

Tab 1	SB 1212 by Gruters ; International Affairs						
316316	A	S	RCS	GO, Gruters	Delete L.54 - 173:	01/27 04:00 PM	
Tab 2	SB 7002 by CF ; (Identical to H 07023) OGSR/State Child Abuse Death Review Committee						
Tab 3	SB 7032 by CJ ; (Identical to H 07015) OGSR/Body Camera Recordings Obtained by Law Enforcement Officers						
Tab 4	SB 7034 by CJ ; (Identical to H 07013) OGSR/Residential Facilities Serving Victims of Sexual Exploitation						
Tab 5	SB 7036 by CJ ; (Identical to H 07019) OGSR/Criminal Intelligence Information/Criminal Investigative Information						
Tab 6	SB 7038 by CJ ; (Identical to H 07005) OGSR/Information Held by an Investigative Agency						
Tab 7	SB 822 by Albritton ; (Identical to H 00659) Drones						
472536	A	S	RCS	GO, Albritton	Delete L.32 - 33:	01/27 04:00 PM	
Tab 8	SB 1690 by Torres ; (Identical to H 01251) Preservation of Memorials						
Tab 9	SB 240 by Rader ; (Identical to H 01277) State Symbols						
Tab 10	SPB 7046 by GO ; State Group Insurance Program						

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY
Senator Hooper, Chair
Senator Rader, Vice Chair

MEETING DATE: Monday, January 27, 2020
TIME: 1:30—3:30 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 SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1212 Gruters	International Affairs; Requiring the Secretary of State to serve as the state protocol officer; requiring that certain organizations provide notice of international travel to the Department of State, rather than the Department of Economic Opportunity; authorizing the Office of International Affairs within the Department of State to support the establishment of citizen support organizations for certain purposes; prohibiting the office from allowing a citizen support organization to use certain services, property, or facilities if the organization does not provide equal membership and employment opportunities, etc. GO 01/27/2020 Fav/CS IS RC	Fav/CS Yeas 5 Nays 0
2	SB 7002 Children, Families, and Elder Affairs (Identical H 7023)	OGSR/State Child Abuse Death Review Committee; Amending a provision relating to an exemption from public records and meeting requirements for certain identifying information held or discussed by the State Child Abuse Death Review Committee or a local committee; removing the scheduled repeal of the exemption, etc. GO 01/27/2020 Favorable RC	Favorable Yeas 4 Nays 0
3	SB 7032 Criminal Justice (Identical H 7015)	OGSR/Body Camera Recordings Obtained by Law Enforcement Officers; Amending a provision which provides an exemption from public records requirements for body camera recordings obtained by law enforcement officers under certain circumstances; abrogating the scheduled repeal of the exemption, etc. GO 01/27/2020 Favorable RC	Favorable Yeas 4 Nays 0

COMMITTEE MEETING EXPANDED AGENDAGovernmental Oversight and Accountability
Monday, January 27, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 7034 Criminal Justice (Identical H 7013)	OGSR/Residential Facilities Serving Victims of Sexual Exploitation; Abrogating the scheduled repeal of provisions relating to location information of specified places that serve child victims of commercial sexual exploitation; abrogating the scheduled repeal of provisions relating to location information of residential facilities that offer services for certain victims of human trafficking, etc. GO 01/27/2020 Favorable RC	Favorable Yeas 4 Nays 0
5	SB 7036 Criminal Justice (Identical H 7019)	OGSR/Criminal Intelligence Information/Criminal Investigative Information; Abrogating the scheduled repeals of provisions relating to specified criminal intelligence information or criminal investigative information, etc. GO 01/27/2020 Favorable RC	Favorable Yeas 4 Nays 0
6	SB 7038 Criminal Justice (Identical H 7005)	OGSR/Information Held by an Investigative Agency; Amending a provision relating to an exemption from public records requirements for information held by an investigative agency pursuant to an investigation relating to an activity prohibited under the Florida RICO Act; removing the scheduled repeal of the exemption, etc. GO 01/27/2020 Favorable RC	Favorable Yeas 4 Nays 0
7	SB 822 Albritton (Identical H 659)	Drones; Adding an exception to prohibited uses of a drone, etc. EN 01/13/2020 Favorable GO 01/27/2020 Fav/CS RC	Fav/CS Yeas 5 Nays 0
8	SB 1690 Torres (Identical H 1251)	Preservation of Memorials; Citing this act as the "Historical Memorials Protection Act"; prohibiting specified activities concerning memorials by a person or an entity; providing for liability and the award of certain costs and damages for violations of the act; requiring the Secretary of State to provide written approval before the placement of certain materials on or adjacent to certain memorials on public property; providing criminal penalties for damage to or removal of certain memorials, etc. GO 01/27/2020 Favorable CJ RC	Favorable Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability
 Monday, January 27, 2020, 1:30—3:30 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	SB 240 Rader (Identical H 1277)	State Symbols; Designating shelter animals as the official state pet, etc. AG 01/21/2020 Favorable GO 01/27/2020 Favorable RC	Favorable Yeas 4 Nays 0

Consideration of proposed bill:

10	SPB 7046	State Group Insurance Program; Authorizing persons eligible to participate in the program to elect membership with certain health maintenance organization plans; requiring at least one health maintenance organization plan be made available to each enrollee residing in the state; prohibiting specified fraudulent acts in connection with the program, including the submission of fraudulent insurance claims, making false statements in claims, and the acceptance of certain payments; requiring the Division of State Group Insurance to establish an anti-fraud unit for certain purposes by a specified date, etc.	Submitted and Reported Favorably as Committee Bill Yeas 4 Nays 0
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TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointment to the office indicated.			
Investment Advisory Council			
11	Jones, J. Robert, Jr. (Winter Park)	02/01/2023	Recommend Confirm Yeas 4 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1212

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Gruters

SUBJECT: International Affairs

DATE: January 27, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ponder	McVaney	GO	Fav/CS
2.			IS	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1212 amends s. 15.01, F.S., to provide that the Secretary of State shall serve as the state protocol officer. The bill revises s. 15.182, F.S., such that the Department of State (Department) is the only entity that must receive notice of intent to travel internationally by state-funded musical, cultural, or artistic organizations.

The bill creates s. 288.8165, F.S., allowing the Department to authorize the establishment of citizen support organizations to provide assistance, funding and promotional support for the intergovernmental programs of the Department.

The bill may have a minimal impact on government expenditures in the establishment of citizen support organizations. However, the Department will also experience a slightly positive impact as private resources from citizen support organizations will augment its intergovernmental programs. The private sector will experience an indeterminate fiscal impact in establishing citizen support organizations as well as meeting the audit, transparency and reporting requirements.

The bill takes effect July 1, 2020.

II. Present Situation:

The Department of State and the Secretary of State

The Secretary of State (the Secretary) holds a statutorily created office whose duties are “as provided by law.”¹ The Secretary serves as the head of the Department of State.² The Department consists of the following six divisions:

- Division of Elections;
- Division of Historical Resources;
- Division of Corporations;
- Division of Library and Information Services;
- Division of Cultural Affairs; and the
- Division of Administration.³

The Secretary is appointed by the Governor, subject to confirmation by the Senate and performs the functions conferred by the State Constitution upon the custodian of state records.⁴ Pursuant to Chapter 15, F.S., the Secretary of State is the custodian of the constitution, the Great Seal of this state, the original statutes, and of the resolutions of the Legislature, and of all the official correspondence of the Governor.⁵ The Department is required to maintain a register and an index of all official letters, orders, communications, messages, documents and other official acts issued or received by the Governor or the Secretary of State, and record these in a book numbered in chronological order.⁶ Before issuing any order or transmission of an official letter, communication or document from the executive office or promulgation of any official act or proceeding, except military orders, the Governor is required to deliver the same or a copy thereof to the Department for recordation.⁷

Notice of International Travel

The Department of Economic Opportunity (DEO) “assist[s] the Governor in working with the Legislature, state agencies, business leaders, and economic development professionals to formulate and implement coherent and consistent policies and strategies designed to promote economic opportunities to all Floridians.”⁸

In accordance with s. 15.182, F.S., if a musical, cultural or artistic organization that receives state funding is traveling internationally for a presentation, performance, or other significant public viewing, including an organization associated with a college or university, such an organization is required to notify the DEO of its intention to travel as well as the date, time and location of

¹ FLA. CONST. art. XII, s. 24. The Office of the Secretary of State was created in 1845, under the State Constitution.

² Section 20.10(1), F.S. *See* FLA. CONST. art. XII, s. 24.

³ Section 20.01(2), F.S.

⁴ Section 20.10(1), F.S.

⁵ Section 15.01, F.S.

⁶ Section 15.01, F.S.

⁷ *Id.*

⁸ Section 20.60, F.S.

each appearance. DEO, in conjunction with Enterprise Florida, Inc.⁹ (EFI), is required to act as an intermediary between artistic organizations and Florida businesses to encourage and coordinate joint undertakings, such as the sponsoring of cultural events.¹⁰

Section 15.182(3), F.S., requires an organization to provide notice to the Department at least 30 days prior to the date international travel is to commence. If the intention to travel internationally is not formed 30 days in advance, notice to the Department shall be given as soon as feasible.¹¹ Thus, under this section, notice of intent to travel internationally by state-funded organizations must be given to both DEO and the Department. Section 15.182(3), F.S., further requires that the Department take “an active role in informing such groups of the responsibility to notify the [D]epartment [of State] of travel intentions.”

The State Protocol Officer

The Governor, pursuant to s. 288.012(7), F.S., may designate a state protocol officer (SPO) who shall be housed within the Executive Office of the Governor. The SPO is required to develop, maintain, publish, and distribute the state protocol manual.¹² The SPO is responsible for consular operations and the sister city and sister state program as well as serving as a liaison with foreign, federal and other international organizations and with local governments.¹³ The SPO must maintain consular relations between the state and all foreign governments doing business in Florida and has the duty to ensure all federal treaties regarding foreign privileges and immunities are properly observed by monitoring U.S. laws and directives.

Additionally, the SPO is required to:

- Establish a viable system of registration for foreign government officials residing or having jurisdiction in the state¹⁴;
- Maintain and systematically update a current and accurate list of all such foreign governmental officials, consuls, or consulates;
- Issue certificates to such foreign governmental officials after verification pursuant to proper investigations through U.S. Department of State sources and the appropriate foreign government;
- Verify entitlement to sales and use tax exemptions pursuant to U.S. Department of State guidelines and identification methods;
- Verify entitlement to issuance of special motor vehicle license plates by the Department of Highway Safety and Motor Vehicles to honorary consuls or such other officials representing foreign governments who are not entitled to issuance of special Consul Corps license plates by the U.S. Government;

⁹ Enterprise Florida, Inc., created by s. 288.901, F.S., serves as the state’s economic development organization, operating under a contract with DEO. Enterprise Florida, Inc., is a nonprofit corporation, governed by a board of directors chaired by the Governor.

¹⁰ Section 15.182(2), F.S.

¹¹ Section 15.182(3), F.S.

¹² Section 288.012(7), F.S.

¹³ Section 288.816(1), F.S.

¹⁴ This provision instructs that an emphasis shall be placed on maintaining active communication between the SPO and the U.S. Department of State in order to be currently informed regarding foreign governmental personnel stationed in, or with official responsibilities for, Florida. Active dialogue shall also be maintained with foreign countries which historically have had dealings with Florida in order to keep them informed of the proper procedure for registering with the state.

- Establish a system of communication to provide all state and local law enforcement agencies with information regarding proper procedures relating to the arrest or incarceration of a foreign citizen;
- Request the Department of Law Enforcement to provide transportation and protection services when necessary pursuant to s. 943.68;
- Coordinate, when necessary, special activities between foreign governments and Florida state and local governments (such as Consular Corps Day, Consular Corps conferences, and various other social, cultural, or educational activities);
- Notify all newly arrived foreign governmental officials of the services offered by the SPO.¹⁵

The duties of the SPO also include the operation of the sister city and sister state program and establishing such new programs as needed to further global understanding through the interchange of people, ideas, and culture between Florida and the world. In order to accomplish this purpose, the SPO has the power and authority to:

- Coordinate and carry out activities designed to encourage the state and its subdivisions to participate in sister city and sister state affiliations with foreign countries and their subdivisions¹⁶;
- Encourage cooperation with and disseminate information pertaining to the Sister Cities International Program and any other program whose object is to promote linkages with foreign countries and their subdivisions;
- Maximize any aid available from all levels of government, public and private agencies, and other entities to facilitate such activities;
- Establish a viable system of registration for sister city and sister state affiliations between the state and foreign countries and their subdivisions. Such system shall include a method to determine that sufficient ties are properly established as well as a method to supervise how these ties are maintained; and
- Maintain a current and accurate listing of all such affiliations.¹⁷

The SPO serves as a contact for the state with the Florida Washington Office, the Florida Congressional Delegation, and United States Government agencies with respect to laws or policies which may affect the interests of the state in the area of international relations.¹⁸ The SPO is directed to direct all inquiries regarding international economic trade development or reverse investment opportunities to Enterprise Florida, Inc.¹⁹ The SPO serves as a liaison with other states regarding international programs of interest to Florida, and investigates and makes suggestions regarding possible areas of joint action or regional cooperation.²⁰ The SPO is granted the power and has the duty to encourage the relocation of consular offices and multilateral and international agencies and organizations to Florida.²¹

¹⁵ Section 288.816(2), F.S.

¹⁶ Such activities may include a State of Florida sister cities conference. Section 288.816(3)(a), F.S.

¹⁷ Sister city affiliations shall not be discouraged between the state and any country specified in s. 620(f)(1) of the federal Foreign Assistance Act of 1961 (22 U.S.C.A. Section 2370(f)(1)), as amended, with whom the United States is currently conducting diplomatic relations unless a mandate from the United States Government expressly prohibits such affiliations.

¹⁸ Section 288.816(4), F.S.

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 288.816(5), F.S.

Under s. 288.816(6), F.S., the DEO and EFI must help to contribute an international perspective to the state's development efforts.

Citizen Support Organizations

Citizen support organizations (CSOs) and direct-support organizations (DSOs) are statutorily created private entities that are generally required to be non-profit corporations and are authorized to carry out specific tasks in support of public entities or public causes. The functions and purposes of a CSO or DSO are prescribed by its enabling statute and, for most, by a written contract with the agency the CSO or DSO was created to support.²²

Legislature created s. 20.058, F.S., to establish a comprehensive set of transparency and reporting requirements for CSOs created or authorized pursuant to law or executive order and created, approved, or administered by a state agency.²³ Specifically, the law requires each CSO to annually submit, by August 1, the following information related to its organization, mission, and finances to the agency it supports:²⁴

- The name, mailing address, telephone number, and website address of the organization;
- The statutory authority or executive order that created the organization;
- A brief description of the mission of, and results obtained by, the organization;
- A brief description of the organization's plans for the next three fiscal years;
- A copy of the organization's code of ethics; and
- A copy of the organization's most recent federal Internal Revenue Service (IRS) Return of Organization Exempt from Income Tax form (Form 990).²⁵

Each agency receiving the above information must make the information available to the public through the agency's website. If the CSO maintains a website, the agency's website must provide a link to that website.²⁶ Additionally, any contract between an agency and a CSO must be contingent upon the CSO submitting and posting the information.²⁷ If a CSO fails to submit the required information for two consecutive years, the agency must terminate the contract with the CSO.²⁸ The contract must also include a provision for ending operations and returning state-issued funds to the state if the authorizing statute is repealed, the contract is terminated, or the organization is dissolved.²⁹

By August 15 of each year, the agency must report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Office of Program Policy Analysis and Government Accountability the information provided by the CSO. The report must also include a

²² Because the bill speaks to the establishment of a CSO, the analysis focuses on CSOs. DSOs are subject to the same transparency and reporting requirements as CSOs.

²³ Chapter 2014-96, Laws of Fla.

²⁴ Section 20.058(1), F.S.

²⁵ The IRS Form 990 is an annual information return required to be filed with the IRS by most organizations exempt from federal income tax under 26 U.S.C. 501.

²⁶ Section 20.058(2), F.S.

²⁷ Section 20.058(4), F.S.

²⁸ *Id.*

²⁹ *Id.*

recommendation by the agency, with supporting rationale, to continue, terminate, or modify the agency's association with each CSO.³⁰

A law creating or authorizing the creation of a CSO must state that the creation or authorization for the CSO is repealed on October 1 of the fifth year after enactment, unless reviewed and saved from repeal by the Legislature. CSOs in existence prior to July 1, 2014, must be reviewed by the Legislature by July 1, 2019.³¹

III. Effect of Proposed Changes:

Section 1 amends s. 15.01, F.S., to provide that the Secretary shall serve as the state protocol officer and that the Secretary, in consultation with the Governor and other governmental officials, shall develop, maintain, publish, and distribute the state protocol manual.

Section 2 amends s. 15.182, F.S., to designate the Department as the agency to whom state-funded musical, cultural, or artistic organizations must provide notice of intent to travel internationally.

Section 3 amends s. 288.816(2), F.S., to remove from the SPO's responsibilities the requirement of (i) issuing certificates to such foreign governmental officials after verification pursuant to proper investigations through U.S. Department of State sources and the appropriate foreign governments; and (ii) verifying entitlement to sales and use tax exemptions pursuant to U.S. Department of State guidelines and identification methods.

The bill also amends s. 288.816(3), F.S., and makes permissive the SPO's role regarding sister city and sister state programs. The bill eliminates the requirement of a system of registration for sister city and sister state affiliations as well as the duty to maintain an accurate listing of all such affiliations.

Section 4 creates 288.8165, F.S., allowing the Department to authorize the establishment of CSOs to provide assistance, funding and promotional support for intergovernmental programs of the Department. A CSO must be:

- A Florida corporation not for profit incorporated under chapter 617 and approved by the Department of State.
- Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts and bequests of money; acquire, receive, hold, invest, and administer, in its own name, securities, funds, or real or personal property; and make expenditures for the benefit of the intergovernmental programs of the Department; except that such organization may not receive funds from the Department by grant or gift unless specifically authorized by the Legislature. If the CSO by contract provides fiscal and administrative services to the department for a grant or program that benefits the intergovernmental programs of the department, the organization may be reimbursed or compensated for such services by the Department if the services are a direct benefit to the intergovernmental programs of the Department.

³⁰ Section 20.058(3), F.S.

³¹ Section 20.058(5), F.S.

- Determined by the Department to be consistent with the goals of the intergovernmental programs of the Department and in the best interests of the State.
- Approved in writing (by a letter of agreement from the Secretary of State) by the Department to operate for the benefit of the intergovernmental programs of the Department.

The Department may allow a CSO to use Department property, facilities, and personnel free of charge if such use is consistent with the approved purpose of that CSO and such use does not unreasonably interfere with the general public's use of Department property. The Department is allowed to prescribe conditions upon a CSO's use of any property, facilities, or personnel and may not permit such use if the CSO does not provide equal membership and employment opportunities to all persons, regardless of race, color, national origin, religion, sex, or age.

The bill specifies that each CSO must provide for an annual audit in accordance with s. 215.981, F.S.

The bill provides for the future repeal of this section on October 1, 2025, unless it is reviewed and saved from repeal by the Legislature.

Section 5 amends s. 288.012, F.S., to make conforming changes.

Section 6 provides that the act will take effect on July 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

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 bill will have an indeterminate fiscal impact on the private sector in the establishment of CSOs and in meeting the audit, transparency and reporting requirements.

C. Government Sector Impact:

The bill may have a minimal impact on government expenditures in the establishment of CSOs. However, the Department will experience an indeterminate positive fiscal impact as private resources from CSOs will augment the intergovernmental programs of the Department.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 15.01, 15.182, 288.816, and 288.012 of the Florida Statutes.

This bill creates s. 288.8165, F.S., 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 January 27, 2020:

The committee substitute removes reference to the Office of International Affairs throughout the bill and replaces it with Department of State and consolidates duplicative notice provisions regarding intent to travel internationally into one provision. It also conforms the provisions authorizing the Department to establish Citizen Support Organizations to the requirements for such organizations under s. 20.2551, F.S.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2020	.	
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The Committee on Governmental Oversight and Accountability
(Gruters) recommended the following:

Senate Amendment (with title amendment)

Delete lines 54 - 173

and insert:

Section 2. Section 15.182, Florida Statutes, is amended to
read:

15.182 International travel by state-funded musical,
cultural, or artistic organizations; notification to the
Department of State Economic Opportunity.—

(1) If a musical, cultural, or artistic organization that



316316

11 receives state funding is traveling internationally for a
12 presentation, performance, or other significant public viewing,
13 including an organization associated with a college or
14 university, such organization shall notify the Department of
15 State Economic Opportunity in writing of its intentions to
16 travel, together with the date, time, and location of each
17 appearance. The notice shall be provided to the department at
18 least 30 days prior to the date the international travel is to
19 commence or, when an intention to travel internationally is not
20 formed at least 30 days in advance of the date the travel is to
21 commence, as soon as feasible after forming such travel
22 intention. The department shall take an active role in informing
23 such artistic organizations of the responsibility to provide
24 notice of international travel intentions.

25 (2) The Department of State Economic Opportunity, in
26 conjunction with the Department of Economic Opportunity and
27 Enterprise Florida, Inc., shall act as an intermediary between
28 performing musical, cultural, and artistic organizations and
29 Florida businesses to encourage and coordinate joint
30 undertakings. Such coordination may include, but is not limited
31 to, encouraging business and industry to sponsor cultural
32 events, assistance with travel of such organizations, and
33 coordinating travel schedules of cultural performance groups and
34 international trade missions.

35 ~~(3) An organization shall provide the notification to the~~
36 ~~Department of State required by this section at least 30 days~~
37 ~~before the date the international travel is to commence or, when~~
38 ~~an intention to travel internationally is not formed at least 30~~
39 ~~days in advance of the date the travel is to commence, as soon~~



316316

40 ~~as feasible after forming such travel intention. The Department~~
41 ~~of State shall take an active role in informing such groups of~~
42 ~~the responsibility to notify the department of travel~~
43 ~~intentions.~~

44 Section 3. Paragraphs (c) and (d) of subsection (2) and
45 subsection (3) of section 288.816, Florida Statutes, are amended
46 to read:

47 288.816 Intergovernmental relations.—

48 (2) The state protocol officer shall be responsible for all
49 consular relations between the state and all foreign governments
50 doing business in Florida. The state protocol officer shall
51 monitor United States laws and directives to ensure that all
52 federal treaties regarding foreign privileges and immunities are
53 properly observed. The state protocol officer shall:

54 ~~(c) Issue certificates to such foreign governmental~~
55 ~~officials after verification pursuant to proper investigations~~
56 ~~through United States Department of State sources and the~~
57 ~~appropriate foreign government.~~

58 ~~(d) Verify entitlement to sales and use tax exemptions~~
59 ~~pursuant to United States Department of State guidelines and~~
60 ~~identification methods.~~

61 (3) The state protocol officer may ~~shall operate the sister~~
62 ~~city and sister state program and establish such new programs as~~
63 ~~needed to further global understanding through the interchange~~
64 ~~of people, ideas, and culture between Florida and the world. To~~
65 ~~accomplish this purpose, the state protocol officer shall have~~
66 ~~the power and authority to:~~

67 (a) Coordinate and carry out activities designed to
68 encourage the state and its subdivisions to participate in



316316

69 sister city and sister state affiliations with foreign countries
70 and their subdivisions. Such activities may include a State of
71 Florida sister cities conference.

