Public construction retainage.—

(1) With regard to any contract for construction services, a public entity may withhold from each progress payment made to the contractor an amount not exceeding 5 ~~10~~ percent of the payment as retainage until 50-percent completion of such services.

(2) After 50-percent completion of the construction services purchased pursuant to the contract, the public entity must reduce to 2.5 ~~5~~ percent the amount of retainage withheld from each subsequent progress payment made to the contractor.

Page 2 of 4

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

16-00384-19

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59 For purposes of this section, the term "50-percent completion"  
 60 ~~means the definition that is provided has the meaning set forth~~  
 61 in the contract between the public entity and the contractor or,  
 62 if not defined in the contract, the point at which the public  
 63 entity has expended 50 percent of the total cost of the  
 64 construction services purchased as identified in the contract  
 65 together with all costs associated with existing change orders  
 66 and other additions or modifications to the construction  
 67 services provided for in the contract.

68 (3) After 50-percent completion of the construction  
 69 services purchased pursuant to the contract, the contractor may  
 70 elect to withhold retainage from payments to its subcontractors  
 71 at a rate higher than 2.5 ~~5~~ percent. The specific amount to be  
 72 withheld must be determined on a case-by-case basis and must be  
 73 based on the contractor's assessment of the subcontractor's past  
 74 performance, the likelihood that such performance will continue,  
 75 and the contractor's ability to rely on other safeguards. The  
 76 contractor shall notify the subcontractor, in writing, of its  
 77 determination to withhold more than 2.5 ~~5~~ percent of the  
 78 progress payment and the reasons for making that determination,  
 79 and the contractor may not request the release of such retained  
 80 funds from the public entity.

81 (5) ~~Neither~~ This section ~~and~~ ~~nor~~ s. 255.077 do not prohibit  
 82 ~~prohibits~~ a public entity from withholding retainage at a rate  
 83 less than 5 ~~10~~ percent of each progress payment, from  
 84 incrementally reducing the rate of retainage pursuant to a  
 85 schedule provided for in the contract, or from releasing at any  
 86 point all or a portion of any retainage withheld by the public  
 87 entity which is attributable to the labor, services, or

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

16-00384-19

2019246\_\_

88 materials supplied by the contractor or by one or more  
 89 subcontractors or suppliers. If a public entity makes any  
 90 payment of retainage to the contractor which is attributable to  
 91 the labor, services, or materials supplied by one or more  
 92 subcontractors or suppliers, the contractor must ~~shall~~ timely  
 93 remit payment of such retainage to those subcontractors and  
 94 suppliers.

95 Section 3. This act does not apply to any contract for  
 96 construction services which is entered into or is pending  
 97 approval by a public entity, as defined in s. 255.072, Florida  
 98 Statutes, or to any construction services project advertised for  
 99 bid by the public entity, on or before July 1, 2019.

100 Section 4. This act shall take effect July 1, 2019.

Page 4 of 4

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)

2-12-19 Meeting Date

(SB 2410) Bill Number (if applicable)

214284 Amendment Barcode (if applicable)

Topic Public Construction

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Parkway, Ste 200 Phone (954) 465-6811

Coconut Creek FL 33066 City State Zip

Email cbowen@abcconstruction.com

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

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

Representing Associated Builders and Contractors

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

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

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/12/2019  
Meeting Date

246  
Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name Brian Pitts

Job Title Treasurer

Address 1119 Newton Ave S  
Street

Phone 727/897-9291

St. Petersburg FL 33705  
City State Zip

Email justice2jesus@yahoo.com

Speaking:  For  Against  Information

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

Representing Justice 2 Jesus

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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**THE FLORIDA SENATE**  
**APPEARANCE RECORD**

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

02/12/2019

246

*Meeting Date*

*Bill Number (if applicable)*

Topic Public Construction

*Amendment Barcode (if applicable)*

Name Warren Husband

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

Address PO Box 10909

Phone (850) 205-9000

*Street*

Tallahassee

FL

32301

Email \_\_\_\_\_

*City*

*State*

*Zip*

Speaking:  For  Against  Information

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

Representing Florida A.G.C. Council (Associated General Contractors)

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/12/19

Meeting Date

SB 246

Bill Number (if applicable)

Topic Public Construction

Amendment Barcode (if applicable)

Name Bruce Kerchner

Job Title

Address 231 West Bay Ave.