72 (b) Encourage cooperation with and disseminate information
73 pertaining to the Sister Cities International Program and any
74 other program whose object is to promote linkages with foreign
75 countries and their subdivisions.

76 (c) Maximize any aid available from all levels of
77 government, public and private agencies, and other entities to
78 facilitate such activities.

79 ~~(d) Establish a viable system of registration for sister
80 city and sister state affiliations between the state and foreign
81 countries and their subdivisions. Such system shall include a
82 method to determine that sufficient ties are properly
83 established as well as a method to supervise how these ties are
84 maintained.~~

85 ~~(e) Maintain a current and accurate listing of all such
86 affiliations. Sister city affiliations shall not be discouraged
87 between the state and any country specified in s. 620(f)(1) of
88 the federal Foreign Assistance Act of 1961, as amended, with
89 whom the United States is currently conducting diplomatic
90 relations unless a mandate from the United States Government
91 expressly prohibits such affiliations.~~

92 Section 4. Section 288.8165, Florida Statutes, is created
93 to read:

94 288.8165 Citizen support organizations.—

95 (1) CITIZEN SUPPORT ORGANIZATIONS.—The Department of State
96 may authorize the establishment of citizen support organizations
97 to provide assistance, funding, and promotional support for the



316316

98 intergovernmental programs of the department. For the purposes
99 of this section, a "citizen support organization" means an
100 organization which:

101 (a) Is a Florida corporation not for profit incorporated
102 under chapter 617 and approved by the Department of State.

103 (b) Is organized and operated to conduct programs and
104 activities; raise funds; request and receive grants, gifts, and
105 bequests of money; acquire, receive, hold, invest, and
106 administer, in its own name, securities, funds, or real or
107 personal property; and make expenditures for the benefit of the
108 intergovernmental programs of the department; except that such
109 organization may not receive funds from the department by grant
110 or gift unless specifically authorized by the Legislature. If
111 the citizen support organization by contract provides fiscal and
112 administrative services to the department for a grant or program
113 that benefits the intergovernmental programs of the department,
114 the organization may be reimbursed or compensated for such
115 services by the department if the services are a direct benefit
116 to the intergovernmental programs of the department.

117 (c) The department has determined to be consistent with the
118 goals of the intergovernmental programs of the department and in
119 the best interests of the state.

120 (d) Is approved in writing by the department to operate for
121 the benefit of the intergovernmental programs of the department.
122 Such approval must be stated in a letter of agreement from the
123 Secretary of State.

124 (2) USE OF ADMINISTRATIVE SERVICES AND PROPERTY.—

125 (a) The department may permit a citizen support
126 organization to use department property, facilities, and



316316

127 personnel free of charge. A citizen support organization may use
128 department property, facilities, and personnel if such use is
129 consistent with the approved purpose of that citizen support
130 organization and if such use does not unreasonably interfere
131 with the general public's use of department property,
132 facilities, and personnel for established purposes.

133 (b) The department may prescribe conditions upon the use by
134 a citizen support organization of department property,
135 facilities, or personnel.

136 (c) The department may not permit the use of any property,
137 facilities, or personnel of the state by a citizen support
138 organization that does not provide equal membership and
139 employment opportunities to all persons regardless of race,
140 color, national origin, religion, sex, or age.

141 (3) ANNUAL AUDIT.—Each citizen support organization shall
142 provide for an annual financial audit in accordance with s.
143 215.981.

144 (4) FUTURE REPEAL.—This section is repealed October 1,
145 2025, unless reviewed and saved from repeal by the Legislature.

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

148 And the title is amended as follows:

149 Delete lines 16 - 21

150 and insert:

151 creating s. 288.8165; authorizing the Department of
152 State to support the establishment of citizen support
153 organizations for certain purposes; defining the term
154 "citizen support organization"; prohibiting the
155 department from allowing a

By Senator Gruters

23-01371-20

20201212__

1 A bill to be entitled
2 An act relating to international affairs; amending s.
3 15.01, F.S.; requiring the Secretary of State to serve
4 as the state protocol officer; requiring the Secretary
5 of State to take certain actions relating to the state
6 protocol manual; amending s. 15.182, F.S.; requiring
7 that certain organizations provide notice of
8 international travel to the Department of State,
9 rather than the Department of Economic Opportunity;
10 requiring the Department of State, The Department of
11 Economic Opportunity, and Enterprise Florida, Inc., to
12 work in conjunction for a certain purpose; amending s.
13 288.816, F.S.; revising the duties of the state
14 protocol officer; authorizing, rather than requiring,
15 the state protocol officer to take certain actions;
16 creating s. 288.8165, F.S.; authorizing the Office of
17 International Affairs within the Department of State
18 to support the establishment of citizen support
19 organizations for certain purposes; defining the term
20 "citizen support organization"; authorizing the office
21 to adopt rules; prohibiting the office from allowing a
22 citizen support organization to use certain services,
23 property, or facilities if the organization does not
24 provide equal membership and employment opportunities;
25 requiring citizen support organizations to provide for
26 a certain financial audit; providing a scheduled
27 repeal; amending s. 288.012, F.S.; conforming
28 provisions to changes made by the act; providing an
29 effective date.

23-01371-20

20201212__

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

Section 1. Section 15.01, Florida Statutes, is amended to read:

15.01 Duties.—

(1) The Secretary of State shall serve as the state protocol officer. In consultation with the Governor and other governmental officials, the Secretary of State shall develop, maintain, publish, and distribute the state protocol manual.

(2) The Department of State shall have the custody of the constitution and Great Seal of this state, and of the original statutes thereof, and of the resolutions of the Legislature, and of all the official correspondence of the Governor. The department shall keep in its office a register and an index of all official letters, orders, communications, messages, documents, and other official acts issued or received by the Governor or the Secretary of State, and record these in a book numbered in chronological order. The Governor, before issuing any order or transmission of any official letter, communication, or document from the executive office or promulgation of any official act or proceeding, except military orders, shall deliver the same or a copy thereof to the Department of State to be recorded.

Section 2. Section 15.182, Florida Statutes, is amended to read:

15.182 International travel by state-funded musical, cultural, or artistic organizations; notification to the Department of State ~~Economic Opportunity~~.—

23-01371-20

20201212__

59 (1) If a musical, cultural, or artistic organization that
60 receives state funding is traveling internationally for a
61 presentation, performance, or other significant public viewing,
62 including an organization associated with a college or
63 university, such organization shall notify the Department of
64 State Economic Opportunity of its intentions to travel, together
65 with the date, time, and location of each appearance.

66 (2) The Department of State Economic Opportunity, in
67 conjunction with the Department of Economic Opportunity and
68 Enterprise Florida, Inc., shall act as an intermediary between
69 performing musical, cultural, and artistic organizations and
70 Florida businesses to encourage and coordinate joint
71 undertakings. Such coordination may include, but is not limited
72 to, encouraging business and industry to sponsor cultural
73 events, assistance with travel of such organizations, and
74 coordinating travel schedules of cultural performance groups and
75 international trade missions.

76 (3) An organization shall provide the notification to the
77 Department of State required by this section at least 30 days
78 before the date the international travel is to commence or, when
79 an intention to travel internationally is not formed at least 30
80 days in advance of the date the travel is to commence, as soon
81 as feasible after forming such travel intention. The Department
82 of State shall take an active role in informing such groups of
83 the responsibility to notify the department of travel
84 intentions.

85 Section 3. Paragraphs (c) and (d) of subsection (2) and
86 subsection (3) of section 288.816, Florida Statutes, are amended
87 to read:

23-01371-20

20201212__

88 288.816 Intergovernmental relations.—

89 (2) The state protocol officer shall be responsible for all
90 consular relations between the state and all foreign governments
91 doing business in Florida. The state protocol officer shall
92 monitor United States laws and directives to ensure that all
93 federal treaties regarding foreign privileges and immunities are
94 properly observed. The state protocol officer shall:

95 ~~(c) Issue certificates to such foreign governmental~~
96 ~~officials after verification pursuant to proper investigations~~
97 ~~through United States Department of State sources and the~~
98 ~~appropriate foreign government.~~

99 ~~(d) Verify entitlement to sales and use tax exemptions~~
100 ~~pursuant to United States Department of State guidelines and~~
101 ~~identification methods.~~

102 (3) The state protocol officer may ~~shall operate the sister~~
103 ~~city and sister state program and establish such new programs as~~
104 ~~needed to further global understanding through the interchange~~
105 ~~of people, ideas, and culture between Florida and the world. To~~
106 ~~accomplish this purpose, the state protocol officer shall have~~
107 ~~the power and authority to:~~

108 (a) Coordinate and carry out activities designed to
109 encourage the state and its subdivisions to participate in
110 sister city and sister state affiliations with foreign countries
111 and their subdivisions. Such activities may include a State of
112 Florida sister cities conference.

113 (b) Encourage cooperation with and disseminate information
114 pertaining to the Sister Cities International Program and any
115 other program whose object is to promote linkages with foreign
116 countries and their subdivisions.

23-01371-20

20201212__

117 (c) Maximize any aid available from all levels of
118 government, public and private agencies, and other entities to
119 facilitate such activities.

120 ~~(d) Establish a viable system of registration for sister
121 city and sister state affiliations between the state and foreign
122 countries and their subdivisions. Such system shall include a
123 method to determine that sufficient ties are properly
124 established as well as a method to supervise how these ties are
125 maintained.~~

126 ~~(e) Maintain a current and accurate listing of all such
127 affiliations. Sister city affiliations shall not be discouraged
128 between the state and any country specified in s. 620(f)(1) of
129 the federal Foreign Assistance Act of 1961, as amended, with
130 whom the United States is currently conducting diplomatic
131 relations unless a mandate from the United States Government
132 expressly prohibits such affiliations.~~

133 Section 4. Section 288.8165, Florida Statutes, is created
134 to read:

135 288.8165 Citizen support organizations.-

136 (1) CITIZEN SUPPORT ORGANIZATIONS.-The Office of
137 International Affairs within the Department of State may support
138 the establishment of citizen support organizations to provide
139 assistance, funding, and promotional support for
140 intergovernmental programs. For the purposes of this section, a
141 "citizen support organization" means an organization that is:

142 (a) A Florida corporation not for profit incorporated under
143 chapter 617 and approved by the Department of State;

144 (b) Organized and operated to conduct programs and
145 activities; raise funds; request and receive grants, gifts, and

23-01371-20

20201212__

146 bequests of money; acquire, receive, hold, invest, and
147 administer, in its own name, securities, funds, objects of
148 value, or other property, real or personal; and make
149 expenditures to or for the direct or indirect benefit of the
150 Office of International Affairs;

151 (c) Determined by the Office of International Affairs to be
152 consistent with the goals of the office and in the best
153 interests of the state; and

154 (d) Approved in writing by the Office of International
155 Affairs to operate for the direct or indirect benefit of the
156 office. Such approval must be given in a letter of agreement
157 from the office.

158 (2) USE OF ADMINISTRATIVE SERVICES AND PROPERTY.—

159 (a) The Office of International Affairs may adopt rules
160 requiring citizen support organizations to meet certain
161 requirements in order to use the office's administrative
162 services, property, or facilities.

163 (b) The Office of International Affairs may not allow a
164 citizen support organization to use any administrative services,
165 property, or facilities of the state if the citizen support
166 organization does not provide equal membership and employment
167 opportunities to all persons regardless of race, color,
168 religion, sex, age, or national origin.

169 (3) ANNUAL AUDIT.—Each citizen support organization shall
170 provide for an annual financial audit in accordance with s.
171 215.981.

172 (4) FUTURE REPEAL.—This section is repealed October 1,
173 2025, unless reviewed and saved from repeal by the Legislature.

174 Section 5. Section 288.012, Florida Statutes, is amended to

23-01371-20

20201212__

175 read:

176 288.012 State of Florida international offices; ~~state~~
177 ~~protocol officer; protocol manual.~~—The Legislature finds that
178 the expansion of international trade and tourism is vital to the
179 overall health and growth of the economy of this state. This
180 expansion is hampered by the lack of technical and business
181 assistance, financial assistance, and information services for
182 businesses in this state. The Legislature finds that these
183 businesses could be assisted by providing these services at
184 State of Florida international offices. The Legislature further
185 finds that the accessibility and provision of services at these
186 offices can be enhanced through cooperative agreements or
187 strategic alliances between private businesses and state, local,
188 and international governmental entities.

189 (1) The department is authorized to:

190 (a) Establish and operate offices in other countries for
191 the purpose of promoting trade and economic development
192 opportunities of the state, and promoting the gathering of trade
193 data information and research on trade opportunities in specific
194 countries.

195 (b) Enter into agreements with governmental and private
196 sector entities to establish and operate offices in other
197 countries which contain provisions that may conflict with the
198 general laws of the state pertaining to the purchase of office
199 space, employment of personnel, and contracts for services. When
200 agreements pursuant to this section are made which set
201 compensation in another country's currency, such agreements
202 shall be subject to the requirements of s. 215.425, but the
203 purchase of another country's currency by the department to meet

23-01371-20

20201212__

204 such obligations shall be subject only to s. 216.311.

205 (2) Each international office shall have in place an
206 operational plan approved by the participating boards or other
207 governing authority, a copy of which shall be provided to the
208 department. These operating plans shall be reviewed and updated
209 each fiscal year and shall include, at a minimum, the following:

210 (a) Specific policies and procedures encompassing the
211 entire scope of the operation and management of each office.

212 (b) A comprehensive, commercial strategic plan identifying
213 marketing opportunities and industry sector priorities for the
214 country in which an international office is located.

215 (c) Provisions for access to information for Florida
216 businesses related to trade leads and inquiries.

217 (d) Identification of new and emerging market opportunities
218 for Florida businesses. This information shall be provided
219 either free of charge or on a fee basis with fees set only to
220 recover the costs of providing the information.

221 (e) Provision of access for Florida businesses to
222 international trade assistance services provided by state and
223 local entities, seaport and airport information, and other
224 services identified by the department.

225 (f) Qualitative and quantitative performance measures for
226 each office, including, but not limited to, the number of
227 businesses assisted, the number of trade leads and inquiries
228 generated, the number of international buyers and importers
229 contacted, and the amount and type of marketing conducted.

230 (3) Each international office shall annually submit to
231 Enterprise Florida, Inc., a complete and detailed report on its
232 activities and accomplishments during the previous fiscal year

23-01371-20

20201212__

233 for inclusion in the annual report required under s. 288.906. In
234 the format and by the annual date prescribed by Enterprise
235 Florida, Inc., the report must set forth information on:

236 (a) The number of Florida companies assisted.

237 (b) The number of inquiries received about investment
238 opportunities in this state.

239 (c) The number of trade leads generated.

240 (d) The number of investment projects announced.

241 (e) The estimated U.S. dollar value of sales confirmations.

242 (f) The number of representation agreements.

243 (g) The number of company consultations.

244 (h) Barriers or other issues affecting the effective
245 operation of the office.

246 (i) Changes in office operations which are planned for the
247 current fiscal year.

248 (j) Marketing activities conducted.

249 (k) Strategic alliances formed with organizations in the
250 country in which the office is located.

251 (l) Activities conducted with Florida's other international
252 offices.

253 (m) Any other information that the office believes would
254 contribute to an understanding of its activities.

255 (4) The Department of Economic Opportunity, in connection
256 with the establishment, operation, and management of any of its
257 offices located in another country, is exempt from the
258 provisions of ss. 255.21, 255.25, and 255.254 relating to
259 leasing of buildings; ss. 283.33 and 283.35 relating to bids for
260 printing; ss. 287.001-287.20 relating to purchasing and motor
261 vehicles; and ss. 282.003-282.00515 and 282.702-282.7101

23-01371-20

20201212__

262 relating to communications, and from all statutory provisions
263 relating to state employment.

264 (a) The department may exercise such exemptions only upon
265 prior approval of the Governor.

266 (b) If approval for an exemption under this section is
267 granted as an integral part of a plan of operation for a
268 specified international office, such action shall constitute
269 continuing authority for the department to exercise the
270 exemption, but only in the context and upon the terms originally
271 granted. Any modification of the approved plan of operation with
272 respect to an exemption contained therein must be resubmitted to
273 the Governor for his or her approval. An approval granted to
274 exercise an exemption in any other context shall be restricted
275 to the specific instance for which the exemption is to be
276 exercised.

277 (c) As used in this subsection, the term "plan of
278 operation" means the plan developed pursuant to subsection (2).

279 (d) Upon final action by the Governor with respect to a
280 request to exercise the exemption authorized in this subsection,
281 the department shall report such action, along with the original
282 request and any modifications thereto, to the President of the
283 Senate and the Speaker of the House of Representatives within 30
284 days.

285 (5) Where feasible and appropriate, international offices
286 established and operated under this section may provide one-stop
287 access to the economic development, trade, and tourism
288 information, services, and programs of the state. Where feasible
289 and appropriate, such offices may also be collocated with other
290 international offices of the state.

23-01371-20

20201212__

291 (6) The department is authorized to make and to enter into
292 contracts with Enterprise Florida, Inc., to carry out the
293 provisions of this section. The authority, duties, and
294 exemptions provided in this section apply to Enterprise Florida,
295 Inc., to the same degree and subject to the same conditions as
296 applied to the department. To the greatest extent possible, such
297 contracts shall include provisions for cooperative agreements or
298 strategic alliances between private businesses and state,
299 international, and local governmental entities to operate
300 international offices.

301 ~~(7) The Governor may designate a state protocol officer.~~
302 ~~The state protocol officer shall be housed within the Executive~~
303 ~~Office of the Governor. In consultation with the Governor and~~
304 ~~other governmental officials, the state protocol officer shall~~
305 ~~develop, maintain, publish, and distribute the state protocol~~
306 ~~manual.~~

307 Section 6. This act shall take effect July 1, 2020.

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/20
Meeting Date

SB 1212
Bill Number (if applicable)

Topic Senate Governmental Oversight Act.

Amendment Barcode (if applicable)

Name Brittany Dover

Job Title Legislative Affairs Director

Address 500 S. Bronough St.

Phone (850) 245-6509

Street

Tallahassee

City

FL.

State

32399

Zip

Email _____

Speaking: For Against Information

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

Representing Dept. of State

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7002

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/State Child Abuse Death Review Committee

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Delia</u>	<u>Hendon</u>		CF Submitted as Committee Bill
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 7002 amends s. 383.412, F.S., to save from repeal the current public records and public meetings exemptions for certain identifying information held by the State Child Abuse Death Review Committee or a local child abuse death review committee. Section 383.412, F.S., provides that any information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by and which information is held by the State Child Abuse Death Review Committee or a local committee is confidential and exempt from public disclosure. Portions of meetings of the State Child Abuse Death Review Committee or a local committee at which this confidential and exempt information is discussed are exempt from public meeting requirements. The bill removes the scheduled repeal date, resulting in the continuation of the public records and public meetings exemptions.

The bill is not expected to impact state and local revenues and expenditures.

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, section 11.0431, Florida Statutes (F.S.), provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, chapter 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020)

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.¹⁶ 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.¹⁷ This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts or special districts.¹⁸

Public policy regarding access to government meetings also is addressed in the Florida Statutes. Section 286.011, F.S., known as the “Government in the Sunshine Law,”¹⁹ or the “Sunshine Law,”²⁰ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.²¹ The board or commission must provide the public reasonable notice of such meetings.²² 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.²³ Minutes of a public meeting must be promptly recorded and open to public

not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² See, e.g., s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ See, e.g., s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ FLA. CONST., art. I, s. 24(b).

¹⁷ *Id.*

¹⁸ 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.”

¹⁹ *Times Pub. Co. v. Williams*, 222 So. 2d 470, 472 (Fla. 2d DCA 1969).

²⁰ *Board of Public Instruction of Broward County v. Doran*, 224 So. 2d 693, 695 (Fla. 1969).

²¹ Section 286.011(1)-(2), F.S.

²² *Id.*

²³ Section 286.011(6), F.S.

inspection.²⁴ Failure to abide by open meetings requirements will invalidate any resolution, rule or formal action adopted at a meeting.²⁵ A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.²⁶

The Legislature may create an exemption to open meetings requirements by passing a general law by at least a two-thirds vote of each house of the Legislature.²⁷ 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.²⁸ A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.²⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,³⁰ with specified exceptions.³¹ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³² The Act provides that a public records exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.³³

Open Government Sunset Review Act

The Open Government Sunset Review Act³⁴ (the Act) prescribes a legislative review process for newly created or substantially amended³⁵ public records or open meetings exemptions, with specified exceptions.³⁶ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.³⁷

²⁴ Section 286.011(2), F.S.

²⁵ Section 286.011(1), F.S.

²⁶ Section 286.011(3), F.S.

²⁷ FLA. CONST., art. I, s. 24(c).

²⁸ *Id.*

²⁹ *Halifax Hosp. Medical Center v. New-Journal Corp.*, 724 So. 2d 567 (Fla. 1999). In *Halifax Hospital*, the Florida Supreme Court found that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption. *Id.* at 570. The Florida Supreme Court also declined to narrow the exemption in order to save it. *Id.* In *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004), the court found that the intent of a 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.

³⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

³¹ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³² Section 119.15(3), F.S.

³³ Section 119.15(6)(b), F.S.

³⁴ Section 119.15, F.S.

³⁵ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

³⁶ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

³⁷ Section 119.15(3), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.³⁸ 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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;³⁹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;⁴⁰ or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.⁴¹

The Act also requires specified questions to be considered during the review process.⁴² In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.⁴³ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.⁴⁴

Child Abuse Death Review

Current law establishes the State Child Abuse Death Review Committee (State Committee) and local child abuse review committees (Local Committees) (collectively, the Committees) within the Department of Health.⁴⁵ The Committees must review the facts and circumstances of all

³⁸ Section 119.15(6)(b), F.S.

³⁹ Section 119.15(6)(b)1., F.S.

⁴⁰ Section 119.15(6)(b)2., F.S.

⁴¹ Section 119.15(6)(b)3., F.S.

⁴² 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?

⁴³ See *generally* s. 119.15, F.S.

⁴⁴ Section 119.15(7), F.S.

⁴⁵ Section 383.402, F.S.

deaths of children from birth to age 18 which occur in this state and are reported to the central abuse hotline of the Department of Children and Families.⁴⁶

The State Committee must prepare a comprehensive annual statistical report regarding deaths from child abuse.⁴⁷ The report, at a minimum, must include:

- Descriptive statistics, including demographic information regarding victims and caregivers, and the causes and nature of deaths;
- A detailed statistical analysis of the incidence and causes of deaths;
- Specific issues identified within current policy, procedure, rule, or statute and recommendations to address those issues from both the state and local committees; and
- Other recommendations to prevent deaths from child abuse based on an analysis of the data presented in the report.⁴⁸

The law provides the Committees with broad access to and use of information related to a child whose death is under review and that is necessary for the Committee to carry out its duties, including:

- Medical, dental or mental health treatment records;
- Records in in possession of a state agency or political subdivision; and
- Records of law enforcement which are not part of an active investigation.⁴⁹

Exemptions Under Review

Current law provides both a public records and a public meetings exemption for the State Committee and a Local Committee.⁵⁰

Information that reveals the identity of the surviving siblings, family members, or others living in the home of a deceased child who is the subject of review by the State Committee or a Local Committee is confidential and exempt from public records requirements.⁵¹ In addition, confidential or exempt information obtained by the Committee or a Local Committee retains its confidential or exempt status.⁵² The State and Local Committees may share with each other any relevant confidential or exempt information regarding case reviews.⁵³ Any person who knowingly or willfully violates the public records exemption commits a misdemeanor of the first degree.^{54,55}

Portions of meetings of the State Committee or a Local Committee at which confidential and exempt information is discussed are exempt from open meetings requirements.⁵⁶ The closed

⁴⁶ Section 383.402(1), F.S.

⁴⁷ Section 383.402(4), F.S.

⁴⁸ Section 383.402(5), F.S.

⁴⁹ Section 383.402(5)(a) and (b), F.S.

⁵⁰ Section 383.412, F.S.

⁵¹ Section 383.412(2)(a), F.S.

⁵² Section 383.412(2)(b), F.S.

⁵³ Section 383.412(4), F.S.

⁵⁴ Section 383.412(5), F.S.

⁵⁵ A misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year and a fine not to exceed \$1,000. *See* 775.082(4)(a) and 775.083(1)(d), F.S.

⁵⁶ Section 383.412(3), F.S.

portion of a meeting must continue to be recorded and no portion of the closed meeting is permitted to be off the record.⁵⁷ The recording of a closed meeting is exempt from public records requirements.⁵⁸

Pursuant to the Act, these exemptions are repealed October 2, 2020, unless saved from repeal by the Legislature.⁵⁹

The public records and public meetings exemptions were initially enacted by the Legislature in 1999 and amended and reenacted, thereafter in 2005, 2010, and 2015.^{60, 61} The 2015 amendment narrowed the public records exemption for identifying information related to cases of verified abuse and neglect to information that identifies the deceased child's siblings.⁶² It also expanded the public records exemption to include information held by the State Committee or a Local Committee which reveals the identity of a deceased child whose death is not the result of verified abuse or neglect as well as the identity of the surviving siblings, family members, or others living in the home.⁶³ This amendment also authorized the release of confidential information to a governmental agency in furtherance of its duties or a person or entity for research or statistical purposes.⁶⁴

The Legislature's stated purpose for the public records exemption was "to increase the potential for reduced morbidity or mortality of children and reduce the potential for poor outcomes for children, thereby improving the overall quality of life for children."⁶⁵ Additionally, the Legislature found it was a public necessity for portions of the Committees' meetings, wherein confidential and exempt information is discussed, to be made exempt from the public meetings requirements.⁶⁶ Without such an exemption, the Legislature found the open communication and coordination among the parties would be hampered, and the release of confidential and exempt information in a public meeting would defeat the purpose of the public records exemption.⁶⁷ Thus, the Legislature found the harm resulting from the release of such information substantially outweighed any public benefit.⁶⁸

Senate Review of s. 383.412, F.S.

In the course of conducting the Open Government Sunset Review of s. 383.412, F.S., the Senate Children, Families, and Elder Affairs Committee staff met with representatives from the

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Section 383.412(6), F.S.

⁶⁰ *See* Chs. 99-210, 2005-190, 2010-40, and 2015-77, Laws of Fla.

⁶¹ The initial act sunset in 2004 when legislation to reenact the exemption failed to pass both chambers of the Legislature. *See* Florida Senate, *Website Archive*, Senate 0462: Relating to Child Fatalities/Pub. Rec./OGSR http://archive.flsenate.gov/session/index.cfm?BI_Mode=ViewBillInfo&Mode=Bills&ElementID=JumpToBox&SubMenu=1&Year=2004&billnum=462 (last visited Oct. 31, 2019).

⁶² Ch. 2015-77, Laws of Fla.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ Ch. 99-210, s. 2, Laws of Fla.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

Department of Health (DOH) and the Department of Children and Families (DCF) and conducted surveys of each of the 23 Local Committees.

DOH and DCF staff stated that the exemptions have been effective and recommended making no changes to the public records and public meeting exemptions. Similarly, surveys of the 23 Local Committees showed near unanimous support for keeping the exemptions in place and unchanged.⁶⁹

Based upon a review of the public records and public meetings exemptions found in s. 383.412, F.S., under the Open Government Sunset Review Act, as well as discussions with and recommendations of DOH and DCF and survey results from the 23 local committees, the professional staff of the Senate Children, Families, and Elder Affairs Committee recommends the Legislature retain both the public records and public meetings exemptions established in s. 383.412, F.S.

III. Effect of Proposed Changes:

The bill is based on an Open Government Sunset Review of a public records and public meetings exemption for personal identifying information held by the DOH and by the Committees, and for portions of meetings of the Committees at which such confidential and exempt information is discussed.

The bill amends s. 383.412, F.S., to continue the current public records and public meetings exemptions. Records containing the specified personal identifying information will continue to be exempt from public disclosure. Additionally, those portions of meetings of the State Committee or a Local Committee at which such confidential and exempt information is discussed will continue to be exempt from the public meetings requirement.⁷⁰

By removing the scheduled repeal of the exemptions, the exemptions are no longer subject to review under the Open Government Sunset Review Act.

The bill takes effect October 1, 2020.

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.

⁶⁹ Summary of 2019 Local Child Abuse Death Review Committee Surveys. On file with the Senate Committee on Children, Families, and Elder Affairs.

⁷⁰ Section 383.412(3)(a), F.S.

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

Article I, s. 24(c) of the State Constitution requires 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. The bill continues a current public records and public meetings exemption beyond its current date of repeal. The bill does not create or expand an exemption. 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 or the open meeting requirements to state with specificity the public necessity justifying the exemption. The bill continues a current public records and public meetings exemption without an 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 and the open meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the exemptions is to protect personal identifying information related to the surviving family members in child abuse-related death cases. The exemptions do 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:

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

C. Government Sector Impact:

Governmental agencies will continue to incur costs related to the redaction of records in responding to public records requests. Additionally, governmental agencies will continue to incur costs associated with recording the closed portion of meetings held by the Committees wherein confidential and exempt information is discussed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 383.412 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-01483-20

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1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 383.412, F.S., relating
 4 to an exemption from public records and meeting
 5 requirements for certain identifying information held
 6 or discussed by the State Child Abuse Death Review
 7 Committee or a local committee; removing the scheduled
 8 repeal of the exemption; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (6) of section 383.412, Florida
 13 Statutes, is amended to read:

14 383.412 Public records and public meetings exemptions.—

15 (1) For purposes of this section, the term "local
 16 committee" means a local child abuse death review committee or a
 17 panel or committee assembled by the State Child Abuse Death
 18 Review Committee or a local child abuse death review committee
 19 pursuant to s. 383.402.

20 (2) (a) Any information held by the State Child Abuse Death
 21 Review Committee or a local committee which reveals the identity
 22 of the surviving siblings of a deceased child whose death
 23 occurred as the result of a verified report of abuse or neglect
 24 is confidential and exempt from s. 119.07(1) and s. 24(a), Art.
 25 I of the State Constitution.

26 (b) Any information held by the State Child Abuse Death
 27 Review Committee or a local committee which reveals the identity
 28 of a deceased child whose death has been reported to the central
 29 abuse hotline but determined not to be the result of abuse or

586-01483-20

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30 neglect, or the identity of the surviving siblings, family
31 members, or others living in the home of such deceased child, is
32 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
33 of the State Constitution.

34 (c) Information made confidential or exempt from s.
35 119.07(1) and s. 24(a), Art. I of the State Constitution which
36 is obtained by the State Child Abuse Death Review Committee or a
37 local committee shall retain its confidential or exempt status.

38 (3) (a) Portions of meetings of the State Child Abuse Death
39 Review Committee or a local committee at which information made
40 confidential and exempt pursuant to subsection (2) is discussed
41 are exempt from s. 286.011 and s. 24(b), Art. I of the State
42 Constitution. The closed portion of a meeting must be recorded,
43 and no portion of the closed meeting may be off the record. The
44 recording shall be maintained by the State Child Abuse Death
45 Review Committee or a local committee.

46 (b) The recording of a closed portion of a meeting is
47 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
48 Constitution.

49 (4) The State Child Abuse Death Review Committee and local
50 committees may share information made confidential and exempt by
51 this section:

52 (a) With each other;

53 (b) With a governmental agency in furtherance of its
54 duties; or

55 (c) With any person or entity authorized by the Department
56 of Health to use such relevant information for bona fide
57 research or statistical purposes. A person or entity who is
58 authorized to obtain such relevant information for research or

586-01483-20

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59 statistical purposes must enter into a privacy and security
60 agreement with the Department of Health and comply with all laws
61 and rules governing the use of such records and information for
62 research or statistical purposes. Anything identifying the
63 subjects of such relevant information must be treated as
64 confidential by the person or entity and may not be released in
65 any form.

66 (5) Any person who knowingly or willfully makes public or
67 discloses to any unauthorized person any information made
68 confidential and exempt under this section commits a misdemeanor
69 of the first degree, punishable as provided in s. 775.082 or s.
70 775.083.

71 ~~(6) This section is subject to the Open Government Sunset~~
72 ~~Review Act in accordance with s. 119.15, and shall stand~~
73 ~~repealed on October 2, 2020, unless reviewed and saved from~~
74 ~~repeal through reenactment by the Legislature.~~

75 Section 2. This act shall take effect October 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7032

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Body Camera Recordings Obtained by Law Enforcement Officers

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Erickson</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u> </u>	<u> </u>	<u>RC</u>	

I. Summary:

SB 7032 amends s. 119.071(2)(1), F.S., to save from repeal the public records exemption for body camera recordings. A body camera is a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.

Section 119.071(2)(1), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.

The public records exemption also specifies when a law enforcement agency may or must provide disclosure, and also provides for court-ordered disclosure and specifies grounds the court must consider in reaching its decision regarding disclosure.

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

Costs incurred by an agency in responding to public records requests for the body camera information should be offset by authorized fees. There are also costs associated with retention of the body camera recordings for the minimum period mandated by the public record exemption. However, Florida law does not mandate that a law enforcement agency acquire and use body cameras. See Section V. Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Access to Public Records – Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So.3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Body Cameras

Florida law defines a “body camera” as a portable electronic recording device that is worn on a law enforcement officer's body and that records audio and video data in the course of the officer performing his or her official duties and responsibilities.²⁷ Although Florida law does not require a law enforcement agency to acquire and use body cameras, it does require a law enforcement agency²⁸ that permits its law enforcement officers²⁹ to wear body cameras to establish policies

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 119.071(2)(1)1.a. and 943.1718(1)(a), F.S.

²⁸ A “law enforcement agency” is defined in s. 943.1718(1)(b), F.S., as an agency that has a primary mission of preventing and detecting crime and enforcing the penal, criminal, traffic, and motor vehicle laws of the state and in furtherance of that primary mission employs law enforcement officers as defined in s. 943.10, F.S.

²⁹ A “law enforcement officer” is defined in s. 943.1718(1)(c), F.S., as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make

and procedures addressing the proper use, maintenance, and storage of body cameras and the data recorded by body cameras. The policies and procedures must include:

- General guidelines for the proper use, maintenance, and storage of body cameras.
- Any limitations on which law enforcement officers are permitted to wear body cameras.
- Any limitations on law-enforcement-related encounters and activities in which law enforcement officers are permitted to wear body cameras.
- A provision permitting a law enforcement officer using a body camera to review the recorded footage from the body camera, upon his or her own initiative or request, before writing a report or providing a statement regarding any event arising within the scope of his or her official duties. Any such provision may not apply to an officer's inherent duty to immediately disclose information necessary to secure an active crime scene or to identify suspects or witnesses.
- General guidelines for the proper storage, retention, and release of audio and video data recorded by body cameras.³⁰

Florida law also requires a law enforcement agency that permits its law enforcement officers to wear body cameras to:

- Ensure that all personnel who wear, use, maintain, or store body cameras are trained in the law enforcement agency's policies and procedures concerning them.
- Ensure that all personnel who use, maintain, store, or release audio or video data recorded by body cameras are trained in the law enforcement agency's policies and procedures pertaining to body cameras.
- Retain audio and video data recorded by body cameras in accordance with the requirements of s. 119.021, F.S. (maintenance of public records), except as otherwise provided by law.
- Perform a periodic review of actual agency body camera practices to ensure conformity with the agency's policies and procedures.³¹

According to a 2018 criminal justice agency survey by the Florida Department of Law Enforcement, one state agency, 102 municipal police agencies, 23 sheriffs' offices, one college police department, six university police departments, and one school district reported that they currently use body cameras.³²

Body camera recordings are not subject to ch. 934, F.S. (interception of communications).³³ Therefore, a body camera recording cannot be considered an "intercept" of communications and the general prohibition in ch. 934, F.S., against interception of wire, oral, and electronic communications does not apply to such recordings.

arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state.

³⁰ Section 943.1718(2), F.S.

³¹ Section 943.1718(3), F.S.

³² 2018 Criminal Justice Agency Profile Survey Results, Florida Department of Law Enforcement, available at <http://www.fdle.state.fl.us/CJSTC/Publications/CJAP/CJAP> (last visited Dec. 19, 2019). The information, which is only available in Microsoft Excel Spreadsheet format, can be obtained by selecting the relevant law enforcement agency and then selecting "Supplemental Programs."

³³ Section 943.1718(4), F.S.

Generally, information contained in a body camera recording is subject to public disclosure. However, as discussed below, Florida law provides that some information contained in a body camera recording is confidential and exempt from public disclosure.³⁴

Public Records Exemption for Body Camera Recordings

“Although broad disclosure policies can promote police agency transparency and accountability, some videos—especially recordings of victims or from inside people’s homes—will raise privacy concerns if they are released to the public or the news media.” “In most state public disclosure laws, exceptions are outlined that may exempt body-worn camera footage from public release.”³⁵

Like most state public disclosure laws, Florida’s public records law exempts some body camera footage from public release. Section s. 119.071(2)(l), F.S., which was created in 2015,³⁶ provides a public records exemption for a body camera recording made by a law enforcement officer³⁷ in the course of the officer performing his or her official duties and responsibilities.

Section s. 119.071(2)(l), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.³⁸

A law enforcement agency may disclose a body camera recording in furtherance of its official duties and responsibilities and may also disclose the recording to another governmental agency in the furtherance of its official duties and responsibilities.³⁹

A law enforcement agency must disclose a body camera recording, or a portion thereof, to:

- A person recorded by a body camera (the person receives those portions of the recording relevant to the person’s presence in the recording);

³⁴ Section 119.071(2)(l), F.S.

³⁵ Miller, Lindsay, Jessica Toliver, and Police Executive Research Forum. 2014. *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*. Washington, DC: Office of Community Oriented Policing Services, available at <http://www.justice.gov/iso/opa/resources/472014912134715246869.pdf> (last visited on Dec. 18, 2019). See p. 17 (footnote omitted) of the report.

³⁶ Chapter 2015-41, L.O.F.

³⁷ Section 119.071(2)(l)1.b., F.S., provides that “law enforcement officer” has the same meaning as provided in s. 943.10, F.S. Section 943.10(1), F.S., defines a “law enforcement officer” as any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency.

³⁸ Section 119.071(2)(l)2.a.-c., F.S.

³⁹ Section 119.071(2)(l)3.a. and b., F.S.

- The personal representative⁴⁰ of a person recorded by a body camera (the person receives those portions of the recording relevant to the recorded person's presence in the recording);⁴¹
- A person not depicted in a body camera recording if the recording depicts a place in which the person lawfully resided, dwelled, or lodged at the time of the recording (the person receives those portions of the recording that record the interior of such a place); and
- Pursuant to a court order.⁴²

In addition to any other grounds the court may consider in determining whether to order that a body camera recording be disclosed, the court must consider:

- Whether disclosure is necessary to advance a compelling interest;
- The recording contains information that is otherwise exempt or confidential and exempt under the law;
- The person requesting disclosure is seeking to obtain evidence to determine legal issues in a case in which the person is a party;
- Disclosure would reveal information regarding a person that is of a highly sensitive personal nature;
- Disclosure may cause reputational harm or jeopardize the safety of a person depicted in the recording;
- Confidentiality is necessary to prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- The recording could be redacted to protect privacy interests; and
- There is good cause to disclose all or portions of a recording.⁴³

A law enforcement agency must retain a body camera recording for at least 90 days.⁴⁴ Generally, records retained by law enforcement agencies are governed by statutes and rules promulgated by the Department of State, Division of Library Services.⁴⁵ Currently, public records may be destroyed in accordance with the retention schedules established by the Division of Library Services.⁴⁶ This public records exemption requires law enforcement to retain these recordings for a minimum amount of time but does not otherwise supersede the retention and destruction schedule established by the Division of Library Services.

⁴⁰ Section 119.071(2)(1)1.c., F.S., defines a "personal representative" as a parent of, a court-appointed guardian of, an attorney of, an agent of, or a person holding a power of attorney for a person recorded by a body camera. If a person depicted in the recording is deceased, the term also means the personal representative of the estate of the deceased person; the deceased person's surviving spouse, parent, or adult child; the deceased person's attorney or agent; or the parent or guardian of a surviving minor child of the deceased. An agent must possess written authorization of the recorded person to act on his or her behalf.

⁴¹ This scenario would include a situation in which the person recorded was unable to give consent for some reason or was deceased.

⁴² Section 119.071(2)(1)4.a.-d., F.S.

⁴³ Section 119.071(2)(1)4.d.(I)(A)-(H), F.S. In any proceeding regarding the disclosure of a body camera recording, the law enforcement agency that made the recording must be given reasonable notice of hearings and an opportunity to participate. Section 119.071(2)(1)4.d.(II), F.S.

⁴⁴ Section 119.071(2)(1)5., F.S.

⁴⁵ Section 257.36, F.S. *See State of Florida General Records Schedule GS2 For Law Enforcement, Correctional Facilities, and District Medical Examiners*, effective Aug. 2017, available at <http://dos.myflorida.com/library-archives/records-management/general-records-schedules/> (last visited on Dec. 18, 2019).

⁴⁶ Section 257.36(6), F.S.

The exemption applies retroactively. It does not supersede any other exemption existing prior to or created after the effective date of this exemption. Those portions of a body camera recording that are protected from disclosure by another exemption continue to be exempt or confidential and exempt.⁴⁷ Some of the other public records exemptions that may be relevant to a body camera recording include:

- Active criminal intelligence information and active criminal investigative information (exempt);⁴⁸
- Information revealing surveillance techniques or procedures or personnel (exempt);⁴⁹
- Information revealing the substance of a confession of a person arrested (exempt);⁵⁰
- Information revealing the identity of a confidential informant or a confidential source (exempt);⁵¹
- Criminal intelligence information or criminal investigative information that reveals the identity of the victim of the crime of child abuse or any sexual offense or a videotape or image of any part of the body of the victim of a statutorily-specified sexual offense (confidential and exempt);⁵²
- Any information in a videotaped statement of a minor who is alleged to be or who is a victim of a statutorily-specified sexual offense, which reveals that minor's identity, home, school, etc. (confidential and exempt);⁵³
- A video or audio recording that depicts or records the killing of a law enforcement officer who was acting in accordance with his or her official duties or the killing of a victim of mass violence (confidential and exempt);⁵⁴ and
- Information revealing undercover personnel of any criminal justice agency (exempt).⁵⁵

The statement of public necessity for creation of the exemption provides the following reasons for creating the exemption:

- It is a public necessity that the following types of body camera recordings are made confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution: recordings taken within the interior of a private residence; recordings taken within the interior of a facility that offers health care, mental health care, or social services; and recordings taken in a place that a reasonable person would expect to be private.
- There is an increased prevalence of body cameras being used by law enforcement officers. Body cameras preserve information that has the potential to assist both law enforcement officers' and the public's ability to review the circumstances surrounding an event in which law enforcement intervention occurs.
- However, in certain instances, audio and video recorded by body cameras is significantly more likely to capture highly sensitive personal information than other types of law enforcement recordings or documents.

⁴⁷ Section 119.071(2)(l)7., F.S.

⁴⁸ Section 119.071(2)(c)1., F.S.

⁴⁹ Section 119.071(2)(d), F.S.

⁵⁰ Section 119.071(2)(e), F.S.

⁵¹ Section 119.071(2)(f), F.S.

⁵² Section 119.071(2)(h), F.S.

⁵³ Section 119.071(2)(j)2.a., F.S.

⁵⁴ Section 119.071(2)(p), F.S.

⁵⁵ Section 119.071(4)(c), F.S.

- Public disclosure of these recordings could have an undesirable chilling effect. People who know they are being recorded by a body camera may be unwilling to cooperate fully with law enforcement officers if they know that a body camera recording can be made publicly available to anyone else. People may also be less likely to call a law enforcement agency for services if their sensitive personal information or the circumstances that necessitate a law enforcement agency's involvement are subject to public dissemination as a body camera recording.
- Body camera recordings could be used for criminal purposes if they were available upon request. This exemption from public records requirements allows law enforcement officers to more effectively and efficiently administer their duties, which would otherwise be significantly impaired.
- These concerns regarding the impact of the public records requirements for body camera recordings not only necessitate the exemption of the recordings from public records requirements, but also outweigh any public benefit that may be derived from their disclosure.⁵⁶

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.⁵⁷

Staff Survey Regarding Exemption Under Review

Staff received responses from seven police departments, one university police department, and seven sheriff offices to a joint survey of the House Oversight, Transparency and Public Management Subcommittee and the Senate Committee on Criminal Justice regarding the public records exemption for body camera recordings. Twelve of the fifteen survey respondents recommended retaining the exemption in its current form. Three survey respondents recommended retaining the exemption with some modifications.⁵⁸

III. Effect of Proposed Changes:

The bill saves from repeal the public records exemption in s. 119.071(2)(1), F.S., for body camera recordings.

⁵⁶ Chapter 2015-41, sec. 2, L.O.F.

⁵⁷ Section 119.071(2)(1)8., F.S.

⁵⁸ The survey responses are on file with the Senate Committee on Criminal Justice. One survey respondent recommended clarifying application of Article I, s. 16, of the State Constitution ("Marsy's Law") to victim information contained in body camera recordings. Marsy's Law appears to impact numerous public records exemptions; therefore, any clarification of application of Marsy's Law would necessarily require addressing its application to multiple public records exemptions, not simply the public exemption regarding body camera recordings. Another survey respondent recommended exempting information in body camera recordings identifying public employees. It is unclear if this recommendation pertains to all public employees but the public records exemption regarding body camera recordings does not supersede any current public records exemption pertinent to a public employee. Section 119.071(2)(1)7., F.S. Another survey respondent recommended clarification regarding whether the public records exemption regarding body camera recordings applies to both video and audio recordings. However, the definition of "body camera" pertinent to this public records exemption states that the device includes audio and video data. Section 119.071(2)(1)1.a., F.S. Further, one of the legislative findings in the public necessity statement in support of this public records exemption is that "in certain instances, *audio and video recorded by body cameras* is significantly more likely to capture highly sensitive personal information than other types of law recordings or documents." Chapter 2015-41, sec. 2, L.O.F. (emphasis provided by staff).