Phone 407 830 1882

Street

Longwood FL 32750

City

State

Zip

Email BKerchner@att.net

Speaking: [ ] For [ ] Against [ ] Information

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

Representing Southeast Glass 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**  
**APPEARANCE RECORD**

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

2/12/19  
Meeting Date

SB 246  
Bill Number (if applicable)

Topic Public Construction

Amendment Barcode (if applicable)

Name Carol Bowen

Job Title Chief Lobbyist

Address 3730 Coconut Creek Pkwy, Ste 200 Phone (954) 465-6811

Street

Coconut Creek FL 33066

City

State

Zip

Email cbowen@pubeastflorida.com

Speaking:  For  Against  Information

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

Representing Associated Builders and Contractors of Florida

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

# APPEARANCE RECORD

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

2-12-19

Meeting Date

SB 246

Bill Number (if applicable)

Topic RETAINAGE

Amendment Barcode (if applicable)

Name CAM FENTRIS

Job Title LEGISLATIVE COUNSEL

Address 1400 VILLAGE SQ # 3-243

Phone 850-222-2772

Street

TALL

City

FL

State

32312

Zip

Email CFENTRIS@AOL.COM

Speaking:  For  Against  Information

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

Representing FCA ROOFING + SHEET METAL CONTRACTORS ASSN

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/12/2019

Meeting Date

246

Bill Number (if applicable)

Topic Public Construction

Amendment Barcode (if applicable)

Name Jeff Branch

Job Title Legislative Advisor

Address Street

Phone 850-370-3701

City

State

Zip

Email jbranch@flciv.com

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

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

Representing Florida League of Cities

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

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

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

2-12-19

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

246

Meeting Date

Bill Number (if applicable)

Topic

Amendment Barcode (if applicable)

Name JESS MCCARTY

Job Title ASSISTANT COUNTY ATTORNEY

Address 111 NW 1ST STREET, SUITE 2810

Phone 305-979-7110

Street

MIAMI

FL

33128

City

State

Zip

Email JMM2@MIAMIDADE.GOV

Speaking:  For  Against  Information

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

Representing MIAMI-DADE COUNTY

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

S-001 (10/14/14)

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

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

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

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BILL: SPB 7028

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: Judicial Retirement

DATE: February 11, 2019

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

---

| ANALYST           | STAFF DIRECTOR | REFERENCE | ACTION                                |
|-------------------|----------------|-----------|---------------------------------------|
| 1. <u>McVaney</u> | <u>McVaney</u> | _____     | <b>GO Submitted as Comm. Bill/Fav</b> |

---

**I. Summary:**

SPB 7028 amends s. 121.052, F.S., relating to the Florida Retirement System, to clarify that only a justice and judge who reaches age 70 prior to July 1, 2019, is authorized to purchase service credit relating to (a) temporary duty as a senior judge after that date or (b) the remainder of the justice or judge's term of office.

Current law provisions that allow a justice or judge who attains age 70 prior to July 1, 2019, to purchase service credit at the justice or judge's own expense are continued. If the retirement benefits are not vested when the justice or judge attains age 70, the purchased service credit is limited to the months necessary to achieve vesting. If the retirement benefits are vested at age 70, the purchased service credit is limited to the months remaining in the unexpired term of office.

The bill is not expected to have an impact on state or local revenues or expenditures.

The bill takes effect July 1, 2019.

**II. Present Situation:**

**State Court System Generally**

The judicial power is vested in a supreme court, district courts of appeal, circuit courts, and county courts.<sup>1</sup>

The Florida Supreme Court consists of seven justices.<sup>2</sup> These justices are appointed by the governor and are subject to retention elections by the voters. There is a district court of appeal serving each appellate district.<sup>3</sup> The legislature has authorized a total of 64 judgeships within the

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<sup>1</sup> FLA. CONST. art. V, s. 1.

<sup>2</sup> FLA. CONST. art. V., s. 3.

<sup>3</sup> FLA. CONST. art. V., s. 4.

five appellate districts.<sup>4</sup> These justices and judges are appointed by the governor and continue to serve subject to retention elections. The term of office for these justices and judges is 6 years.

There is a circuit court serving each judicial circuit.<sup>5</sup> The state is divided into 20 judicial circuits.<sup>6</sup> The legislature has authorized 599 judgeships at the circuit court level.<sup>7</sup> There is a county court in each county.<sup>8</sup> The legislature has authorized 322 county judgeships.<sup>9</sup> These judges may be either appointed by the governor or elected by the voters. The term of office for these judges is 6 years.