Section 119.071(2)(1), F.S., makes a body camera recording, or a portion thereof, confidential and exempt from public disclosure if the recording is taken:

- Within the interior of a private residence;
- Within the interior of a facility that offers health care, mental health care, or social services;
- At the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; or
- In a place that a reasonable person would expect to be private.

The public records exemption also specifies when a law enforcement agency may or must provide disclosure, and also provides for court-ordered disclosure and specifies grounds the court must consider in reaching its decision regarding disclosure.

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

The bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

B. Public Records/Open Meetings Issues:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

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 bill exempts body camera recordings in limited circumstances: the interior of a residence; the interior of a health care, mental health care, or social services facility; the scene of a medical emergency involving a death or involving an injury that requires transport to a medical facility; and a place that a reasonable person would expect to be private. Because descriptions of some of these places may require interpretation by agencies having custody of the body camera recordings, specific applications of the exemption could be challenged. However, “exemptions from disclosure are to be narrowly construed,”⁵⁹ and the agency having custody of the records “bears the burden of proving its right to the claimed exemption.”⁶⁰

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Section 119.071(2)(l)2.c., F.S., exempts from public disclosure a body camera recording that is taken in a place that a reasonable person would expect to be private.

Article I, s. 23, of the State Constitution provides:

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

The Florida Supreme Court has stated that the right of privacy includes a right to “be free from uninvited observation or of interference in those aspect of [Floridians’] lives that fall within the ambit of this zone of privacy unless the intrusion is warranted by the necessity of a compelling state interest.”⁶¹ Referring to a case which predated Article I, s. 23, of the State Constitution, the Florida Supreme Court opined that the people have a fundamental right to control what they reveal about themselves and to whom they chose to reveal themselves, and noted “this power is exercised in varying degrees by differing individuals, the parameters of an individuals’ privacy can be dictated only by that individual.”⁶²

⁵⁹ *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So.2d 48, 53 (Fla. 5th DCA 2004) (citations omitted), *rev. den.*, 892 So.2d 1015 (Fla. 2004).

⁶⁰ *Id.* (citation omitted).

⁶¹ *Shaktman v. State*, 553 So.2d 148, 150 (Fla. 1998).

⁶² *Id.* at 151.

The Florida Supreme Court found that before the right of privacy attaches “a reasonable expectation of privacy must exist.”⁶³ The test for making that determination is “whether the law recognizes an individual’s legitimate expectation of privacy” in a certain type of record.⁶⁴ The Florida Supreme Court also recognizes the right to be free of observation and interference in aspects of life that fall within a “zone of privacy.”⁶⁵ In determining whether an individual has a legitimate expectation of privacy in a given case, the court must consider all of the circumstances, especially objective manifestations of that expectation.⁶⁶

Courts have used public records exemptions as guideposts of when a privacy interest exists. For example, the Florida Fourth District Court of Appeal relied on the Florida Supreme Court’s finding that financial records were private, but also observed that there was a statutory public records exemption for financial information held by a state agency, and noted that “the legislature has recognized the confidential nature of the exact type of information at issue.”⁶⁷ Likewise, the Second District Court of Appeal of Florida found that people have an expectation of privacy in their social security numbers, and as authority, noted that social security numbers were protected from disclosure by both federal and state law and by various rules of procedure.⁶⁸

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Costs incurred by an agency in responding to public records requests for the body camera information should be offset by authorized fees.⁶⁹ There are also costs associated with retention of the body camera recordings for the minimum period mandated by the public

⁶³ *Winfield v. Division of Pari-Mutuel Wagering, Dept. of Business Regulation*, 477 So.2d 544, 547 (Fla. 1985).

⁶⁴ *Id.*

⁶⁵ *Shaktman*, 553 So.2d at 150.

⁶⁶ *Id.* at 153. In his concurring opinion, Chief Justice Ehrlich opined that “the zone of privacy covered by article I, section 23, can be determined only by reference to the expectations of each individual, and those expectations are protected provided they are not spurious or false. A determination of whether an individual has a legitimate expectation of privacy in any given case must be made by considering all the circumstances, especially objective manifestations of that expectation; for example, in cases where disclosure of purportedly private information is sought, circumstances, such as the kind of information, where it is kept, who has access to it and under what circumstances.” *Id.*

⁶⁷ *Berkley v. Eisen*, 699 So.2d 789, 791 (Fla. 4th DCA 1997).

⁶⁸ *Thomas v. Smith*, 882 So.2d 1037, 1045 (Fla. 2d DCA 2004).

⁶⁹ Section 119.07(2) and (4), F.S.

recording exemption.⁷⁰ However, Florida law does not mandate that a law enforcement agency acquire and use body cameras.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

⁷⁰ Several law enforcement agencies responding to the joint staff survey (see footnote 57) indicated that they retain body camera recordings for a longer period than the minimum retention period (at least 90 days) required by the public records exemption.

By the Committee on Criminal Justice

591-02255-20

20207032__

1 A bill to be entitled

2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 119.071, F.S., which
4 provides an exemption from public records requirements
5 for body camera recordings obtained by law enforcement
6 officers under certain circumstances; making editorial
7 changes; abrogating the scheduled repeal of the
8 exemption; providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraph (1) of subsection (2) of section
13 119.071, Florida Statutes, is amended to read:

14 119.071 General exemptions from inspection or copying of
15 public records.—

16 (2) AGENCY INVESTIGATIONS.—

17 (1)1. As used in this paragraph, the term:

18 a. "Body camera" means a portable electronic recording
19 device that is worn on a law enforcement officer's body and that
20 records audio and video data in the course of the officer
21 performing his or her official duties and responsibilities.

22 b. "Law enforcement officer" has the same meaning as
23 provided in s. 943.10.

24 c. "Personal representative" means a parent, a court-
25 appointed guardian, an attorney, or an agent of, or a person
26 holding a power of attorney for, a person recorded by a body
27 camera. If a person depicted in the recording is deceased, the
28 term also means the personal representative of the estate of the
29 deceased person; the deceased person's surviving spouse, parent,

591-02255-20

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30 or adult child; the deceased person's attorney or agent; or the
31 parent or guardian of a surviving minor child of the deceased.
32 An agent must possess written authorization of the recorded
33 person to act on his or her behalf.

34 2. A body camera recording, or a portion thereof, is
35 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
36 of the State Constitution if the recording:

- 37 a. Is taken within the interior of a private residence;
38 b. Is taken within the interior of a facility that offers
39 health care, mental health care, or social services; or
40 c. Is taken in a place that a reasonable person would
41 expect to be private.

42 3. Notwithstanding subparagraph 2., a body camera
43 recording, or a portion thereof, may be disclosed by a law
44 enforcement agency:

- 45 a. In furtherance of its official duties and
46 responsibilities; or
47 b. To another governmental agency in the furtherance of its
48 official duties and responsibilities.

49 4. Notwithstanding subparagraph 2., a body camera
50 recording, or a portion thereof, shall be disclosed by a law
51 enforcement agency:

- 52 a. To a person recorded by a body camera; however, a law
53 enforcement agency may disclose only those portions that are
54 relevant to the person's presence in the recording;
55 b. To the personal representative of a person recorded by a
56 body camera; however, a law enforcement agency may disclose only
57 those portions that are relevant to the represented person's
58 presence in the recording;

591-02255-20

20207032__

59 c. To a person not depicted in a body camera recording if
60 the recording depicts a place in which the person lawfully
61 resided, dwelled, or lodged at the time of the recording;
62 however, a law enforcement agency may disclose only those
63 portions that record the interior of such a place.

64 d. Pursuant to a court order.

65 (I) In addition to any other grounds the court may consider
66 in determining whether to order that a body camera recording be
67 disclosed, the court shall consider whether:

68 (A) Disclosure is necessary to advance a compelling
69 interest;

70 (B) The recording contains information that is otherwise
71 exempt or confidential and exempt under the law;

72 (C) The person requesting disclosure is seeking to obtain
73 evidence to determine legal issues in a case in which the person
74 is a party;

75 (D) Disclosure would reveal information regarding a person
76 that is of a highly sensitive personal nature;

77 (E) Disclosure may harm the reputation or jeopardize the
78 safety of a person depicted in the recording;

79 (F) Confidentiality is necessary to prevent a serious and
80 imminent threat to the fair, impartial, and orderly
81 administration of justice;

82 (G) The recording could be redacted to protect privacy
83 interests; and

84 (H) There is good cause to disclose all or portions of a
85 recording.

86 (II) In any proceeding regarding the disclosure of a body
87 camera recording, the law enforcement agency that made the

591-02255-20

20207032__

88 recording shall be given reasonable notice of hearings and shall
89 be given an opportunity to participate.

90 5. A law enforcement agency must retain a body camera
91 recording for at least 90 days.

92 6. The exemption provided in subparagraph 2. applies
93 retroactively.

94 7. This exemption does not supersede any other public
95 records exemption that existed before or is created after the
96 effective date of this exemption. Those portions of a recording
97 which are protected from disclosure by another public records
98 exemption shall continue to be exempt or confidential and
99 exempt.

100 ~~8. This paragraph is subject to the Open Government Sunset~~
101 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
102 ~~on October 2, 2020, unless reviewed and saved from repeal~~
103 ~~through reenactment by the Legislature.~~

104 Section 2. This act shall take effect October 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7034

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Residential Facilities Serving Victims of Sexual Exploitation

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Cox	Jones		CJ Submitted as Committee Bill
1.	Hackett	McVaney	GO	Favorable
2.			RC	

I. Summary:

SB 7034 amends ss. 409.1678 and 787.06, F.S., to save from repeal the public record exemptions relating to location information of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity, respectively.

Safe houses and safe foster homes are certified by the Department of Children and Families (DCF) to care for sexually exploited children. Safe houses and safe foster homes must provide a safe, separate, and therapeutic environment tailored to the needs of specified commercially sexually exploited children who have endured significant trauma.

Current law makes confidential and exempt from public disclosure information about the location of safe houses, safe foster homes, other residential facilities serving child victims of sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity. However, the information may be provided to any agency in order to maintain health and safety standards and to address emergency situations.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemptions contained in ss. 409.1678 and 787.06, F.S., are scheduled to repeal on October 2, 2020. This bill removes these scheduled repeals to continue the confidential and exempt status of the information.

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Human Trafficking

Human trafficking is a form of modern-day slavery, which involves the exploitation of persons for commercial sex or forced labor.²⁷ An estimated 40.6 million persons were the victims of human trafficking in 2016, with one in four victims being children.²⁸ Human traffickers use various techniques to instill fear in victims, including violence, threats, deception, or keeping

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 787.06(1)(a), F.S. Further, s. 787.06(2)(d), F.S., defines the term "human trafficking" to mean the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining another person for the purpose of exploitation of that person.

²⁸ International Labour Organization, *Forced labour, modern slavery and human trafficking*, available at <http://www.ilo.org/global/topics/forced-labour/lang--en/index.htm> (last visited December 17, 2019).

victims under lock and key.²⁹ Other practices frequently used include isolating victims from the public and family members; confiscating passports, visas, or other identification documents; using or threatening to use violence toward victims or their families; telling victims that they will be imprisoned or deported for immigration violations if they contact authorities; and controlling the victims' funds by holding the money.³⁰ It is estimated that human trafficking generates \$150 billion dollars in illegal profits a year.³¹

Residential Treatment for Certain Victims of Human Trafficking

Safe Houses

A "safe house" is a group residential placement certified by the Department of Children and Families (DCF) to care for sexually exploited children.³² Safe houses must provide safe, separate, and therapeutic environments tailored to the needs of commercially sexually exploited children who have endured significant trauma and are not eligible for relief and benefits under the federal Trafficking Victims Protection Act.³³ Safe houses must:

- Use strength-based and trauma informed approaches to care;
- Serve exclusively one sex;
- Group child victims by age or maturity level;
- Care for child victims in a manner that separates them from children with other needs;
- Have staff members who are awake and on duty 24 hours a day; and
- Provide appropriate security for the facility through specified means.³⁴

Additionally, safe houses serving children who have been sexually exploited must conduct a comprehensive assessment of the needs of each resident and provide a variety of services to meet such needs, including, in part:

- Victim-witness and family counseling;
- Behavioral health care;
- Treatment and intervention for sexual assault;
- Life skills and workforce training;
- Mentoring by a survivor of commercial sexual exploitation if available; and
- Substance abuse screening.³⁵

Safe houses are inspected by DCF prior to certification and annually thereafter.³⁶

²⁹ The Polaris Project, *The Facts*, available at <https://polarisproject.org/human-trafficking/facts> (last visited December 17, 2019).

³⁰ *Id.*

³¹ International Labour Organization, *Profits and Poverty: The Economics of Forced Labour*, available at http://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_243391/lang--en/index.htm (last visited December 17, 2019).

³² Section 409.1678(1)(b), F.S.

³³ Section 409.1678(2)(a), F.S.

³⁴ Section 409.1678(2)(c), F.S. Safe houses must also be licensed under s. 409.175, F.S.

³⁵ Section 409.1678(2)(d), F.S.

³⁶ Section 409.1678(2)(f), F.S.

Safe Foster Homes

A “safe foster home” is a family foster home certified by DCF to care for sexually exploited children.³⁷ The state requires safe foster homes provide the same services and meet the same requirements as safe houses, except the requirement to have staff awake and on duty 24 hours a day does not apply.³⁸

Additional Residential Facilities

Traditional residential facilities serve both children and adults who are victims of sexual exploitation. If these facilities serve adults, they cannot be designated safe houses or safe foster homes.³⁹

Public Records Exemption Under Review

In 2015, the Legislature created public record exemptions for information about the location of safe houses, safe foster homes, residential facilities serving victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking. Specifically, the information regarding the location of these facilities held by an agency is confidential and exempt from public records requirements. However, the confidential and exempt information may be provided to any agency as necessary to maintain health and safety standards and to address emergency situations in the residential facility. The public record exemptions do not apply to facilities licensed by the Agency for Health Care Administration.⁴⁰

The 2015 public necessity statement⁴¹ for the exemptions provides that:

Safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation . . . or adult victims of human trafficking involving commercial sexual activity, are intended as refuges for sexually exploited victims from those who exploited them. If the individuals who victimized these people were able to learn the location of such facilities, they may attempt to contact their victims, exploit their vulnerabilities, and return them to the situations in which they were victimized. Even without the return of these victims to their former situations, additional contact with those who victimized them would have the effect of continuing their victimization and inhibiting their recoveries. Additionally, knowledge about the location of safe houses, safe foster homes, and other residential facilities serving victims of sexual exploitation . . . or adult victims of human trafficking involving commercial sexual activity, could enable other individuals to locate and attempt to victimize the residents.⁴²

³⁷ Section 409.1678(1)(a), F.S.

³⁸ Section 409.1678(2)(c)5., F.S.

³⁹ Section 409.1678(1)(a) and (b), F.S. The definitions of “safe foster home” and “safe house” are specifically restricted to “sexually exploited children.”

⁴⁰ Chapter 2015-147, L.O.F., codified as ss. 409.1678(6) and 787.06(9), F.S.

⁴¹ FLA. CONST. art. I, s. 24(c), requires each public record exemption state with specificity the public necessity justifying the exemption.

⁴² Chapter 2015-147, L.O.F.

During the 2019 interim, Committee staff met with staff from DCF and the Department of Legal Affairs (DLA) to discuss the exemptions as part of the review process. DCF, the entity which certifies safe houses and safe foster homes, stated that as of 2019 there were seven safe houses and 28 safe foster homes operating in the state. DCF and DLA staff indicated that they have not received any complaints concerning the exemptions nor did they encounter issues in implementing the exemptions. Neither agency was aware of any litigation involving the exemptions. DCF and DLA recommended the exemptions be reenacted as is.

III. Effect of Proposed Changes:

The bill removes the scheduled repeal date of the public record exemptions, thereby maintaining the confidential and exempt status for information about the location of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity.

The bill takes effect on October 1, 2020.

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:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

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 public records exemption appears to be a reasonable measure to prevent release of information about the location of safe houses, safe foster homes, other residential facilities serving child victims of commercial sexual exploitation, and residential facilities serving adult victims of human trafficking involving commercial sexual activity.

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:

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

C. Government Sector Impact:

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests regarding these exemptions should continue to be offset by authorized fees.⁴³

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

⁴³ Section 119.07(2) and (4), F.S.

VIII. Statutes Affected:

This bill substantially amends sections 409.1678 and 787.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Criminal Justice

591-02258-20

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 409.1678, F.S.;
4 abrogating the scheduled repeal of provisions relating
5 to location information of specified places that serve
6 child victims of commercial sexual exploitation;
7 amending s. 787.06, F.S.; abrogating the scheduled
8 repeal of provisions relating to location information
9 of residential facilities that offer services for
10 certain victims of human trafficking; providing an
11 effective date.

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

14
15 Section 1. Subsection (6) of section 409.1678, Florida
16 Statutes, is amended to read:

17 409.1678 Specialized residential options for children who
18 are victims of commercial sexual exploitation.—

19 (6) LOCATION INFORMATION.—

20 (a) Information about the location of a safe house, safe
21 foster home, or other residential facility serving child victims
22 of commercial sexual exploitation, as defined in s. 409.016,
23 which is held by an agency, as defined in s. 119.011, is
24 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
25 of the State Constitution. This exemption applies to such
26 confidential and exempt information held by an agency before,
27 on, or after the effective date of the exemption.

28 (b) Information about the location of a safe house, safe
29 foster home, or other residential facility serving child victims

591-02258-20

20207034__

30 of commercial sexual exploitation, as defined in s. 409.016, may
31 be provided to an agency, as defined in s. 119.011, as necessary
32 to maintain health and safety standards and to address emergency
33 situations in the safe house, safe foster home, or other
34 residential facility.

35 (c) The exemptions from s. 119.07(1) and s. 24(a), Art. I
36 of the State Constitution provided in this subsection do not
37 apply to facilities licensed by the Agency for Health Care
38 Administration.

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

43 Section 2. Subsection (10) of section 787.06, Florida
44 Statutes, is amended to read:

45 787.06 Human trafficking.—

46 (10) (a) Information about the location of a residential
47 facility offering services for adult victims of human
48 trafficking involving commercial sexual activity, which is held
49 by an agency, as defined in s. 119.011, is confidential and
50 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
51 Constitution. This exemption applies to such confidential and
52 exempt information held by an agency before, on, or after the
53 effective date of the exemption.

54 (b) Information about the location of a residential
55 facility offering services for adult victims of human
56 trafficking involving commercial sexual activity may be provided
57 to an agency, as defined in s. 119.011, as necessary to maintain
58 health and safety standards and to address emergency situations

591-02258-20

20207034__

59 in the residential facility.

60 (c) The exemptions from s. 119.07(1) and s. 24(a), Art. I
61 of the State Constitution provided in this subsection do not
62 apply to facilities licensed by the Agency for Health Care
63 Administration.

64 ~~(d) This subsection is subject to the Open Government~~
65 ~~Sunset Review Act in accordance with s. 119.15 and shall stand~~
66 ~~repealed on October 2, 2020, unless reviewed and saved from~~
67 ~~repeal through reenactment by the Legislature.~~

68 Section 3. This act shall take effect October 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7036

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Criminal Intelligence Information/Criminal Investigative Information

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Stokes</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7036 amends ss. 943.0583 and 119.071, F.S., to save from repeal the current exemptions from public records disclosure for certain criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking. This information will continue to be confidential and exempt.

The original public necessity statement for the bill provides that the identity of victims of human trafficking is of a sensitive personal nature. Without this exemption, the release of identifying information may cause further trauma or cause unwarranted damage to the good name or reputation of the victim. Furthermore, victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crime. Without the public records exemption these victims face barriers to employment and other life opportunities.

Sections 943.0583 and 119.071(2)(h), F.S., relating to information regarding victims of human trafficking, are subject to the Open Government Sunset Review Act and stand repealed on October 2, 2020, unless reviewed and saved from the repeal through reenactment by the Legislature. This bill removes the scheduled repeal to continue the confidential and exempt status of this information.

This bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests relating to information regarding victims of human trafficking should be offset by authorized fees. See Section V. Fiscal Impact Statement.

This bill is effective October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Human Trafficking

Human trafficking is a form of modern-day slavery. Victims of human trafficking, ranging from young children to adults, are subjected to force, fraud, or coercion for the purpose of sexual exploitation or forced labor. There are an estimated 40.3 victims of human trafficking in the world. Of that number, an estimated 25 percent are children. Based on data in 2017, it was estimated that 1 out of 7 endangered runaways reported to the National Center for Missing and Exploited Children were likely child sex trafficking victims.²⁷

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Polaris, *Human Trafficking: The Facts*, available at <https://polarisproject.org/human-trafficking/facts> (last visited December 19, 2019).

“Human trafficking” is defined in s. 787.06(2)(d), F.S., as the transporting, soliciting, recruiting, harboring, providing, enticing, maintaining, or obtaining of another person for the purpose of exploiting that person. “A victim of human trafficking” is a person subjected to coercion,²⁸ for the purpose of being used in human trafficking, a child under 18 years of age subjected to human trafficking, or an individual subjected to human trafficking as defined by federal law.²⁹

Public Records Exemption for Criminal Intelligence Information or Criminal Investigative Information Relating to Human Trafficking

Section 943.0583, F.S., allows a victim of human trafficking to petition the court for the expunction of a criminal history record resulting from the arrest or filing of charges for an offense committed or reported to have been committed while the person was a victim of human trafficking, which offense was committed or reported to have been committed as a part of the human trafficking scheme of which the person was a victim or at the direction of an operator of the scheme.³⁰ The standard of proof in a petition for expungement is a preponderance of the evidence. In 2015, the Legislature made any information that reveals, or may reveal, the identity of a victim of human trafficking whose criminal history record has been expunged, confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution.³¹

The expunction of a criminal history record is the court-ordered physical destruction or obliteration of a record or portion of a record by any criminal justice agency having custody thereof, or as prescribed by the court issuing the order.³² The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.
- Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

Section 943.0583(11), F.S., is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

²⁸ Section 787.06(2)(a), F.S., defines “coercion” as using or threatening to use physical force against any person; restraining, isolating, or confining or threatening to restrain, isolate, or confine any person without lawful authority and against her or his will; using lending or other credit methods to establish a debt by any person when labor or services are pledged as a security for the debt, if the value of the labor or services as reasonably assessed is not applied toward the liquidation of the debt, the length and nature of the labor or services are not respectively limited and defined; destroying, concealing, removing, confiscating, withholding, or possessing any actual or purported passport, visa, or other immigration document, or any other actual or purported government identification document, of any person; causing or threatening to cause financial harm to any person; enticing or luring any person by fraud or deceit; or providing a controlled substance as outlined in Schedule I or Schedule II of s. 893.03, F.S., to any person for the purpose of exploitation of that person.

²⁹ Section 943.0583(1)(c), F.S.

³⁰ Section 943.0583(3), F.S., does not allow the following offenses to be expunged: arson, sexual battery, robbery, kidnapping, aggravated child abuse, aggravated abuse of an elderly person or disabled adult, aggravated assault with a deadly weapon, murder, manslaughter, aggravated manslaughter of an elderly person or disabled adult, aggravated manslaughter of a child, unlawful throwing, placing, or discharging of a destructive device or bomb, armed burglary, aggravated battery, and aggravated stalking.