### ***Age restriction on serving as a justice or judge***

Article V, section 8 of the State Constitution sets out the eligibility for office of justice and judges. The relevant qualification for this discussion is the age restriction. Prior to July 1, 2019, no justice or judge can serve after attaining age 70, except upon temporary assignment or to complete a term, one-half of which has been served (at the time the judge reached age 70). Beginning July 1, 2019, the restriction is modified to prohibit a justice or judge from serving after attaining age 75, regardless of whether the service is temporary or is intended to complete the judge's term.

### ***Temporary service***

A retired justice or judge may be assigned temporary duty in any court as long as the retired justice or judge was not defeated in seeking reelection to, or did not fail to be retained in a retention election of, his or her last judicial office, and is not practicing law.<sup>10</sup> Compensation as a "senior judge"<sup>11</sup> is \$375 per day or portion thereof.<sup>12</sup>

### **Florida Retirement System**

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS.<sup>13</sup> The FRS is a contributory system with active members contributing three percent of their salaries.<sup>14</sup>

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<sup>4</sup> Section 35.06, F.S.

<sup>5</sup> FLA. CONST. art V., s. 5.

<sup>6</sup> Section 26.021, F.S.

<sup>7</sup> Section 26.031, F.S.

<sup>8</sup> FLA. CONST. V., s. 6.

<sup>9</sup> Section 34.022, F.S.

<sup>10</sup> Section 25.073(1), F.S.

<sup>11</sup> "Senior judge" is the common reference to a retired justice or judge assigned temporary duty.

<sup>12</sup> Section 25.073(2)(a), F.S., provides that the compensation will not be less than \$200 per day or portion of a day. The Chief Justice of the Supreme Court has set the compensation at \$375 per day.

<sup>13</sup> Florida Retirement System Pension Plan and Other State Administered Retirement Systems Comprehensive Annual Financial Report Fiscal Year Ended June 30, 2018, at p. 35. Available online at: [https://www.rol.frs.state.fl.us/forms/2017-18\\_CAFR.pdf](https://www.rol.frs.state.fl.us/forms/2017-18_CAFR.pdf). (Last visited January 28, 2019.)

<sup>14</sup> Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. Members in the Deferred Retirement Option Program do not contribute to the system.

The FRS is a multi-employer plan governed by the Florida Retirement System Act in Chapter 121, F.S. As of June 30, 2018, the FRS consisted of 1,002 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and also includes the 173 cities and 267 special districts that have elected to join the system.<sup>15</sup>

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

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

The membership of the FRS is divided into five membership classes: the Regular Class;<sup>16</sup> The Special Risk Class;<sup>17</sup> the Special Risk Administrative Support Class;<sup>18</sup> the Elected Officers' Class;<sup>19</sup> and the Senior Management Service Class.<sup>20</sup> The Elected Officers' Class is subdivided into three subclasses: Judicial Officers, County Officers and State Officers.

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.<sup>21</sup> For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.<sup>22</sup> Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.<sup>23</sup> For judicial officers, the service accrual rate is 3.3 percent for each year of service.

### ***Contribution Rates***

Each class and subclass is funded separately based upon the costs attributable to the members of that class or subclass. Employers participating in the FRS are required to contribute a specified percentage of the member's monthly compensation. The employer contribution rate is a blended contribution rate set by statute, which is the same percentage regardless of whether the member participates in the pension plan or the investment plan.<sup>24</sup> The rate is determined annually based on an actuarial study by the Department of Management Services that calculates the necessary level of funding to support all of the benefit obligations under both FRS retirement plans.

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<sup>15</sup> See *supra* note 13, at 196.

<sup>16</sup> The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

<sup>17</sup> The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

<sup>18</sup> The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

<sup>19</sup> The Elected Officers' Class is for elected state and county officers, and for those elected municipal or special district officers whose governing body has chosen Elected Officers' Class participation for its elected officers. Section 121.052, F.S.

<sup>20</sup> The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

<sup>21</sup> Section 121.021(45)(a), F.S.

<sup>22</sup> Section 121.021(45)(b), F.S.

<sup>23</sup> Section 121.091, F.S.

<sup>24</sup> Section 121.70(1), F.S.

The state actuary determines a rate associated with the normal cost of the pension plan (funding the prospective benefits) and a rate necessary to amortize the unfunded actuarial liabilities (UAL) over a thirty-year period. For purposes of this legislation, the relevant current employer contribution rates<sup>25</sup> for the Judicial Officer subclass within the Elected Officers Class are 12 percent of payroll for normal costs and 27.05 percent of payroll for the amortization of the unfunded actuarial liabilities of the FRS. The employee also pays three percent of salary.

***Purchase of service credits by judicial officers***

Section 121.052, F.S., allows a judicial officer who reaches age 70 and is not permitted to complete the judicial term because of age limitation under s. 8, Art. V of the State Constitution to purchase certain service credit under the Florida Retirement System. The purchase of service credit must occur after the time period relating to the service purchased as elapsed.

If the judicial officer reaches age 70, the judicial officer may purchase, at his or her own expense, any service credit after age 70 through the end of the officer’s term. The judicial officer must wait until the period purchased has elapsed. With this purchase, the judicial officer’s retirement benefit will be increased prospectively.

If a judicial officer reaches age 70 and the retirement benefit is not vested, the judicial officer may purchase service credit for service as a temporary judge. Such service must be immediately following the judicial officer’s last full term of service. The purchase of service credit is limited to the amount of time needed to vest retirement benefits. The purchase of such service is at the judicial officer’s expense at the amount of contributions that would have been paid had the judicial officer continued in office for the time period claimed, plus 6.5 percent interest.

Assuming the salaries in effect on June 30, 2019, for each level of judicial officer and a 42.05 percent contribution rate, the table below shows the cost to purchase one month of service and 12 months of service (without the application of interest).

| <b>Level of Court</b> | <b>Salary</b> | <b>Cost of 1 month</b> | <b>Cost of 12 months</b> |
|-----------------------|---------------|------------------------|--------------------------|
| <b>Supreme Court</b>  | \$220,600     | \$7,730                | \$92,762                 |
| <b>District Court</b> | \$169,554     | \$5,941                | \$71,297                 |
| <b>Circuit Court</b>  | \$160,688     | \$5,631                | \$67,569                 |
| <b>County Court</b>   | \$151,822     | \$5,320                | \$63,841                 |

Because the age restriction in the State Constitution was changed to age 75 effective July 1, 2019, a justice or judge attaining age 70 after July 1, 2019, will not be ineligible to complete a term based on attaining age 70. Thus, no one should become eligible to purchase the service credit after July 1, 2019.

---

<sup>25</sup> Section 121.71(4) and (5), F.S.

**III. Effect of Proposed Changes:**

Section 1 amends s. 121.052, F.S., to clarify that only a judge or justice who reaches age 70 prior to July 1, 2019, is eligible to purchase certain service credit for purposes of the Florida Retirement System.

The bill takes effect July 1, 2019.

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

Not applicable. The bill does not require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

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

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

This bill does not impose, authorize, or raise a state tax or fee.

**E. Other Constitutional Issues:**

None identified.

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

The bill does not impact state or local taxes or fees.

**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 121.052 of the Florida Statutes.

**IX. Additional Information:**

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

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

None.

**B. Amendments:**

None.

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

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FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-01426-19

20197028pb

A bill to be entitled

An act relating to judicial retirement; amending s. 121.052, F.S.; modifying provisions authorizing justices or judges to purchase additional service credit in the Florida Retirement System under certain circumstances to conform to the revisions made to the mandatory judicial retirement age established in s. 8, Art. V of the State Constitution; providing an effective date.

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

Section 1. Subsection (4) of section 121.052, Florida Statutes, is amended to read:

121.052 Membership class of elected officers.—

(4) PARTICIPATION BY ELECTED OFFICERS SERVING A SHORTENED TERM DUE TO APPORTIONMENT, FEDERAL INTERVENTION, ETC.—

(a) A duly elected officer whose term of office was shortened by legislative or judicial apportionment pursuant to s. 16, Art. III of the State Constitution may, after the term of office to which he or she was elected is completed, pay into the Florida Retirement System Trust Fund the amount of contributions that would have been made by the officer or the officer's employer on his or her behalf, plus 4 percent interest compounded annually from the date he or she left office until July 1, 1975, and 6.5 percent interest compounded annually thereafter, and may receive service credit for the length of time the officer would have served if such term had not been shortened by apportionment.