³¹ Section 943.0583(11), F.S.; Chapter 2015-146, L.O.F.

³² Section 943.045(16), F.S.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

[I]t is a public necessity that information in the investigative or intelligence records related to a criminal history record ordered expunged under s. 943.0583, Florida Statutes, which would or could reasonably be expected to reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under s. 943.0583, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. Persons who are victims of human trafficking and who have been charged with crimes allegedly committed at the behest of their traffickers are themselves victims of crimes. Such victims face barriers to employment and other life opportunities as long as these criminal charges remain on record and accessible to potential employers and others. Therefore, it is necessary that these records be made confidential and exempt in order for human trafficking victims to have the chance to rebuild their lives and reenter society.³³

Staff Surveys Regarding Exemptions Under Review

During the 2019 interim, Senate and House professional staff contacted the Florida Department of Law Enforcement (FDLE), the Department of Juvenile Justice (DJJ), county sheriff's departments, and local police departments. An overwhelming majority of the responding agencies requested to preserve the public records exemption.

Public Records Exemption for Criminal Intelligence Information or Criminal Investigative Information that Reveals the Identity of a Child Abuse Victim or a Minor who is a Victim of Human Trafficking

Section 119.071, F.S., provides general exemptions from inspection or copying of public records. The Legislature has provided that the following information pertaining to agency investigations is exempt from public record:

- Any information that reveals the identity of the victim of the crime of child abuse, or that reveals the identify of a person under the age of 18 who is the victim of the crime of human trafficking; any information that may reveal the identity of a person who is a victim of any sexual offense, including a sexual offense of human trafficking; any photograph, videotape, or image of any part of the body of the victim of a sexual offense, including a sexual offense of human trafficking.³⁴

Section 119.071(2)(h), F.S., relating to information regarding victims of human trafficking, is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from the repeal through reenactment by the Legislature.

³³ Chapter 2015-146, L.O.F.

³⁴ Section 119.071(2)(h), F.S.

In creating the exemption, the Legislature articulated the following reasons for the exemption:

The Legislature finds that it is a public necessity to make confidential and exempt from public records requirements certain criminal intelligence information or criminal investigative information that reveals the identity of a victim of the crime of human trafficking of a minor for labor or any victim of human trafficking for commercial sexual activity. The Legislature finds that it is important to strengthen the protections afforded victims of human trafficking for labor who are minors and victims of human trafficking for commercial sexual activity, regardless of age, in order to ensure their privacy and to prevent their re victimization by making such information confidential and exempt. The identity of these victims is information of a sensitive personal nature. As such, this exemption serves to minimize the trauma to victims because the release of such information would compound the tragedy already visited upon their lives and would be defamatory to or cause unwarranted damage to the good name or reputation of the victims. Protecting the release of identifying information of such victims protects them from further embarrassment, harassment, or injury.³⁵

Staff Survey Regarding Exemptions Under Review

During the 2019 interim, Senate and House professional staff contacted the FDLE, the DJJ, county sheriff's departments and local police departments. An overwhelming majority of the responding agencies requested to preserve the public records exemption.

Twenty-six of the agencies that provided a response to the survey regarding s. 119.071(2)(h), F.S., were in favor of saving the exemption. Only three of those responding agencies suggested changes, and no agencies were in favor of repeal. Twenty-four of the agencies that provided a response to the survey regarding s. 943.0583(11), F.S., were in favor of saving the exemption. Only one of the responding agencies suggested changes, and one agency suggested repeal.

III. Effect of Proposed Changes:

The bill amends ss. 943.0583 and 119.071, F.S., to save from repeal the current exemption from public records disclosure for certain criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking.

This bill deletes the scheduled repeal of the current public records exemption for criminal intelligence information or criminal investigative information that reveals the identity of victims of human trafficking. This information will continue to be confidential and exempt from public disclosure after October 1, 2020.

This bill takes effect on October 1, 2020.

³⁵ Chapter 2015-146, L.O.F.

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:**Vote Requirement**

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public records exemption. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. The bill does not create or expand a public records exemption, therefore it does not require a two-thirds vote for final passage.

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. The original public necessity statement for the bill provides that the identity of victims of human trafficking is of a sensitive personal nature. Without this exemption, the release of identifying information may cause further trauma or cause unwarranted damage to the good name or reputation of the victim. Furthermore, victims of human trafficking who have been convicted of crimes committed at the direction of their traffickers are themselves victims of crime. Without the public records exemption these victims face barriers to employment and other life opportunities. The justification upon which the public records exemption is based remains valid. Therefore, for these reasons, the bill reenacts the public records exemption.

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 the law is to protect the identity of victims of human trafficking. This bill exempts only certain criminal intelligence information and criminal investigative information that reveals the identity of victims of human trafficking from the public records requirements. 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:

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. Private Sector Impact:

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

C. Government Sector Impact:

This bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests relating to information regarding victims of human trafficking should be offset by authorized fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the sections 119.071 and 943.0583 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Criminal Justice

591-02257-20

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1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending ss. 119.071 and 943.0583,
4 F.S.; abrogating the scheduled repeals of provisions
5 relating to specified criminal intelligence
6 information or criminal investigative information;
7 providing an effective date.
8

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

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

13 119.071 General exemptions from inspection or copying of
14 public records.—

15 (2) AGENCY INVESTIGATIONS.—

16 (h)1. The following criminal intelligence information or
17 criminal investigative information is confidential and exempt
18 from s. 119.07(1) and s. 24(a), Art. I of the State
19 Constitution:

20 a. Any information that reveals the identity of the victim
21 of the crime of child abuse as defined by chapter 827 or that
22 reveals the identity of a person under the age of 18 who is the
23 victim of the crime of human trafficking proscribed in s.
24 787.06(3)(a).

25 b. Any information that may reveal the identity of a person
26 who is a victim of any sexual offense, including a sexual
27 offense proscribed in s. 787.06(3)(b), (d), (f), or (g), chapter
28 794, chapter 796, chapter 800, chapter 827, or chapter 847.

29 c. A photograph, videotape, or image of any part of the

591-02257-20

20207036__

30 body of the victim of a sexual offense prohibited under s.
31 787.06(3)(b), (d), (f), or (g), chapter 794, chapter 796,
32 chapter 800, s. 810.145, chapter 827, or chapter 847, regardless
33 of whether the photograph, videotape, or image identifies the
34 victim.

35 2. Criminal investigative information and criminal
36 intelligence information made confidential and exempt under this
37 paragraph may be disclosed by a law enforcement agency:

38 a. In the furtherance of its official duties and
39 responsibilities.

40 b. For print, publication, or broadcast if the law
41 enforcement agency determines that such release would assist in
42 locating or identifying a person that such agency believes to be
43 missing or endangered. The information provided should be
44 limited to that needed to identify or locate the victim and not
45 include the sexual nature of the offense committed against the
46 person.

47 c. To another governmental agency in the furtherance of its
48 official duties and responsibilities.

49 3. This exemption applies to such confidential and exempt
50 criminal intelligence information or criminal investigative
51 information held by a law enforcement agency before, on, or
52 after the effective date of the exemption.

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

57 Section 2. Subsection (11) of section 943.0583, Florida
58 Statutes, is amended to read:

591-02257-20

20207036__

943.0583 Human trafficking victim expunction.—

(11) (a) The following criminal intelligence information or criminal investigative information is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution:

1. Any information that reveals the identity of a person who is a victim of human trafficking whose criminal history record has been expunged under this section.

2. Any information that may reveal the identity of a person who is a victim of human trafficking whose criminal history record has been ordered expunged under this section.

(b) Criminal investigative information and criminal intelligence information made confidential and exempt under this subsection may be disclosed by a law enforcement agency:

1. In the furtherance of its official duties and responsibilities.

2. For print, publication, or broadcast if the law enforcement agency determines that such release would assist in locating or identifying a person that the agency believes to be missing or endangered. The information provided should be limited to that needed to identify or locate the victim.

3. To another governmental agency in the furtherance of its official duties and responsibilities.

(c) This exemption applies to such confidential and exempt criminal intelligence information or criminal investigative information held by a law enforcement agency before, on, or after the effective date of the exemption.

~~(d) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand~~

591-02257-20

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88 ~~repealed on October 2, 2020, unless reviewed and saved from~~
89 ~~repeal through reenactment by the Legislature.~~

90 Section 3. This act shall take effect October 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7038

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Information Held by an Investigative Agency

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Erickson</u>	<u>Jones</u>		CJ Submitted as Committee Bill
1.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 7038 amends s. 895.06(7), F.S., to save from repeal a public records exemption in relating to investigative information. The exemption makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of offenses concerning racketeering and illegal debts.

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal. The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law. An investigation is considered complete once the investigative agency either files an action or closes its investigation without filing an action.

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

The bill does not appear to have a fiscal impact on state or local governments. Costs incurred by an agency in responding to public records requests for the investigative information should be offset by authorized fees. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2020.

II. Present Situation:

Access to Public Records - Generally

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

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.³ Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.⁴ Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county, and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.⁵

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.⁶ The Florida Supreme Court has interpreted the statutory definition of “public record” to include “material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type.”⁷

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2018-2020) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 2, (2018-2020).

⁴ *State v. Wooten*, 260 So.3d 1060 (Fla. 4th DCA 2018).

⁵ Section 119.01(1), F.S. 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.”

⁶ Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

custodian of the public record.⁸ A violation of the Public Records Act may result in civil or criminal liability.⁹

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.¹⁰ The exemption must state with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.¹¹

General exemptions from the public records requirements are contained in the Public Records Act.¹² Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹³

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” Custodians of records designated as “exempt” are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.¹⁴ Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.¹⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act¹⁶ (the Act) prescribes a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰

⁸ Section 119.07(1)(a), F.S.

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

¹⁰ FLA. CONST. art. I, s. 24(c).

¹¹ *Id. See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So.2d 567 (Fla. 1999) (holding 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); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So.2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

¹² *See, e.g., s. 119.071(1)(a), F.S.* (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

¹³ *See, e.g., s. 213.053(2)(a), F.S.* (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

¹⁴ *See Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA 1991).

¹⁵ *WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004).

¹⁶ Section 119.15, F.S.

¹⁷ An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

¹⁸ Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

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 subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;²¹
- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²² or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.²³

The Act also requires specified questions to be considered during the review process.²⁴ In examining an exemption, the Act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption.

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁵ If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.²⁶

Florida RICO Act

The “Florida RICO (Racketeer Influenced and Corrupt Organization) Act” is the short title for ss. 895.01-895.06, F.S. “Racketeering activity” means committing, attempting to commit, conspiring to commit, or soliciting, coercing, or intimidating another person to commit any of a number of offenses listed in the definition.²⁷

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

²⁴ 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?

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

²⁷ Section 895.02(1), F.S. These offenses include violations of specified Florida laws (e.g., Medicaid fraud, kidnapping, human trafficking, and drug offenses) as well as any conduct defined as “racketeering activity” under 18 U.S.C. s 1961(1).

Section 895.03, F.S., provides that it is unlawful for any person:

- Who with criminal intent has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise.
- Through a pattern of racketeering activity or through the collection of an unlawful debt, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise or real property.
- Employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt.
- To conspire or endeavor to violate any of the previously-described activity.

Section 895.04, F.S., punishes as a first degree felony²⁸:

- With criminal intent, receiving any proceeds derived, directly or indirectly, from a pattern of racketeering activity or through the collection of an unlawful debt²⁹ to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest, or equity in, real property or in the establishment or operation of any enterprise;³⁰
- Through a pattern of racketeering activity or through the collection of an unlawful debt, acquiring or maintaining, directly or indirectly, any interest in or control of any enterprise or real property;
- If employed by, or associated with, any enterprise, conducting or participating, directly or indirectly, in such enterprise through a pattern of racketeering activity or the collection of an unlawful debt; and
- Conspiring or endeavoring to violate any of the aforementioned unlawful acts.³¹

In addition to criminal penalties under s. 895.04, F.S., s. 895.05, F.S., imposes civil liability for violations of the Florida RICO Act, including forfeiture to the state of all property, including money, used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of the act.³²

²⁸ A first degree felony is generally punishable by up to 30 years in state prison and a fine not exceeding \$10,000. Sections 775.082 and 775.083, F.S.

²⁹ Section 895.02(2), F.S., defines an “unlawful debt” as any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in this state in whole or in part because the debt was incurred or contracted in violation of specified Florida laws (e.g., various gambling offenses) as well as any gambling activity in violation of federal law or in the business of lending money at a rate usurious under state or federal law.

³⁰ Section 895.02(3), F.S., defines “enterprise” as any individual, sole proprietorship, partnership, corporation, business trust, union chartered under the laws of this state, or other legal entity, or any unchartered union, association, or group of individuals associated in fact although not a legal entity; and it includes illicit as well as licit enterprises and governmental, as well as other, entities. A criminal gang as defined in s. 874.03, F.S., constitutes an enterprise.

³¹ Section 895.03(4), F.S.

³² Section 895.05(2), F.S.

RICO Investigative Subpoenas

Under s. 895.06, F.S., an investigative agency³³ may, during the course of an investigation into civil violations of the Florida RICO Act, subpoena witnesses and material if the agency has reason to believe that a person or other enterprise has engaged in, or is engaging in, activity in violation of the act.³⁴ “The purpose of the subpoena power under section 895.06 is to allow an investigative agency to investigate, collect evidence and determine if a RICO violation has occurred.”³⁵

A subpoena is confidential for 120 days after the date of its issuance, and the subpoenaed person or entity may not disclose the existence of the subpoena to any person other than the attorney for the subpoenaed person or entity during the 120-day period.³⁶

The investigative agency may apply ex parte to the circuit court for the circuit in which a subpoenaed person or entity resides, is found, or transacts business for an order directing that the subpoenaed person or entity not disclose the existence of the subpoena to any other person or entity except the attorney for the subpoenaed person or entity for an additional period of time for good cause shown by the investigative agency.³⁷

The investigative agency may seek a court order for noncompliance with the subpoena and may stipulate to protective orders with respect to documents and information submitted in response to a subpoena.³⁸ A person’s failure to comply with a court order issued pursuant to s. 895.06, F.S., may be punished as contempt of court.³⁹

Public Records Exemption for Florida RICO Investigative Information

Section 895.06(7), F.S., which was created in 2015,⁴⁰ makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., which specifies prohibited racketeering activity.⁴¹

This confidential and exempt information may be disclosed by the investigative agency to a governmental entity in the performance of its official duties and to a court or tribunal.⁴² The information is no longer confidential and exempt once all investigations to which the information pertains are completed, unless the information is otherwise protected by law.⁴³ An investigation

³³ Section 895.02(7), F.S., defines “investigative agency” as the Department of Legal Affairs, the Office of Statewide Prosecution, or the office of a state attorney.

³⁴ Section 895.06(1), F.S.

³⁵ *Check ‘N Go of Florida, Inc. v. State*, 790 So.2d 454, 457 (Fla. 5th DCA 2001), *review denied* 817 So.2d 845 (Fla. 2002).

³⁶ Section 895.06(2), F.S.

³⁷ *Id.*

³⁸ Section 895.06(4) and (6), F.S.

³⁹ Section 895.06(5), F.S.

⁴⁰ Chapter 2015-99, L.O.F.

⁴¹ *See* s. 895.06(7)(a), F.S.

⁴² Section 895.06(7)(b), F.S.

⁴³ Section 895.06(7)(c), F.S.

is considered complete once the investigative agency either files an action or closes its investigation without filing an action.⁴⁴

The exemption is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2020, unless reviewed and saved from repeal by the Legislature.⁴⁵

The statement of public necessity for the exemption provides the following reasons for creating the exemption:

- Because a Florida RICO Act investigation conducted by an investigative agency may lead to the filing of a civil action, the premature release of the information held by such investigative agency could frustrate or thwart the investigation and impair the ability of the investigative agency to effectively and efficiently administer its duties under the act;
- The exemption protects the reputation of the potential defendant in the event the investigation is closed without the filing of a civil action; and
- Without the exemption, a potential defendant under the Florida RICO Act may learn of the investigation and dissipate his or her assets and thwart any future enforcement action under the act.⁴⁶

Legislative Survey Regarding the Public Records Exemption for Florida RICO Investigation Information

Staff received responses from the Department of Legal Affairs (DLA) and the state attorney offices in the 15th and 20th Judicial Circuits to a joint survey of the House Oversight, Transparency and Public Management Subcommittee and the Senate Committee on Criminal Justice regarding the public records exemption for Florida RICO investigation information. Both offices recommended retaining the exemption without changes.⁴⁷

Between July 1, 2015, and August 1, 2019, the DLA initiated five RICO investigations, of which three have been completed. During the same time period, the state attorney office in the 15th Judicial Circuit initiated and completed a minimum of 16 RICO investigations, and the State Attorney's Office for the 20th Judicial Circuit initiated and completed approximately five RICO investigations.⁴⁸

III. Effect of Proposed Changes:

The bill saves from repeal and retains a public records exemption in s. 895.06(7), F.S., relating to investigative information. Section 895.06(7), F.S., makes confidential and exempt from public disclosure information held by an investigative agency pursuant to an investigation of a violation of s. 895.03, F.S., which specifies prohibited racketeering activity.

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

⁴⁴ Section 895.06(7)(d), F.S.

⁴⁵ Section 895.06(7)(e), F.S.

⁴⁶ Chapter 2015-99, L.O.F.

⁴⁷ The survey responses are on file with Senate Committee on Criminal Justice.

⁴⁸ *Id.*

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

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

The bill takes effect on October 1, 2020.

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:

Voting Requirement

Article I, s. 24(c), of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, a two-thirds vote of the members present and voting for final passage of the bill is not required.

Public Necessity Statement

Article I, s. 24(c), of the State Constitution requires a bill that creates or expands an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. The bill continues the current public records exemption under sunset review; it does not expand this exemption or create a new one. Therefore, the bill does not require a public necessity statement.

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 public records exemption appears to be a reasonable measure to prevent premature release of RICO investigative information that could frustrate or thwart the investigation and thwart future RICO enforcement actions. Further, the RICO investigative information only remains confidential and exempt until all investigations to which the information pertains are completed, unless the information is otherwise protected by 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:

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

C. Government Sector Impact:

Costs incurred by an agency in responding to public records requests for the investigative information should be offset by authorized fees.⁴⁹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 895.06 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

⁴⁹ Section 119.07(2) and (4), F.S.

B. Amendments:

None.

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

By the Committee on Criminal Justice

591-02256-20

20207038__

1 A bill to be entitled
 2 An act relating to a review under the Open Government
 3 Sunset Review Act; amending s. 895.06, F.S., relating
 4 to an exemption from public records requirements for
 5 information held by an investigative agency pursuant
 6 to an investigation relating to an activity prohibited
 7 under the Florida RICO Act; removing the scheduled
 8 repeal of the exemption; providing an effective date.

9
 10 Be It Enacted by the Legislature of the State of Florida:

11
 12 Section 1. Subsection (7) of section 895.06, Florida
 13 Statutes, is amended to read:

14 895.06 Civil investigative subpoenas; public records
 15 exemption.—

16 (7) (a) Information held by an investigative agency pursuant
 17 to an investigation of a violation of s. 895.03 is confidential
 18 and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 19 Constitution.

20 (b) Information made confidential and exempt under
 21 paragraph (a) may be disclosed by the investigative agency to:

22 1. A government entity in the performance of its official
 23 duties.

24 2. A court or tribunal.

25 (c) Information made confidential and exempt under
 26 paragraph (a) is no longer confidential and exempt once all
 27 investigations to which the information pertains are completed,
 28 unless the information is otherwise protected by law.

29 (d) For purposes of this subsection, an investigation is

591-02256-20

20207038__

30 considered complete once the investigative agency either files
31 an action or closes its investigation without filing an action.

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

36 Section 2. This act shall take effect October 1, 2020.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 822

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Albritton

SUBJECT: Drones

DATE: January 27, 2020 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Rogers	Rogers	EN	Favorable
2.	Hackett	McVaney	GO	Fav/CS
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 822 amends s. 934.50, F.S., to create an exception from the prohibition against law enforcement agencies using drones to gather information. The bill authorizes the use of drones by a non-law enforcement employee of the Fish and Wildlife Conservation Commission or of the Florida Forest Service for the purpose of managing and eradicating invasive exotic plants or animals on public lands and suppressing or mitigating wildfire threats.

There may be a positive indeterminate impact to the state associated with using drone technology (rather than manned aircraft) for invasive species management.

The bill takes effect on July 1, 2020.

II. Present Situation:

A drone, also called an Unmanned Aerial Vehicle (UAV) or Unmanned Aerial System (UAS), is defined in s. 934.50, F.S., as a powered, aerial vehicle that:

- Does not carry a human operator;
- Uses aerodynamic forces to provide vehicle lift;
- Can fly autonomously or be piloted remotely;

- Can be expendable or recoverable; and
- Can carry a lethal or nonlethal payload.¹

Drones range in size from wingspans of 6 inches to 246 feet, and can weigh from approximately 4 ounces to over 25,600 pounds.² They may be controlled manually or through an autopilot that uses a data link to connect the drone's pilot to the drone.³ Drones can be equipped with infrared cameras,⁴ and "LADAR" (laser radar).⁵ In 2011, it was reported that the U.S. Army contracted with two corporations to develop facial recognition and behavioral recognition technologies for drone use.⁶

Federal Aviation Authority

In February 2012, Congress passed the Federal Aviation Authority (FAA) Modernization and Reform Act of 2012 (Act), which required the FAA to safely open the nation's airspace to drones by September 2015.⁷ The FAA regulates the use of drones as it does all aircraft in the national airspace, with an emphasis on safety, efficiency, and national security, but views considerations such as privacy beyond the scope of FAA authority.⁸

Under the authority granted in the 2012 Act, the FAA issued its regulations on the operation and certification of small (less than 55 pounds at take-off) unmanned aircraft systems in June 2016.⁹ The 2016 small drone regulations are still in effect and include airspace restrictions and a waiver

¹ Section 934.50(2), F.S.

² 14 C.F.R. Part 91, Docket No. FAA-2006-25714, Department of Transportation, Federal Aviation Administration, *Unmanned Aircraft Operations in the National Airspace System*, February 6, 2007.

³ *Id.*

⁴ Infrared cameras can see objects through walls based on the relative levels of heat produced by the objects. *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf; Search and rescue drones equipped with thermal imaging help first responders identify the location of people lost in chaotic scenes, and police departments have started using drones with thermal capabilities to identify the location of suspects while keeping an infrared eye on their officers. *Best Infrared Drones (Buying Guide)*, Spire Drones, <https://buythebestdrone.com/best-infrared-drones/> (last visited Dec. 23, 2019).

⁵ The research and development laboratory at the Massachusetts Institute of Technology has developed airborne lidar systems that generate detailed 3D imagery of terrain and structures, including those beneath dense foliage. The lab reports that the micro-lidar could be used under both clear and heavy foliage conditions for surveillance and reconnaissance missions as well as for humanitarian assistance and disaster relief operations. Lincoln Laboratory, Massachusetts Institute of Technology, R & D Projects, *Micro-lidar*, <https://www.ll.mit.edu/r-d/projects/micro-lidar> (last visited Dec. 23, 2019).