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

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(b) Any duly elected officer whose term of office was shortened because the election at which he or she was elected was delayed as a result of federal intervention under the federal Voting Rights Act may, after the term of office to which he or she was elected is completed, pay into the System Trust Fund the amount of contributions that would have been made by the employee or by the employer on his or her behalf for the period of time the assumption of office was delayed, plus 4 percent interest compounded annually from the date he or she assumed office until July 1, 1975, and 6.5 percent interest compounded annually thereafter, and may receive service credit for the length of time he or she would have served if such term had not been shortened by delay of the election.

(c) For the purpose of this chapter, "creditable service" includes the period from November 1972 to January 1973 which would have been served by an elected county officer but for the enactment of chapter 67-510, Laws of Florida, if the inclusion of such period would provide any person affected with sufficient creditable service to qualify for retirement benefits pursuant to this chapter.

(d)1. Any justice or judge, or any retired justice or judge who retired before July 1, 1993, who ~~has~~ attained the age of 70 years before July 1, 2019, and who ~~was~~ is prevented under s. 8, Art. V of the State Constitution from completing his or her term of office because of age may elect to purchase credit for all or a portion of the months he or she would have served during the remainder of the term of office; however, he or she may claim those months only after the date the service would have occurred. The justice or judge must pay into the Florida

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

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59 Retirement System Trust Fund the amount of contributions that  
60 would have been made by the employer on his or her behalf for  
61 the period of time being claimed, plus 6.5 percent interest  
62 thereon compounded each June 30 from the date he or she left  
63 office, in order to receive service credit in this class for the  
64 period of time being claimed. After the date the service would  
65 have occurred, and upon payment of the required contributions,  
66 the retirement benefit of a retired justice or judge shall be  
67 adjusted prospectively to include the additional creditable  
68 service; however, such adjustment may be made only once.

69 2. Any justice or judge who did ~~does~~ not seek retention or  
70 election to a subsequent term of office because he or she was  
71 ~~would be~~ prevented under s. 8, Art. V of the State Constitution  
72 from completing such term of office upon attaining the age of 70  
73 years may elect to purchase service credit for service as a  
74 temporary judge as assigned by the court if the temporary  
75 assignment immediately follows the last full term of office  
76 served and the purchase is limited to the number of months of  
77 service needed to vest retirement benefits. To receive  
78 retirement credit for such temporary service beyond termination,  
79 the justice or judge must pay into the Florida Retirement System  
80 Trust Fund the amount of contributions that would have been made  
81 by the justice or judge and the employer on his or her behalf  
82 had he or she continued in office for the period of time being  
83 claimed, plus 6.5 percent interest thereon compounded each June  
84 30 from the date he or she left office.

85 Section 2. This act shall take effect July 1, 2019.



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Commerce and Tourism, *Vice Chair*  
Appropriations Subcommittee on Transportation,  
Tourism, and Economic Development  
Children, Families, and Elder Affairs  
Governmental Oversight and Accountability  
Military and Veterans Affairs and Space

**JOINT COMMITTEE:**  
Joint Select Committee on Collective Bargaining

**SENATOR VICTOR M. TORRES, JR.**  
15th District

February 12, 2019

Ed Hooper, Chair  
Governmental Oversight and Accountability  
404 S. Monroe Street  
Tallahassee, FL 32399-1100

RE: Request for excusal from February 12, 2019 Governmental Oversight and Accountability committee meeting

Dear Chair Hooper:

Due to a family medical issue, I am unable to attend today's meeting of the Governmental Oversight and Accountability committee. Please accept this letter as a formal request for excusal of this absence. Please let me know if you have any questions or need additional information.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Victor M. Torres, Jr.".

Victor M. Torres, Jr.  
Florida State Senator  
District 15

c: Joe McVaney, Staff Director, Governmental Oversight and Accountability  
Lisa Vickers, Chief of Staff, President Galvano

**REPLY TO:**

101 Church Street, Suite 305, Kissimmee, Florida 34741 (407) 846-5187 FAX: (850) 410-4817  
 226 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

**BILL GALVANO**  
President of the Senate

**DAVID SIMMONS**  
President Pro Tempore

# CourtSmart Tag Report

**Room:** SB 301  
**Caption:** Senate Governmental Oversight and Accountability Committee

**Case No.:**

**Type:**  
**Judge:**

**Started:** 2/12/2019 4:00:14 PM

**Ends:** 2/12/2019 4:35:21 PM

**Length:** 00:35:08

4:00:13 PM Meeting called to order  
4:00:20 PM Roll Call - Quorum is present  
4:00:32 PM Senator Torres is excused  
4:00:46 PM Comments by Chair  
4:01:16 PM Introduction of Jack Hackett, new committee staff attorney  
4:01:30 PM Tab 1- SB 7002 - OGSR/Alzheimer's Disease Research Grant Advisory Board by Senator Harrell  
4:03:57 PM Chair  
4:04:05 PM Questions? None.  
4:04:11 PM Appearance Cards?  
4:04:16 PM Brian Pitts - Justice-2-Jesus, speaking against the bill  
4:05:55 PM Chair  
4:06:55 PM Debate? None.  
4:07:00 PM Senator Harrell to close on SB 7002  
4:07:15 PM Chair  
4:07:43 PM Roll Call - SB 7002 reported favorably  
4:07:47 PM Tab 2 - SB 7004 by Senator Harrell - OSGR/Department of Health Personnel  
4:09:06 PM Chair  
4:09:25 PM Questions? None  
4:09:30 PM Appearance Card?  
4:09:37 PM Brian Pitts, Justice-2-Jesus, speaks in opposition  
4:11:51 PM Chair  
4:12:54 PM Questions? None. Debate? None.  
4:12:58 PM Senator Harrell to close on SB 7004  
4:13:09 PM Chair  
4:14:04 PM Roll Call - SB 7004 reported Favorably  
4:14:16 PM Chair turns gavel to Vice Chair Rader  
4:14:45 PM Tab 3 - SB 246 Public Construction by Senator Hooper  
4:15:30 PM Chair  
4:15:33 PM Questions?  
4:15:41 PM Senator Rader  
4:15:47 PM Senator Hooper  
4:15:57 PM Amendment 214284 by Senator Hooper  
4:16:24 PM Questions? None.  
4:16:27 PM Appearance Cards on amendment?  
4:16:36 PM Carol Bowen, Chief Lobbyist, Associated Builders and Contractors, waives in support  
4:16:59 PM Senator Hooper to close on amendment 214284- waives close  
4:17:11 PM Amendment 214284 is adopted  
4:17:15 PM Back on Bill as amended  
4:17:21 PM Questions? None. Appearance Cards?  
4:17:24 PM Brian Pitts - Justice-2-Jesus, speaking against bill  
4:19:57 PM Warren Husband, Florida A.G.C. Council (Associated General Contractors) to speak on the bill  
4:20:48 PM Bruce Kershner, Southeast Glass Association, waives in support  
4:20:59 PM Carol Bowen, Chief Lobbyist, Associated Builders and Contractors of Florida, speaking for information  
4:22:01 PM Chair  
4:23:01 PM Questions?  
4:23:05 PM Question from Chair  
4:23:32 PM Carol Bowen in response  
4:23:51 PM Chair  
4:24:59 PM Cam Fentriss, Legislative Counsel, Florida Roofing and Sheet Metal Contractors Association, waives in support  
4:25:04 PM Jeff Branch, Legislative Advocate, Fl. League of Cities, speaking against the bill  
4:27:36 PM Questions? None

**4:27:47 PM** Jess McCarty, Assistant County Attorney, Miami-Dade County, waives in opposition  
**4:27:58 PM** Any more appearance cards? None. Debate on bill as amended? None.  
**4:28:05 PM** Senator Hooper to close on bill as amended  
**4:30:09 PM** Chair  
**4:31:08 PM** Roll Call CS/SB 246 - Favorable  
**4:31:23 PM** Tab 4 - SPB 7028 - Judicial Retirement, by Governmental Oversight and Accountability, presented by Senator Hooper  
**4:33:14 PM** Chair  
**4:33:15 PM** Questions? None  
**4:33:21 PM** Appearance cards?  
**4:33:25 PM** Debate? None.  
**4:33:29 PM** Senator Hooper to close on SPB 7028. Motion to move as a committee bill  
**4:33:32 PM** Objection to the motion? None.  
**4:33:36 PM** Roll Call on SB 7028 - Favorable  
**4:33:48 PM** Chair, moment of silence regarding mother of Senator Torres and Representative Mercado, daughter of Senator Torres, and family.  
**4:33:53 PM** Gavel back to Chairman Hooper  
**4:35:19 PM** Senator Albritton moves to adjourn. Motion is adopted. Seeing no objections, meeting is adjourned