⁶ Popular Science, Clay Dillow, *Army Developing Drones That Can Recognize Your Face From a Distance*, September 28, 2011, <https://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind/> (last visited Dec. 23, 2019); see also PoliceOne.com, 2017 Guide to Emerging Technologies, Val Van Brocklin, *Facial recognition technology and a 'reasonable expectation of privacy'*, May 16, 2017, <https://www.policeone.com/emerging-tech-guide/articles/facial-recognition-technology-and-a-reasonable-expectation-of-privacy-cxdcrWsBRCu8Dieb/> (last visited Dec. 23, 2019).

⁷ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012, *Drones in Domestic Surveillance Operations: Fourth Amendment Implications and Congressional Response*, Congressional Research Service, April 3, 2013, available at www.fas.org/sgp/crs/natsec/R42701.pdf.

⁸ 14 C.F.R. Parts 21, 43, 61, 91, 101, 107, 119, 133, and 183; *Operation and Certification of Small Unmanned Aircraft Systems*, 81 Fed. Reg. 42064-42214.

⁹ *Id.*

mechanism allowing for deviations from drone operational restrictions upon application and authorization by the FAA.¹⁰

FAA Drone Airspace Restrictions

The FAA has designated generally restricted airspace including drone flight around and over sports stadiums and wildfires at specified times or under specified conditions. Drone operators must educate themselves on these restrictions prior to flying.¹¹

Use of Drones in Florida – Section 934.50, F.S.

A law enforcement agency is defined in s. 934.50, F.S., as a lawfully established state or local public agency that is responsible for the prevention and detection of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.¹²

Section 934.50(3)(b), F.S., provides that a real property owner, tenant, occupant, invitee, or licensee of the property is presumed to have a reasonable expectation of privacy from drone surveillance¹³ of the property or the owner, tenant, occupant, invitee, or licensee by another person, state agency,¹⁴ or political subdivision,¹⁵ if he or she cannot be seen by persons at ground level who are in a place they have a legal right to be.¹⁶

Section 934.50, F.S., prohibits law enforcement agencies from using a drone to gather evidence or other information, with certain exceptions.¹⁷ Evidence obtained or collected by a law enforcement agency using a drone is not admissible in a criminal prosecution in any court of law in this state unless it is permitted under one of the statute's exceptions.¹⁸ An aggrieved party may

¹⁰ *Id.*

¹¹ It is a federal crime, punishable by up to 12 months in prison, to interfere with firefighting efforts on public lands. Congress has authorized the FAA to impose a civil penalty of up to \$20,000 against any drone pilot who interferes with wildfire suppression, law enforcement or emergency response operations. FAA, Unmanned Aircraft Systems, *Airspace Restrictions*, https://www.faa.gov/uas/where_to_fly/airspace_restrictions/#wildfires (last visited Nov. 6, 2019).

¹² Section 934.50(2)(d), F.S.

¹³ Surveillance is defined in s. 934.50(2)(e), F.S.: With respect to an owner, tenant, occupant, invitee, or licensee of privately owned real property, the observation of such persons with sufficient visual clarity to be able to obtain information about their identity, habits, conduct, movements, or whereabouts; or with respect to privately owned real property, the observation of such property's physical improvements with sufficient visual clarity to be able to determine unique identifying features or its occupancy by one or more persons.

¹⁴ A state agency, as defined in s. 11.45, F.S., is a separate agency or unit of state government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, commission, department, division, institution, office, officer, or public corporation, as the case may be, except any such agency or unit within the legislative branch of state government other than the Florida Public Service Commission.

¹⁵ A political subdivision is defined in s. 11.45, F.S., as a separate agency or unit of local government created or established by law and includes, but is not limited to, the following and the officers thereof: authority, board, branch, bureau, city, commission, consolidated government, county, department, district, institution, metropolitan government, municipality, office, officer, public corporation, town, or village.

¹⁶ Section 934.50(3)(b), F.S.; *see also* s. 934.50(5)(b)-(d) F.S., providing for compensatory damages, injunctive relief, attorney fees, and punitive damages for a violation of s. 934.50(3)(b), F.S.

¹⁷ Section 934.50(3)(a), F.S.

¹⁸ Section 934.50(6), F.S.

initiate a civil action against a law enforcement agency to obtain all appropriate relief in order to prevent or remedy a violation of s. 934.50, F.S.¹⁹

The exceptions in s. 934.50(4), F.S., for law enforcement agencies using drones to gather evidence and other information are as follows:

- The U.S. Secretary of Homeland Security determines that credible intelligence exists indicating a high risk of a terrorist attack by an individual or organization and the drone is used to counter the risk;
- The law enforcement agency first obtains a search warrant authorizing the use of a drone; or
- The law enforcement agency has reasonable suspicion that swift action is necessary to prevent imminent danger to life or serious damage to property, to forestall the imminent escape of a suspect or the destruction of evidence, or to achieve purposes including, but not limited to, facilitating the search for a missing person.²⁰

Non-law enforcement exceptions authorize use of a drone:

- By a person or an entity engaged in a business or profession licensed by the state if the drone is used only to perform reasonable tasks within the scope permitted under such person's or entity's license.
- By a property appraiser who uses a drone solely for the purpose of assessing property for ad valorem taxation.
- To capture images by or for an electric, water, or natural gas utility.
- For aerial mapping, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.
- To deliver cargo, if the person or entity using a drone for this purpose is operating in compliance with Federal Aviation Administration regulations.
- To capture images necessary for the safe operation or navigation of a drone that is being used for a purpose allowed under federal or Florida law.
- By a communications service provider for routing, siting, installation, maintenance, or inspection of facilities used to provide communications services.

The Fish and Wildlife Conservation Commission,²¹ the Florida Department of Agriculture and Consumer Services (housing the Florida Forest Service²² and the Office of Agricultural Law Enforcement²³), and the Department of Environmental Protection²⁴ all have law enforcement personnel and could be considered law enforcement agencies.

¹⁹ Section 934.50(5)(a), F.S.

²⁰ Section 934.50(4)(a)-(c), F.S. There are additional exceptions to the prohibition on the use of drones that are not law enforcement agency related. These exceptions can be found in s. 934.50(4)(d)-(j), F.S.

²¹ FWC, *Law Enforcement*, <https://myfwc.com/about/inside-fwc/le/> (last visited Dec. 27, 2019).

²² DACS, Florida Forest Service, <https://www.fdacs.gov/Divisions-Offices/Florida-Forest-Service> (last visited Dec. 27, 2019).

²³ DACS, *Office of Agricultural Law Enforcement*, <https://www.fdacs.gov/Divisions-Offices/Agricultural-Law-Enforcement> (last visited Dec. 27, 2019).

²⁴ DEP, *Division of Law Enforcement and Emergency Response*, <https://floridadep.gov/dleer> (last visited Dec. 27, 2019).

Weaponized Drones Prohibited in Florida

In Florida, s. 330.411, F.S., prohibits a person from possessing or operating an unmanned aircraft or unmanned aircraft system as defined in s. 330.41, F.S., with an attached weapon, firearm, explosive, destructive device, or ammunition as defined in s. 790.001, F.S.²⁵ North Dakota is the only state that allows law enforcement agencies to utilize weaponized drones. The weapons are limited to the non-lethal variety such as tear gas, rubber bullets, beanbags, pepper spray, and tasers.²⁶

Use of Drones for Land Management

The U.S. Department of Interior (DOI)²⁷ and the U.S. Forest Service²⁸ use drones extensively to enhance science, safety, and savings in relation to their core missions. Drones can be less disruptive to sensitive animal species than manned aircraft.²⁹ They can carry sophisticated sensors and possess the ability to transmit real-time data that can be recorded for future analysis.³⁰ Drones can gather repeatable, scientifically valid observations leading to better science and therefore better policy decisions.³¹ DOI missions often expose personnel to significant safety hazards. From 1937 to 2000, 66 percent of all field biologist fatalities in DOI were aviation-related.³² Additionally, drones have also been used to replace ground personnel in certain missions, reducing their risk of injury. The cost of using drones can be significantly less expensive than using manned flights.³³ DOI identifies the following types of endeavors as being particularly well suited to drone technology:

- Wildfires;
- Wildlife Monitoring;
- Hydrology;
- Geological surveys;
- Geophysical surveys; and
- Volcanic activity.³⁴

²⁵ Section 330.41(2)(c), F.S., defines an unmanned aircraft system as a drone and its associated elements, including communication links and the components used to control the drone which are required for the pilot in command to operate the drone safely and efficiently; s. 330.41(2)(b), F.S., specifies that “drone” has the same meaning as s. 934.50(2), F.S.

²⁶ North Dakota House Bill 1328 (2015), available at <https://www.legis.nd.gov/assembly/64-2015/documents/15-0259-05000.pdf?20150501154934>.

²⁷ Department of Interior, *Unmanned Aircraft Systems (UAS) Integration Strategy* (2015-2020), available at https://www.doi.gov/sites/doi.gov/files/uploads/DOI_UAS_Integration_Strategy_2015-2020.pdf.

²⁸ U.S. Forest Service, *Unmanned Aircraft Systems*, <https://www.fs.fed.us/managing-land/fire/aviation/uas> (last visited Dec. 23, 2019).

²⁹ Department of Interior, *Unmanned Aircraft Systems (UAS) Integration Strategy* (2015-2020), available at https://www.doi.gov/sites/doi.gov/files/uploads/DOI_UAS_Integration_Strategy_2015-2020.pdf.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ Department of Interior Office of Aviation Services, *DOI Unmanned Aircraft Systems (UAS)*, <https://www.doi.gov/aviation/uas> (last visited Dec. 23, 2019).

The U.S. Fish and Wildlife Service uses drones for wildfire detection and observation, invasive plant and animal monitoring and mapping, wildlife population counts, mapping coastal erosion, discovering illegal activity on public lands, and search and rescue operations.³⁵

Invasive Species Management

The Florida Fish and Wildlife Conservation Commission (FWC) regulates nonnative animal species and invasive aquatic plants.³⁶ Nonnative species are animals living outside captivity and which are not historically present in the state.³⁷ More than 500 fish and wildlife nonnative species have been documented in Florida.³⁸ Nonnative species do not all pose a threat to Florida's ecology, but some can become invasive species by causing harm to native species and domestic pets, posing a threat to human health and safety, or causing economic damage.³⁹ A few of Florida's nonnative species arrived by natural range expansions, but many were introduced by humans. The most common pathway by which exotic fish and wildlife species find their way into Florida's habitats is through escape or release by pet owners.⁴⁰

Examples of invasive species in Florida that were originally pets are Burmese pythons, Nile monitor lizards, Gambian pouched rats, monk parakeets, and Cuban tree frogs. Other invasive species in Florida include lionfish, several other species of python and anaconda, wild boar, Rhesus macaque, green iguana, Nile crocodile, and Argentine tegu.⁴¹

To manage and minimize the impacts of nonnative species, it is unlawful to import for sale or use, or to release within the state, any species not native to Florida, unless authorized by FWC.⁴² FWC has identified priority invasive species, including tegu lizards, several snake species, and lionfish.⁴³ FWC implemented a pilot program in 2018 to use private contractors to slow the advance and eradicate the priority invasive species from the state.⁴⁴

Department of Agriculture and Consumer Services' (DACCS's) Division of Plant Industry has the primary responsibility for addressing invasive plant species with a focus on plant pests and noxious weeds.⁴⁵ DACCS's Forest Service also plays an important role in invasive species management. Invasive plants can displace native plants and associated wildlife, and can alter natural processes such as fire regimes and hydrology.⁴⁶

³⁵ U.S. Fish and Wildlife Service, *Unmanned Aircraft Systems take flight in Southeast Region*, <https://www.fws.gov/southeast/articles/unmanned-aircraft-systems-take-flight-in-southeast-region/> (last visited Dec. 23, 2019).

³⁶ Sections 369.252, 379.231, and 379.2311, F.S.

³⁷ FWC, *Nonnative Species Information*, <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited Dec. 23, 2019).

³⁸ FWC, *Florida's Nonnative Fish and Wildlife*, <http://myfwc.com/wildlifehabitats/nonnatives/> (last visited Dec. 23, 2019).

³⁹ *Id.*

⁴⁰ FWC, *Nonnative Species Information*, <https://myfwc.com/wildlifehabitats/nonnatives/exotic-information/> (last visited Jan 7, 2020).

⁴¹ Section 379.2311, F.S.

⁴² Section 379.231, F.S.

⁴³ Section 379.2311, F.S.

⁴⁴ *Id.*

⁴⁵ *See generally*, chapter 581, F.S.; Fla. Admin. Code R. Chap. 5B-57.

⁴⁶ DACCS, Forest Service, *Invasive Non-Native Plants*, <https://www.fdacs.gov/Divisions-Offices/Florida-Forest-Service/Our-Forests/Forest-Health/Invasive-Non-Native-Plants> (last visited Dec. 23, 2019).

The Division of State Lands within the Department of Environmental Protection is tasked with addressing the management of state lands, including the management of invasive species on conservation lands.⁴⁷ The water management districts are responsible for managing district-owned lands, and the South Florida Water Management District (SFWMD), in particular, has extensive programs for invasive plant and animal species. Specifically, SFWMD “is the largest single landowner in the region with nearly 1.5 million acres of public land within our boundaries.... Non-native plants and animals often aggressively invade natural habitats and drastically alter the ecology of natural systems.”⁴⁸ SFWMD has numerous programs to combat invasive species including utilizing aerial drone technology to survey district lands from above to spot invasive pythons and alert hunters where they have been seen to help find and eliminate them faster.⁴⁹ Note, however, that the water management districts do not employ law enforcement personnel.

Wildfire Management

The Florida Forest Service works to manage fire levels across the state to reduce threat to life, property, forests, and at-risk resources while promoting natural resource management. DACS has several programs intended to control wildfires, including the Fire Prevention Program, the Firewise USA Program, and Prescribed Fire. DACS also provides assistance in many forms including the Florida Risk Assessment System, a Smoke Screening Tool, and the Fire Management Information System Mapping Tool.⁵⁰

III. Effect of Proposed Changes:

CS/SB 822 amends s. 934.50, F.S., to authorize a non-law enforcement employee of the FWC or of the Florida Forest Service to use drones for the purpose of managing and eradicating invasive exotic plants or animals on public lands.

The bill provides an effective date of July 1, 2020.

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.

⁴⁷ Sections 253.034(5)(b) and 259.032(9)(e), F.S.

⁴⁸ SFWMD, *Vegetation and Exotic Control*, <https://www.sfwmd.gov/our-work/vegetation> (last visited Dec. 23, 2019).

⁴⁹ SFWMD, *SFWMD Python Hunters Nearing 2,000 Snakes Eliminated*, <https://myemail.constantcontact.com/SFWMD-Python-Hunters-Nearing-2-000-Snakes-Eliminated.html?soid=1117910826311&aid=9hpww0vXYtw> (last visited Jan. 23, 2019).

⁵⁰ FDACS, *Wildland Fire*, <https://www.fdacs.gov/Forest-Wildfire/Wildland-Fire> (last visited Jan. 27, 2020).

B. Public Records/Open Meetings Issues:

None.

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:

There may be a positive indeterminate impact to the state associated with using drone technology for invasive species management. One example of the cost savings associated with the use of drones is that the U.S. Fish and Wildlife Service and U.S. Geological Survey estimated the cost to survey a specific project was about \$2,500 using drone technology. Estimates to fly a similarly equipped manned aircraft for that mission ranged from \$40,000-\$50,000.⁵¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

During the 2019 Legislative session, certain law enforcement positions were transferred from FWC to DEP, making DEP a law enforcement agency. Additionally, the Forest Service may not be the only entity within DACS that could potentially utilize drones for invasive exotic species management. Under the bill as written, the Division of Plant Industry may not be able to use drones to manage invasive species.

⁵¹ Department of Interior, *Unmanned Aircraft Systems (UAS) Integration Strategy* (2015-2020), available at https://www.doi.gov/sites/doi.gov/files/uploads/DOI_UAS_Integration_Strategy_2015-2020.pdf.

VIII. Statutes Affected:

This bill substantially amends section 934.50 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 January 27, 2020:

The CS allows non-law enforcement employees of the FWC or of the Florida Forest Service to use drones for the purpose of suppressing and mitigating wildfires in addition to managing and eradicating invasive exotic plants or animals on public lands.

- B. **Amendments:**

None.



472536

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2020	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 32 - 33
and insert:
Service for the purposes of managing and eradicating invasive
exotic plants or animals on public lands and suppressing and
mitigating wildfire threats.

By Senator Albritton

26-00749A-20

2020822__

1 A bill to be entitled
2 An act relating to drones; amending s. 934.50, F.S.;
3 adding an exception to prohibited uses of a drone;
4 providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Paragraph (k) is added to subsection (4) of
9 section 934.50, Florida Statutes, and subsection (3) of that
10 section is republished, to read:

11 934.50 Searches and seizure using a drone.—

12 (3) PROHIBITED USE OF DRONES.—

13 (a) A law enforcement agency may not use a drone to gather
14 evidence or other information.

15 (b) A person, a state agency, or a political subdivision as
16 defined in s. 11.45 may not use a drone equipped with an imaging
17 device to record an image of privately owned real property or of
18 the owner, tenant, occupant, invitee, or licensee of such
19 property with the intent to conduct surveillance on the
20 individual or property captured in the image in violation of
21 such person's reasonable expectation of privacy without his or
22 her written consent. For purposes of this section, a person is
23 presumed to have a reasonable expectation of privacy on his or
24 her privately owned real property if he or she is not observable
25 by persons located at ground level in a place where they have a
26 legal right to be, regardless of whether he or she is observable
27 from the air with the use of a drone.

28 (4) EXCEPTIONS.—This section does not prohibit the use of a
29 drone:

26-00749A-20

2020822__

30 (k) By a non-law enforcement employee of the Fish and
31 Wildlife Conservation Commission or of the Florida Forest
32 Service for the purpose of managing and eradicating invasive
33 exotic plants or animals on public lands.

34 Section 2. This act shall take effect July 1, 2020.



The Florida Senate

Committee Agenda Request

To: Senator Ed Hooper, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: January 22, 2020

I respectfully request that **Senate Bill #822**, relating to Drones, be placed on the:

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

A handwritten signature in blue ink, appearing to read "Ben Albritton".

Senator Ben Albritton
Florida Senate, District 26

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/2020

Meeting Date

822

Bill Number (if applicable)

472536

Amendment Barcode (if applicable)

Topic Drones

Name Emily Duda Buckley

Job Title Legislative Affairs Director

Address 400 S Monroe St

Street

Tallahassee

City

FL

State

32399

Zip

Phone 8506177700

Email emily.buckley@fdacs.gov

Speaking: For Against Information

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

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

1/27/2020

Meeting Date

822

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Emily Duda Buckley

Job Title Legislative Affairs Director

Address 400 S Monroe St

Phone 8506177700

Street

Tallahassee

FL

32399

Email emily.buckley@fdacs.gov

City

State

Zip

Speaking: For Against Information

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

Representing Florida Department of Agriculture and Consumer Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

JAN 27, 2020

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

SB 822

Meeting Date

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Job Title Executive Director

Address 5289 Palm Dr.

Phone 407-468-6622

Street

Melbourne Beach FL 32951

Email ray@afca.org

City

State

Zip

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

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

Representing Florida Fire Chiefs' Association

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

January 27, 2020

Meeting Date

822

Bill Number (if applicable)

Topic Drones

Amendment Barcode (if applicable)

Name Barney Bishop III

Job Title CEO

Address 2215 Thomasville Road

Phone 850-510-9922

Street

Tallahassee

FL

32308

Email Barney@BarneyBishop.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Smart Justice Alliance

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.)

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

BILL: SB 1690

INTRODUCER: Senator Torres

SUBJECT: Preservation of Memorials

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	McVaney	GO	Favorable
2.			CJ	
3.			RC	

I. Summary:

SB 1690 amends s. 265.710, F.S., to provide that anyone who damages, destroys, takes, or removes a memorial without permission is liable for the full cost to repair or replace the memorial. Such a person will also be liable for treble damages, attorney fees, and court costs associated with an action brought to recover damages.

The bill also establishes that the damaging, defacing, or removing of a memorial constitutes criminal mischief, punishable by a term of imprisonment up to 5 years and a fine up to \$5,000.

The bill further provides that no object that would obstruct the view of a memorial or that would convey information about such a memorial may be placed on or adjacent to a memorial existing before 2019 without consent from the Secretary of State.

The bill has an indeterminate fiscal impact. See Section V., Fiscal Impact Statement.

The bill takes effect October 1, 2020.

II. Present Situation:

Memorials

Chapter 265, F.S., regards memorials, museums, and arts and culture. The legislative intent of the chapter is to recognize the vast cultural resources available in the state and to provide state support for, and gain national and international recognition of, efforts, works, and performances of Florida artists, agencies, museums, and nonprofits.¹ The chapter designates the Secretary of State as chief cultural officer of the state, and creates the division of “state arts administrative

¹ Section 265.282, F.S.

agency” to administer federal arts funding, award grants, and consult with and advise individuals, groups, organizations, and agencies and officials concerning the acquisition of fine arts.² The division also sponsors and promotes performances and exhibits, conducts cultural programs and exchanges, and accept funding and support for its purposes.³

Civil Liability and Treble Damages

A statute may subject a person to civil liability for damages caused by the person’s criminal behavior. “Civil liability” is defined by Black’s Law Dictionary as the “debt or legal obligation from a private wrong amounting to the damage done.”⁴ “Treble damages” are special damages provided by statute in certain cases found by a jury, where the damages to be paid are triple the amount of damage actually caused.⁵

Criminal Mischief

Section 806.13, F.S., defines and provides penalties for criminal mischief. A person commits criminal mischief if he or she (1) willfully and maliciously (2) injures or damages (3) real property belonging to another, including via the placement of graffiti. If the damage to property is valued at \$200 or less, it is a second degree misdemeanor;⁶ between \$200 and \$1,000, it is a first degree misdemeanor⁷; and greater than \$1,000 or causing interruption or impairment of business or public service, it is a third degree felony.⁸

A third degree felony is punishable by a term of imprisonment up to 5 years and a fine up to \$5,000.⁹

The section also provides a third degree felony for willful and malicious defacement, injury, or damage to certain public goods or places of worship. A person convicted under the section is also required to pay a fine between \$250 and \$1,000¹⁰, and perform at least 100 hours of community service.¹¹

Penalties for Minors

A minor found to have committed an act of criminal mischief may have his or her driving privilege revoked or withheld for up to one year.¹² A minor whose driving privilege has been revoked, suspended, or withheld under the section may elect to reduce the sentence by

² Section 265.284, F.S.

³ *Id.*

⁴ “Civil Liability,” Black’s Law Dictionary 435 (9th ed. 2009).

⁵ “Treble Damages,” Black’s Law Dictionary 435 (9th ed. 2009).

⁶ Section 806.13(1)(b)1. F.S., punishable as provided in s. 775.082 or s. 775.083, F.S.

⁷ Section 806.13(1)(b)2. F.S., punishable as provided in s. 775.082 or s. 775.083, F.S.

⁸ Section 806.13(1)(b)3. F.S., punishable as provided in s. 775.082, s. 775.083, or s. 775.084, F.S.

⁹ *See* ss. 775.082, 775.083, and 775.084, F.S., as referenced in the bill, for more detailed sentencing regulations.

¹⁰ Section 806.13(6), F.S.

¹¹ *Id.*

¹² Section 806.13(7), F.S.

performing community service, at a rate of one day's suspension per hour community service worked.¹³ Such community service is to be in the form of cleaning graffiti from public property.

III. Effect of Proposed Changes:

Section 1 provides that the act may be cited as the "Historical Memorials Protection Act."

Section 2 defines the term "memorial" as a plaque, statue, marker, flag, banner, cenotaph, religious symbol, painting, seal, tombstone, structure name, or display that is:

- Constructed and located with the intent of being permanently displayed or perpetually maintained;
- Dedicated to a historical person, entity, event, or series of events; and
- Honoring or recounting the military service of a U.S. Armed Forces personnel, or the public service of a resident of Florida or the United States.

The definition of memorial includes, but is not limited to:

- Florida Women's Hall of Fame;
- Florida Medal of Honor Wall;
- Florida Veterans' Hall of Fame;
- POW-MIA Chair of Honor Memorial;
- Florida Veterans' Walk of Honor and Florida Veterans' Memorial Garden;
- Florida Law Enforcement Officers' Hall of Fame;
- Florida Holocaust Memorial;
- Florida Slavery Memorial; and
- Any other memorial located within the Capitol Complex, including Waller Park.

The bill provides that any person or entity that damages, destroys, takes, or removes a memorial without authorization is civilly liable for the full cost of repair or replacement of the memorial. Furthermore, in addition such person is liable for treble damages, attorney fees, and court costs associated with any action brought to recover the damages for the cost of repair or replacement. The bill provides standing to a resident of this state, a historical preservation organization, a military veteran or veterans' organization, or a law enforcement or firefighter benevolent organization.

The bill further provides that, without express written approval of the Secretary of State, no object¹⁴ that would obstruct the view of a memorial on public property, or that would convey information about the memorial, may be placed on or adjacent to any memorial in existence on or before January 1, 2019.

Section 3 adds a new subsection to s. 806.13, F.S., regarding criminal mischief. The new subsection provides that a person may not willfully damage, deface, or remove a memorial. It specifies memorials¹⁵ owned by a governmental entity, museum, historical society or similar

¹³ Section 806.13(8), F.S.

¹⁴ "plaque, sign, picture, marker, exhibit, notice, or other object."

¹⁵ Given the same definition as in section 1 of the bill.

organization, or memorials located in a cemetery or on a grave or tombstone. The subsection provides that the violator commits a third degree felony.

The bill also provides that a minor choosing to reduce his or her period of driver's license suspension, revocation, or withholding via community service may apply the cleaning of graffiti on memorials or the cleanup of parks dedicated to veterans or historic sites towards such community service requirement.

Section 4 provides that the bill takes effect October 1, 2020.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

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:

To the extent that this bill acts as a deterrent, memorial caretakers may experience a positive fiscal impact on less repairing and cleaning memorials.

C. Government Sector Impact:

The bill has an indeterminate fiscal impact. No analysis on the prison bed impact has been conducted yet for this bill. To the extent that this bill acts as a deterrent, public

memorial caretakers may experience a positive fiscal impact on less repairing and cleaning memorials.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 265.710 and 806.13, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Torres

15-01216A-20

20201690__

1 A bill to be entitled
2 An act relating to preservation of memorials;
3 providing a short title; creating s. 265.710, F.S.;
4 defining the term "memorial"; prohibiting specified
5 activities concerning memorials by a person or an
6 entity; providing for liability and the award of
7 certain costs and damages for violations of the act;
8 requiring the Secretary of State to provide written
9 approval before the placement of certain materials on
10 or adjacent to certain memorials on public property;
11 granting certain persons standing for enforcement of
12 the act; amending s. 806.13, F.S.; providing criminal
13 penalties for damage to or removal of certain
14 memorials; redefining the term "community service" for
15 purposes of minors found to have committed certain
16 delinquent acts of criminal mischief; providing an
17 effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. This act may be cited as the "Historical
22 Memorials Protection Act."

23 Section 2. Section 265.710, Florida Statutes, is created to
24 read:

25 265.710 Civil liability for damaging, destroying, or
26 removing memorials; enforcement.-

27 (1) As used in this section, the term "memorial" means a
28 plaque, statue, marker, flag, banner, cenotaph, religious
29 symbol, painting, seal, tombstone, structure name, or display

15-01216A-20

20201690__

30 that is constructed and located with the intent of being
31 permanently displayed or perpetually maintained; is dedicated to
32 a historical person, an entity, an event, or a series of events;
33 and honors or recounts the military service of any past or
34 present United States Armed Forces military personnel, or the
35 past or present public service of a resident of the geographical
36 area comprising this state or the United States. The term
37 includes, but is not limited to, the following memorials
38 established under this chapter:

39 (a) Florida Women's Hall of Fame;

40 (b) Florida Medal of Honor Wall;

41 (c) Florida Veterans' Hall of Fame;

42 (d) POW-MIA Chair of Honor Memorial;

43 (e) Florida Veterans' Walk of Honor and Florida Veterans'
44 Memorial Garden;

45 (f) Florida Law Enforcement Officers' Hall of Fame;

46 (g) Florida Holocaust Memorial;

47 (h) Florida Slavery Memorial; and

48 (i) Any other memorial located within the Capitol Complex,
49 including, but not limited to, Waller Park.

50 (2) Any person or entity that damages or destroys any
51 memorial, or that takes or removes a memorial without returning
52 the memorial to its original position and condition, is liable
53 for the full cost of repair or replacement of such memorial
54 unless such person or entity was authorized to take or remove
55 the memorial by the person or entity owning such memorial for
56 the purpose of restoring or repairing the memorial.

57 (3) In addition to the cost of repair or replacement, any
58 person or entity that intentionally damages, destroys, takes, or

15-01216A-20

20201690__

59 removes a memorial without authorization is liable for treble
60 damages, attorney fees, and court costs to the owner of the
61 memorial in any action or proceeding brought to recover damages
62 for the cost of repair or replacement of a memorial.

63 (4) No plaque, sign, picture, marker, exhibit, notice, or
64 other object that would obstruct the view of a memorial that is
65 located on public property or that would convey information
66 about such a memorial may be placed on or immediately adjacent
67 to any such memorial in existence on or before January 1, 2019,
68 without the express written approval of the Secretary of State.

69 (5) A resident of this state, a historical preservation
70 organization, a military veteran, a veterans' organization, or a
71 law enforcement or firefighter benevolent organization has
72 standing to seek enforcement of this section through civil
73 action in the circuit court in the county in which a memorial
74 that has been damaged or destroyed is located.

75 Section 3. Present subsections (5) through (9) of section
76 806.13, Florida Statutes, are renumbered as subsections (6)
77 through (10), respectively, a new subsection (5) is added to
78 that section, and present subsection (8) of that section is
79 amended, to read:

80 806.13 Criminal mischief; penalties; penalty for minor.—

81 (5) A person may not willfully damage or deface, or remove
82 by any means, a memorial that is owned or erected by a
83 governmental entity, a museum, a historical society, or a
84 similar public or private organization, or a memorial that is
85 located in a cemetery or on a grave or tombstone. A person who
86 violates this subsection commits a felony of the third degree,
87 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

15-01216A-20

20201690__

88 For purposes of this subsection, the term "memorial" has the
89 same meaning as in s. 265.710.

90 (9)~~(8)~~ A minor whose driver license or driving privilege is
91 revoked, suspended, or withheld under subsection (8) ~~(7)~~ may
92 elect to reduce the period of revocation, suspension, or
93 withholding by performing community service at the rate of 1 day
94 for each hour of community service performed. In addition, if
95 the court determines that due to a family hardship, the minor's
96 driver license or driving privilege is necessary for employment
97 or medical purposes of the minor or a member of the minor's
98 family, the court shall order the minor to perform community
99 service and reduce the period of revocation, suspension, or
100 withholding at the rate of 1 day for each hour of community
101 service performed. As used in this subsection, the term
102 "community service" means cleaning graffiti from public
103 property, including graffiti on memorials, or the general
104 cleanup of parks dedicated to veterans or historic sites.

105 Section 4. This act shall take effect October 1, 2020.



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

January 21, 2020

Ed Hooper, Chair
Committee on Governmental Accountability & Oversight
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Hooper:

Please accept this letter as a formal request to schedule SB 1690, which addresses Preservation of Memorials for the next available meeting of the Governmental Accountability & Oversight Committee. Please let me know if you have any questions or need additional information. Thank you, in advance, for your favorable consideration of this request.

Respectfully,

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

Victor M. Torres, Jr.
State Senator
District 15

c: Joe McVaney, Staff Director, Committee on Governmental Accountability & Oversight
Charles Smith, Legislative Assistant

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

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/20

Meeting Date

1690

Bill Number (if applicable)

Topic PROTECTING HISTORIC MONUMENTS

Amendment Barcode (if applicable)

Name JEFF KOTTKAMP

Job Title _____

Address _____

Phone _____

Street

Jacksonville

FL

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against

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

Representing Guardians of American History

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

1-27-2020

Meeting Date

1690

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Yvette Siger

Job Title volunteer

Address 500 Dogwood Rd

Street

Phone 850-657-442

Shalmar Fl 32579

City

State

Zip

Email guardiansofamericanhistory@gmail.com

Speaking: For Against Information

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

Representing Guardians of American History

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.)

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

BILL: SB 240

INTRODUCER: Senator Rader

SUBJECT: State Symbols

DATE: January 24, 2020

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Becker</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Hackett</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 240 designates any shelter animal that resides at or has been adopted from an animal shelter or an animal rescue organization as the official Florida state pet.

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

The bill takes effect upon becoming a law.

II. Present Situation:

State Symbols

Chapter 15, F.S., designates official state emblems. To date, there are designations for a state motto, tree, fruit,¹ beverage,² citrus archive, anthem, song, shell, stone, gem, wildflower, play, animal, freshwater fish, saltwater fish, marine mammal, saltwater mammal, butterfly, reptile, saltwater reptile, tortoise, air fair, rodeo, festival, moving image center and archive, litter control symbol, pageant, opera program, renaissance festival, railroad museums, transportation museum, flagship, soil, fiddle contest, band, sports hall of fame, pie, honey, horse, and cattle breed.

Currently, there is no designated official state pet. The state animal is the Florida panther.³

A number of other states have made shelter pets either the state pet or state animal, including Colorado, California, Georgia, Illinois, Ohio, and Tennessee.⁴

¹ Section 15.0315, F.S., designates the orange as the official fruit of Florida.

² Section 15.032, F.S., designates orange juice as the official beverage of Florida.

³ Section 15.0353, F.S.

⁴ Golgowski, Nina *Shelter Animals Named Ohio's Official State Pet And It's Purrfect*, Huffpost, March 26, 2019, available at https://www.huffpost.com/entry/shelter-pets-ohio-state-pet_n_5c9a795ee4b08c450ccd1153

Shelter Animals

The American Society for the Prevention of Cruelty to Animals was founded on the belief that animals are entitled to kind and respectful treatment at the hands of humans and must be protected under the law. It indicates that approximately 6.5 million companion animals enter U.S. animal shelters nationwide every year. Of those, approximately 3.3 million are dogs and 3.2 million are cats.⁵

Each year, approximately 1.5 million shelter animals are euthanized (670,000 dogs and 860,000 cats). The number of dogs and cats euthanized in United States shelters annually has declined from approximately 2.6 million in 2011. This decline can be partially explained by an increase in the percentage of animals adopted and an increase in the number of stray animals successfully returned to their owners.⁶

Approximately 3.2 million shelter animals are adopted each year (1.6 million dogs and 1.6 million cats).

About 710,000 animals who enter shelters as strays are returned to their owners. Of those, 620,000 are dogs and only 90,000 are cats.⁷

In Florida, Maddie's Shelter Medicine Program at the University of Florida conducts statewide census of animals passing through the more than 150 animal shelters across the state. Their latest census results found that over 400,000 cats and dogs entered Florida shelters in 2016 alone.⁸

III. Effect of Proposed Changes:

Section 1 creates s. 15.0528, F.S., to designate any shelter animal that resides at or has been adopted from an animal shelter or an animal rescue organization as the official Florida state pet.

Section 2 provides that this act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable. The bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds, nor does it reduce the authority of counties or municipalities to raise revenue.

B. Public Records/Open Meetings Issues:

None.

⁵ *Id.*

⁶ *Id.*

⁷ See <https://www.asPCA.org/animal-homelessness/shelter-intake-and-surrender/pet-statistics> (Last visited January 16, 2020).

⁸ *Florida Shelter Animal Census*, Maddie's Shelter Medicine Program, University of Florida College of Veterinary Medicine, available at <https://sheltermedicine.vetmed.ufl.edu/library/research-studies/flsheltercensus/>.

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 creates section 15.0528 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Rader

29-00087-20

2020240__

1 A bill to be entitled
2 An act relating to state symbols; creating s. 15.0528,
3 F.S.; designating shelter animals as the official
4 state pet; providing an effective date.

5
6 Be It Enacted by the Legislature of the State of Florida:

7
8 Section 1. Section 15.0528, Florida Statutes, is created to
9 read:

10 15.0528 Official state pet.—Any shelter animal that resides
11 at or has been adopted from an animal shelter or an animal
12 rescue organization is designated as the official Florida state
13 pet.

14 Section 2. This act shall take effect upon becoming a law.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Governmental Oversight and Accountability, *Vice Chair*
Agriculture
Appropriations Subcommittee on Health
and Human Services
Children, Families, and Elder Affairs

JOINT COMMITTEE:

Joint Legislative Auditing Committee

SENATOR KEVIN J. RADER

29th District

January 21, 2020

Chairman Ed Hooper
Committee on Governmental Oversight and Accountability
330 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Hooper,

I respectfully request that you place SB 240, relating to State Symbols, on the agenda of the Committee on Governmental Oversight and Accountability, at your earliest convenience.

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

Kindest Regards,

A handwritten signature in cursive script that reads "Kevin Rader".

Senator Kevin J. Rader
Florida Senate, District 29

cc: Joe McVaney, Staff Director
Tamra Redig, Administrative Assistant

REPLY TO:

- 5301 North Federal Hwy, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
- 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

Senate's Website: www.flsenate.gov

BILL GALVANO
President of the Senate

DAVID SIMMONS
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

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

1/27/2017
Meeting Date

HB 240
Bill Number (if applicable)

Topic pet

Amendment Barcode (if applicable)

Name JACK CORI

Job Title _____

Address 730 E. Pal Av
Street

Phone _____

Wesley Fla 32301
City State Zip

Email _____

Speaking: For Against Information

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

Representing FIX FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SPB 7046

INTRODUCER: Governmental Oversight and Accountability Committee

SUBJECT: State Group Insurance Program

DATE: January 27, 2020

REVISED: _____

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

I. Summary:

SPB 7046 amends the State Group Insurance Program administered by the Department of Management Services.

For the State Group Insurance Program, the bill:

- Requires the department to establish an anti-fraud program.
- Defines particular instances that will be deemed to be fraudulent based on the acts of the providers and imposes civil and criminal penalties.
- Deletes obsolete language regarding employees paid from the other-personal-services appropriations categories and hired before April 1, 2013.

For the State Employee Health Insurance Program, the bill:

- Repeals the implementation of the metal tier health insurance plans which had been scheduled for implementation during the 2020 plan year.
- Codifies the regions that must be used for any procurement of HMO services beginning in 2023. These regions are based on utilization and referral patterns studied by DMS recently and the rule recommended by the department.
- Requires an HMO option to be available to all enrollees of the program living in Florida.

For the Prescription Drug Program, the bill:

- Clarifies the implementation of a prescription drug formulary management. The department and the pharmacy benefit manager are not permitted to substitute their judgment over the judgment of the prescriber regarding whether a prescription drug is medically necessary for the treatment of a patient. The department or pharmacy benefit manager may ask specific questions of the prescriber to ensure the patient is served well.
- The bill requires the department to ensure that all rebates, fees and other charges related to pharmacy spend are remitted to the state for the benefit of the program.

The bill is expected to have a positive but indeterminate fiscal impact on the State Employees Group Self-Insurance Trust Fund.

This bill takes effect July 1, 2020.

II. Present Situation:

State Group Insurance Program

Overview

The State Group Insurance Program (SGI Program) is created by s. 110.123, F.S., and is administered by the Division of State Group Insurance (DSGI) within the Department of Management Services (DMS). The SGI Program is an optional benefit for most state employees employed by executive branch agencies, state universities, the court system, and the Legislature and includes health, life, dental, vision, disability, and other supplemental insurance benefits. The SGI Program typically makes benefits changes on a plan year basis, January 1 through December 31.

Eligible Employees

The SGI Program is open to the following individuals:

- All state officers;
- All state employees paid from “salaries and benefits” appropriation categories, regardless of the number of hours worked;
- Retired state officers and state employees;
- Surviving spouses of deceased state officers and state employees;
- Certain terminated state officers and state employees; and
- Certain state employees paid from “other-personal-services” (OPS) appropriation categories.

For OPS employees hired after April 1, 2013, to be eligible to participate in the health insurance program, the employee must¹:

- Be reasonably expected to work an average of at least 30 hours per week; and
- Have worked an average of at least 30 hours per week during the person’s measurement period (which is 12 consecutive months² of employment).

For OPS employees hired before April 1, 2013, the measurement period was the six-month period from April 1, 2013, through September 30, 2013.³

State Employee Health Insurance Program

Health Insurance Premiums and Revenues

Over 176,000 active and retired state employees and officers are expected to participate in the health insurance program during Fiscal Year 2020-2021. The health insurance benefit for active employees has premium rates for single, spouse program,⁴ or family coverage regardless of plan

¹ Section 110.123(2)(c)2., F.S.

² Section 110.123(13)(d), F.S.

³ Section 110.123(13)(c), F.S.

⁴ The Spouse Program provides discounted rates for family coverage when both spouses work for the state.

selection. These premiums cover both medical and pharmacy claims. The state will contribute approximately 92 percent toward the total annual premium for active employees and officers, or \$2.08 billion out of total premium of \$2.25 billion for active employees during Fiscal Year 2020-2021.⁵ Retirees and Consolidated Omnibus Budget Reconciliation Act (COBRA) participants will contribute an additional \$235.6 million in premiums, with \$250.2 million in other revenue for a total of \$2.74 billion in total revenues.⁶

State Employee Health Insurance (Medical Claims)

The DMS provides medical services to health plan members through a self-insured preferred provider organization (PPO), self-insured HMO plans, and a fully-insured HMO plan. Under current contracts, a single provider (Florida Blue) administers the statewide PPO plan. This contract expires December 2022. Three providers (Aetna, AvMed, and United Health Care) administer the self-insured HMO plans providing services in 60 counties combined. Capital Health Plan is a fully-insured HMO plan providing services in 7 counties. The current HMO contracts were awarded on a county-by-county basis with service based on the county in which the member works or resides. These contracts expire December 2020, but are eligible for three 1-year renewals.

Metal Tier Plans

During the 2017 Regular Session, the Legislature directed the DMS to offer health plans, beginning in the 2020 plan year, with specific actuarial values. The actuarial values represent the average cost sharing between the plan and the enrollee for a set of benefits. The cost sharing element includes premiums as well as deductibles and out-of-pocket coinsurance and copayments. Specifically, the DMS was directed to include in the health insurance program:

- A platinum level plan, which shall have an actuarial value of at least 90 percent.
- A gold level plan, which shall have an actuarial value of at least 80 percent.
- A silver level plan, which shall have an actuarial value of at least 70 percent.
- A bronze level plan, which shall have an actuarial value of at least 60 percent.⁷

The DMS was directed to contract with an independent benefits consultant to develop an implementation plan by January 1, 2019.⁸ The DMS contracted with Foster & Foster to complete the report.⁹

The table below shows the current premiums by pay plan and by coverage type and the proposed platinum and bronze plans.¹⁰ The report assumes that roughly 80 percent of the enrollees will choose the platinum plans and another 6 percent will choose the bronze plans.¹¹ As shown in the

⁵ Florida Legislature, Office of Economic and Demographic Research, Self-Insurance Estimating Conference, *State Employees' Group Health Self-Insurance Trust Fund – Report on the Financial Outlook for Fiscal Years Ending June 30, 2020 through June 30, 2025*, adopted January 8, 2020, page 6, available at <http://edr.state.fl.us/content/conferences/healthinsurance/HealthInsuranceOutlook.pdf>.

⁶ *Id.*

⁷ Section 110.123(3)(j), F.S.

⁸ Section 110.123(3)(k), F.S.

⁹ *Implementation of Metal Tier Health Plans in the State Group Health Insurance Program*, prepared by Foster & Foster for State of Florida Department of Management Services, Division of State Group Insurance.

¹⁰ *Id.* at 161.

¹¹ *Id.* at 155.

columns for enrollee premiums, the enrollees choosing the platinum plans will pay significantly higher monthly premiums than they do under the current plans. On the other hand, enrollees selecting the bronze plans may experience lower premiums than under the current plans.

		2019 Standard Plan Premium Rates			2020 PPO/HMO Platinum Plan			2020 PPO/HMO Bronze Plan		
		Employer	Enrollee	Total	Employer	Enrollee	Total	Employer	Enrollee	Total
Career Service/ OPS	Single	\$684.42	\$50.00	\$734.42	\$685	\$165	\$850	\$600	\$5	\$605
	Family	\$1,473.18	\$180.00	\$1,653.18	\$1,475	\$395	\$1,870	\$1,300	\$30	\$1,330
SES/ SMS	Spouse	\$1,623.20	\$30.00	\$1,653.20	\$1,625	\$245	\$1,870	\$1,320	\$10	\$1,330
	Single	\$726.08	\$8.34	\$734.42	\$730	\$120	\$850	\$600	\$5	\$605
Early Retirees	Family	\$1,623.20	\$30.00	\$1,653.20	\$1,625	\$245	\$1,870	\$1,300	\$30	\$1,330
	Single	n/a	\$734.42	\$734.42	n/a	\$850	\$850	n/a	\$588	\$588
	Family	n/a	\$1,653.18	\$1,653.18	n/a	\$1,870	\$1,870	n/a	\$1,297	\$1,297

A major concern regarding implementation of the metal plans is the opportunity for roughly 29,000 eligible employees who “opt-out” of coverage to enroll in the bronze plan. The report points out that if all of these employees enrolled in a family plan, the premiums paid by state agencies would increase by \$464 million annually, the premiums paid by these employees would increase by \$10 million annually, and newly authorized income supplements would increase by \$61 million. Overall, state agencies would bear an additional \$525 million of costs.¹²

State Employees Prescription Drug Program

Overview

As part of the SGI program, the DMS is required to maintain the State Employees’ Prescription Drug Program (Prescription Drug Plan).¹³ The DMS contracts with CVS/Caremark, a pharmacy benefits manager (PBM), to administer the Prescription Drug Plan. The Prescription Drug Plan has three cost sharing categories for members: generic drugs, preferred brand name drugs, which are those brand name drugs on the preferred drug list, and non-preferred brand name drugs, which are those brand name drugs not on the preferred drug list. Contractually, the PBM updates the preferred drug list quarterly as brand name drugs enter the market and as the PBM negotiates pricing, including rebates with manufacturers.

Typically, generic drugs are the least expensive and have the lowest member cost share, preferred brand name drugs have the middle cost share, and non-preferred brand name drugs are the most expensive and have the highest member cost share. As a general practice, prescriptions written for a brand name drug, preferred or non-preferred, will be substituted with a generic drug when available. If the prescribing health care provider states clearly on the prescription that the brand name drug is medically necessary over the generic equivalent, the member will pay only the brand name preferred or nonpreferred cost share. If the member requests the brand name drug over the generic equivalent, without the provider’s medically necessary request, then the member will pay the brand name preferred or nonpreferred cost share plus the difference between the actual cost of the generic drug and the brand name drug.

Prescription drug costs differ depending on which health plan a member enrolls in and whether the prescription drug is a generic, a preferred brand-name, or a non-preferred brand-name. A member can get up to a 30-day supply at retail pharmacy in the Prescription Drug Plan network

¹² *Id.* at 159.

¹³ Section 110.12315, F.S.

and up to a 90-day supply at a mail order pharmacy or at a participating 90-day retail pharmacy. The use of mail order pharmacy is optional, but Preferred Provider Organization (PPO) members must utilize the 90-day mail or retail option after three 30-day fills at a retail pharmacy for any maintenance medications. In addition, certain specialty medications are only available via delivery to a member’s home or a participating pharmacy. The following chart shows the copayments for generics, mail order, or a participating 90-day retail pharmacy for maintenance medications.

	Standard HMO and Standard PPO		High-Deductible HMO and PPO
	Retail (30-day)	Mail Order and Retail (90-day)	All Prescriptions
Generic	\$7	\$14	30%
Preferred Brand Name	\$30	\$60	30%
Non-preferred Brand Name	\$50	\$100	30%

The Prescription Drug Plan also covers compound medications. Compound medications combine, mix, or alter the ingredients of one or more drugs or products to create another drug or product. The Prescription Drug Plan only covers the federal legend drug ingredient of a compounded medication when all of the following criteria are satisfied:

- The compounded medication is not used in place of a commercially available federal legend drug in the same strength and formulation, unless medically necessary;
- The compounded medication is specifically produced for use by a covered person to treat a covered condition; and
- The compounded medication, including all sterile compounded products, is made in compliance with Chapter 465, F.S.

Formulary Management

Prior to plan year 2020, the PBM employed only limited prescription drug formulary management in the form of reviews designed to ensure that drugs are being prescribed for appropriate medical conditions. There was, however, no use of utilization management protocols to incentivize the use of some drugs over others. The Prescription Drug Plan has an open formulary, which covers all federal legend drugs for covered medical conditions. However, the PBM each year announces in July the therapeutic classes of drugs that will be impacted by exclusion for the next plan year.

During the 2019 Regular Session, the Legislature amended s. 110.12315, F.S., to direct the DMS to implement formulary management for prescription drugs and supplies. The management practices are to include and exclude prescription drugs and supplies for coverage by the health insurance program. However, the formulary management could not restrict access to the most clinically appropriate, clinically effective, or the lowest new-cost prescription drugs and supplies. If a prescription drug was otherwise excluded from the formulary, the drug must be made available for inclusion in the formulary (as a non-preferred drug) if the prescribing authority

clearly states on the prescription that the drug is medically necessary in the treatment of the patient.

Pharmacy Spend and PBM Rebates

When a brand-name drug or supply is included in the formulary for coverage by the health insurance plan, the PBM may be successful in negotiating discounted prices, fees, or rebates from the various manufacturers. According to CVS/Caremark, none of the manufacturer payments associated drugs purchased on behalf of the state health insurance program are retained by CVS/Caremark. The table below shows the expected pharmacy spend and PBM rebates for FY 2020-2021 through FY 2024-2025.¹⁴

	FY 2020-21	FY 2021-22	FY 2022-23	FY 2023-24	FY 2024-25
PPO-PBM Rebates	\$92.9 m	\$100.5 m	\$104.0 m	\$107.7 m	\$111.7 m
HMO-PBM Rebates	\$81.5 m	\$90.3 m	\$95.6 m	\$101.4 m	\$107.6 m
Total PBM Rebates	\$174.4 m	\$193.8 m	\$199.6 m	\$209.1 m	\$219.3 m
PPO-Pharmacy Spend	\$430.2 m	\$481.0 m	\$539.4 m	\$612.3 m	\$701.1 m
HMO-Pharmacy Spend	\$361.0 m	\$402.6 m	\$451.8 m	\$510.0 m	\$580.9 m
Total Pharmacy Spend	\$791.2 m	\$883.6 m	\$991.2 m	\$1,122.3 m	\$1,282.0 m
% Growth in Total Spend	10.72%	11.68%	10.32%	13.23%	14.23%
Total Rebates as % of Total Spend	22.0%	21.9%	20.1%	18.6%	17.1%

Anti-Fraud Investigative Units

Section 626.9891, F.S., requires each insurer admitted to do business in Florida to establish and maintain a designated anti-fraud unit or contract with others to investigate and report possible fraudulent insurance acts by insureds or by persons making claims for services against policies held by insureds. Each insurer must also adopt an anti-fraud plan and submit the plan to the Division of Investigative and Forensic Services of the Department of Financial Services.

The State Group Health Insurance Program is not an insurer for purposes of this law, and DMS has not established or contracted for an anti-fraud investigative unit or adopted an anti-fraud plan.

Insurance Fraud

Section 817.234, F.S., defines, and imposes penalties for, insurance fraud. The criminal penalties for violations are as based on the value of the property involved as follows:

- If less than \$20,000, the offender commits a 3rd degree felony;
- If \$20,000 or more but less than \$100,000, the offender commits a 2nd degree felony; and
- If \$100,000 or more, the offender commits a 1st degree felony.

¹⁴ *Supra* note 5.

False Claims Act

The Florida False Claims Act (FFCA)¹⁵ authorizes civil actions by individuals and the state against persons who file false claims for payment or approval with a state agency. The FFCA is modeled after the Federal False Claims Act¹⁶ that was enacted during the Civil War in response to widespread fraud among defense contractors.¹⁷ The FFCA creates a right for the agency or any person to bring a civil action for violations of its provisions. Actions brought by private entities on behalf of the state are called *qui tam* actions.¹⁸

The FFCA has often been used to combat health care, nursing home, Medicaid, and Medicare fraud. An action under the FFCA can be brought either by the state itself or by a private individual on behalf of the state. The Department of Legal Affairs and then the Department of Financial Services are responsible for investigating and litigating actions brought under the FFCA. In addition to Florida, 28 states, the District of Columbia, New York City, and Chicago have a False Claims Act with *qui tam* provisions.¹⁹

Current law provides that when a *qui tam* action is filed in the circuit court of the Second Judicial Circuit, in and for Leon County, it must be identified on its face as a *qui tam* action and a copy of the complaint and disclosure of all material evidence must be served on the Attorney General, as head of the Department of Legal Affairs, and the Chief Financial Officer, as head of the Department of Financial Services.²⁰

When a private individual brings a potential claim to the attention of the Department of Legal Affairs or the Department of Financial Services, these departments have 60 days to decide whether they are going to intervene, and take over litigating the FFCA action from the private individual.²¹

Actions that violate the FFCA include:

- Submitting a false claim for payment or approval;
- Making or using a false record to get a false or fraudulent claim paid or approved;
- Conspiring to make a false claim or to deceive an agency to get a false or fraudulent claim allowed or paid; or

¹⁵ Sections 68.081-68.092, F.S.

¹⁶ 31 U.S.C. §§ 3729 – 3732.

¹⁷ *False Claims Amendments Act of 1986*, S. Rep. No. 99-345, at 8 (1986), reprinted in 1986 U.S.C.C.A.N 5266, 5273 (“The Claims Act was adopted in 1863 and signed into law by President Abraham Lincoln in order to combat rampant fraud in Civil War defense contracts.”); see also *Rainwater v. United States*, 356 U.S. 590, 592 (1958) (“The Act was originally passed in 1863 after disclosure of widespread fraud against the Government during the War Between the States.”).

¹⁸ *Qui tam* cases usually arise from an employee of an institution such as a health care provider who discovers that violations of the FFCA are occurring. This is a type of whistleblower action. In a *qui tam* action under the FFCA, the employee will sue on behalf of the state to collect money that was illegally defrauded from the state. A private entity that brings a successful FFCA action on behalf of the state will receive an amount that the court decides is reasonable for collecting the civil penalty and damages. The amount must not be less than 25 percent and not more than 30 percent of the proceeds recovered under a judgment. Section 68.085(2), F.S.

¹⁹ See State False Claims Acts, <https://www.taf.org/state-laws> (last visited January 24, 2020).

²⁰ Section 68.083(3), F.S.

²¹ *Id.*

- Making or using a false record to conceal, avoid, or decrease payments owed to the state government.²²

The penalty for violating the FFCA is \$5,500 to \$11,000 per claim, plus three times the amount of damages to the state government for FFCA violations.²³

III. Effect of Proposed Changes:

Section 1 amends s. 110.123, F.S., to modify the health insurance program available to state employees and officers.

Subsections (2) and (13) are amended to delete obsolete language relating to OPS employees hired prior to April 1, 2013. This change has no impact on employees or the State Group Insurance Program.

Subsection (3) is amended to require at least one HMO option to be available for health insurance program enrollees residing in the state. Under the current HMO contracts, an HMO option is available throughout the state.

Statutory direction requiring the DMS to establish HMO regions by rule is deleted. This language is obsolete because a new subsection (14) is created to establish the HMO regions by law, beginning in the 2023 plan year. Although HMO regions are established, the DMS retains the authority to contract with HMOs on a statewide basis.

Statutory direction requiring the DMS to implement “metal tier” plans beginning in the 2020 plan year, as well as, the requirement for a report to the legislature, is deleted.

Section 2 creates s. 110.12305, F.S., to establish definitions and impose civil and criminal penalties for fraud committed against the State Group Insurance Program.

This section provides the following criminal penalties for violations. These penalties are identical to the penalties imposed for fraud committed against the Medicaid Program.

Penalties for Violations		
Valuation of Violation	Penalty Type	Statutory Penalties
A person may not knowingly make, cause to be made, or aid and abet in the making of any false statement or false representation of a material fact: <ul style="list-style-type: none"> • Any claim submitted, or commission or omission, to the department or its contracted vendors; or • Any claim submitted to the department or its contracted vendors for items or services that are not authorized to be reimbursed by the program. 		
A provider may not knowingly: <ul style="list-style-type: none"> • Charge, solicit, accept, or receive anything of value, other than an authorized copayment from a health plan member; • Fail to credit the department or its contracted vendors for any payment received from a third-party source; and 		

²² Section 68.082(2), F.S.

²³ Section 68.082(2)(g), F.S.

Penalties for Violations		
Valuation of Violation	Penalty Type	Statutory Penalties
<ul style="list-style-type: none"> Offer, solicit, pay, or receive any remuneration, including any kickback, bribe, or rebate, directly or indirectly, overtly or covertly, in cash or in-kind in return for a service, good, items under the program. 		
\$10,000 or less	3 rd Degree Felony	Punishable by up to 5 years in prison If a habitual felony offender, for a term not exceeding 10 years
\$10,000 or more, but less than \$50,000	2 nd Degree Felony	Punishable by up to 15 years in prison If a habitual felony offender, for a term not exceeding 30 years
\$50,000 or more	1 st Degree Felony	Punishable by up to 30 years in prison If a habitual felony offender may impose life sentence
Value of scheme or course of conduct	May be aggregated in determining degree of felony	
Any person who conspires to knowingly purchase, or knowingly attempt to purchase a legend drug that was paid for by the program		Commits a felony
If value of legend drug is less than \$20,000	3 rd Degree Felony	Punishable by up to 5 years in prison If a habitual felony offender, for a term not exceeding 10 years
If value of legend drug is more than \$20,000 but less than \$100,000	2 nd Degree Felony	Punishable by up to 15 years in prison If a habitual felony offender, for a term not exceeding 30 years
If value of legend drug is greater than \$100,000	1 st Degree Felony	Punishable by up to 30 years in prison If a habitual felony offender may impose life sentence
Fines	Five times the pecuniary gain unlawfully received, or the value of the loss incurred by the program or the contracted vendor, whichever is greater	

Section 3 creates s. 110.12306, F.S., to direct the department to establish, or contract for, an anti-fraud investigative unit relating to the claims paid from the State Employees Health Insurance Trust Fund.

Section 4 amends s. 110.12315, F.S., relating to the prescription drug program. This section clarifies that, if the prescribing authority notes the drug as medically necessary, the drug must be covered by the program. The DMS or its PBM is not permitted to substitute its judgment over the judgement of the prescribing authority. The DMS or its PBM must ensure that each drug is being used appropriately (for a particular condition and appropriate dosage) and for a condition otherwise covered under the health insurance plan. For drugs that are not included on the formulary for program coverage but are prescribed as medically necessary, the DMS or its PBM must inquire about whether the prescribing authority has considered alternative prescription drugs that are included in the formulary. However, these inquiries must be completed within one business day after the pharmacist receives the prescription.

The DMS must ensure that any rebates, discounts, and other fees associated with the purchase or use of prescription drugs or supplies in the program are for the benefit of the program. The DMS must audit the amounts annually.

Section 5 amends s. 110.131, F.S., to correct a cross-reference.

Section 6 provides that the bill takes effect July 1, 2020.

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:

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:

To establish an anti-fraud investigative unit, the department will incur costs either as additional personnel costs or as contracted services. However, with the investigative unit and the potential imposition of significant penalties for fraud committed against the

program, the program is expected to experience indeterminate savings for the State Employees Group Health Self-Insurance Trust Fund.

With the clarification relating to the implementation of formulary management in the prescription drug program, the DMS may experience reduced costs associated with pharmacy drug expenditures and potentially a higher volume of rebates for prescription drugs. Likewise, with the mandated audits of pharmacy rebates, discounts, and other fees, the DMS may see an increase in rebates remitted into the State Employees Group Health Self-Insurance Trust Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the sections 110.123 and 110.12315 of the Florida Statutes. This bill creates sections 110.12305 and 110.12306 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.

FOR CONSIDERATION By the Committee on Governmental Oversight and Accountability

585-02369A-20

20207046pb

1 A bill to be entitled
2 An act relating to the state group insurance program;
3 amending s. 110.123, F.S.; revising the definition of
4 "full-time state employees" to conform to changes made
5 by the act; authorizing persons eligible to
6 participate in the program to elect membership with
7 certain health maintenance organization plans;
8 requiring at least one health maintenance organization
9 plan be made available to each enrollee residing in
10 the state; deleting provisions providing for the
11 establishment of health maintenance organization plan
12 regions by Department of Management Services rule;
13 deleting the requirement that health plans be offered
14 in specified benefit levels; deleting obsolete
15 language regarding eligibility for participation in
16 the program for other-personal-services employees;
17 establishing regions for health maintenance
18 organizations for specified purposes; providing for
19 construction; creating s. 110.12305, F.S.; defining
20 terms; prohibiting specified fraudulent acts in
21 connection with the program, including the submission
22 of fraudulent insurance claims, making false
23 statements in claims, and the acceptance of certain
24 payments; providing criminal penalties; specifying
25 that the repayment, or attempted repayments, of any
26 unlawful payments does not constitute a defense or a
27 ground for dismissal for a violation of the act;
28 specifying which property is deemed to be paid for by
29 the program; specifying application of the business

585-02369A-20

20207046pb

30 records hearsay exception to certain records in the
31 custody of the department or a contracted vendor;
32 specifying factors that establish an inference that a
33 person had knowledge of a false statement or false
34 representation regarding a claim; prohibiting the sale
35 or purchase of a legend drug paid for by the program;
36 providing criminal penalties; prohibiting a person
37 from knowingly making or causing to be made, or
38 attempting or conspiring to make, any false statement
39 or representation in order to obtain goods or services
40 from the program; providing criminal penalties;
41 providing immunity for certain persons who provide
42 information regarding provider fraud to governmental
43 entities; specifying the scope of such immunity;
44 defining the term "fraudulent acts"; requiring the
45 department to publicize certain terms of the Florida
46 False Claims Act to state employees and the public;
47 creating s. 110.12306, F.S.; defining a term;
48 requiring the Division of State Group Insurance to
49 establish an anti-fraud unit for certain purposes by a
50 specified date; authorizing the division to contract
51 with other parties to perform certain anti-fraud
52 measures; requiring the division to adopt an anti-
53 fraud plan and designate at least one employee to
54 implement anti-fraud measures; amending s. 110.12315,
55 F.S.; modifying requirements for identifying a
56 medically necessary drug excluded from the formulary
57 on a prescription; prohibiting the department or its
58 pharmacy benefit manager from substituting its

585-02369A-20

20207046pb

59 judgment over the judgment of a prescriber in
60 determining whether a drug excluded from the formulary
61 is medically necessary; requiring the department or
62 its pharmacy benefit manager to take specified action
63 regarding formulary management; removing a limitation
64 for the annual maximum amount for coverage for
65 medically necessary prescription and nonprescription
66 enteral formulas and amino-acid-based elemental
67 formulas for home use; requiring the department to
68 ensure that the prescription drug program receives
69 certain benefits, and to perform annual audits of such
70 benefits; amending s. 110.131, F.S.; conforming a
71 cross-reference; providing an effective date.

72
73 Be It Enacted by the Legislature of the State of Florida:

74
75 Section 1. Paragraph (c) of subsection (2), paragraphs (h),
76 (j), and (k) of subsection (3), and paragraphs (c) and (d) of
77 subsection (13) of section 110.123, Florida Statutes, are
78 amended, and subsection (14) is added to that section, to read:

79 110.123 State group insurance program.—

80 (2) DEFINITIONS.—As used in ss. 110.123-110.1239, the term:

81 (c) "Full-time state employees" means employees of all
82 branches or agencies of state government holding salaried
83 positions who are paid by state warrant or from agency funds and
84 who work or are expected to work an average of at least 30 or
85 more hours per week; employees paid from regular salary
86 appropriations for 8 months' employment, including university
87 personnel on academic contracts; and employees paid from other-

585-02369A-20

20207046pb

88 personal-services (OPS) funds who are reasonably expected to
89 work an average of at least 30 hours or more per week or have
90 worked an average of at least 30 hours or more per week during
91 the employee's measurement period ~~as described in subparagraphs~~
92 ~~1. and 2.~~ The term includes all full-time employees of the state
93 universities. The term does not include seasonal workers who are
94 paid from OPS funds.

95 ~~1. For persons hired before April 1, 2013, the term~~
96 ~~includes any person paid from OPS funds who:~~

97 ~~a. Has worked an average of at least 30 hours or more per~~
98 ~~week during the initial measurement period from April 1, 2013,~~
99 ~~through September 30, 2013; or~~

100 ~~b. Has worked an average of at least 30 hours or more per~~
101 ~~week during a subsequent measurement period.~~

102 ~~2. For persons hired after April 1, 2013, the term includes~~
103 ~~any person paid from OPS funds who:~~

104 ~~a. Is reasonably expected to work an average of at least 30~~
105 ~~hours or more per week; or~~

106 ~~b. Has worked an average of at least 30 hours or more per~~
107 ~~week during the person's measurement period.~~

108 (3) STATE GROUP INSURANCE PROGRAM.—

109 (h)1. A person eligible to participate in the state group
110 insurance program ~~may be authorized by rules adopted by the~~
111 ~~department,~~ in lieu of participating in the state group health
112 insurance plan, may ~~to~~ exercise an option to elect membership in
113 a health maintenance organization plan which is under contract
114 with the state in accordance with criteria established by this
115 section and by ~~said~~ rules adopted by the department. The offer
116 of optional membership in a health maintenance organization plan

585-02369A-20

20207046pb

117 permitted by this paragraph may be limited or conditioned by
118 rule as may be necessary to meet the requirements of state and
119 federal laws.

120 2. The department shall contract with health maintenance
121 organizations seeking to participate in the state group
122 insurance program through a request for proposal or other
123 procurement process, as developed by the Department of
124 Management Services and determined to be appropriate.

125 a. The department shall establish a schedule of minimum
126 benefits for health maintenance organization coverage, and that
127 schedule shall include+ physician services; inpatient and
128 outpatient hospital services; emergency medical services,
129 including out-of-area emergency coverage; diagnostic laboratory
130 and diagnostic and therapeutic radiologic services; mental
131 health, alcohol, and chemical dependency treatment services
132 meeting the minimum requirements of state and federal law;
133 skilled nursing facilities and services; prescription drugs;
134 age-based and gender-based wellness benefits; and other benefits
135 as may be required by the department. Additional services may be
136 provided subject to the contract between the department and the
137 HMO. As used in this paragraph, the term "age-based and gender-
138 based wellness benefits" includes aerobic exercise, education in
139 alcohol and substance abuse prevention, blood cholesterol
140 screening, health risk appraisals, blood pressure screening and
141 education, nutrition education, program planning, safety belt
142 education, smoking cessation, stress management, weight
143 management, and women's health education.

144 b. The department may establish uniform deductibles,
145 copayments, coverage tiers, or coinsurance schedules for all

585-02369A-20

20207046pb

146 participating HMO plans.

147 c. The department may require detailed information from
148 each health maintenance organization participating in the
149 procurement process, including information pertaining to
150 organizational status, experience in providing prepaid health
151 benefits, accessibility of services, financial stability of the
152 plan, quality of management services, accreditation status,
153 quality of medical services, network access and adequacy,
154 performance measurement, ability to meet the department's
155 reporting requirements, and the actuarial basis of the proposed
156 rates and other data determined by the director to be necessary
157 for the evaluation and selection of health maintenance
158 organization plans and negotiation of appropriate rates for
159 these plans. Upon receipt of proposals by health maintenance
160 organization plans and the evaluation of those proposals, the
161 department may enter into negotiations with all of the plans or
162 a subset of the plans, as the department determines appropriate.
163 The department may negotiate regional or statewide contracts
164 with health maintenance organization plans. Such plans must be
165 cost-effective and must offer high value to enrollees.

166 d. The department may limit the number of HMOs that it
167 contracts with in each region based on the nature of the bids
168 the department receives, the number of state employees in the
169 region, or any unique characteristics of the region. At least
170 one HMO plan must be available to each enrollee residing in the
171 state ~~The department shall establish the regions throughout the~~
172 ~~state by rule. The department must submit the rule to the~~
173 ~~President of the Senate and the Speaker of the House of~~
174 ~~Representatives for ratification no later than 30 days before~~

585-02369A-20

20207046pb

175 ~~the 2020 Regular Session of the Legislature. The rule may not~~
176 ~~take effect until it is ratified by the Legislature.~~

177 e. All persons participating in the state group insurance
178 program may be required to contribute towards a total state
179 group health premium that may vary depending upon the plan,
180 coverage level, and coverage tier selected by the enrollee and
181 the level of state contribution authorized by the Legislature.

182 3. The department is authorized to negotiate and to
183 contract with specialty psychiatric hospitals for mental health
184 benefits, on a regional basis, for alcohol, drug abuse, and
185 mental and nervous disorders. The department may establish,
186 subject to the approval of the Legislature pursuant to
187 subsection (5), any such regional plan upon completion of an
188 actuarial study to determine any impact on plan benefits and
189 premiums.

190 4. In addition to contracting pursuant to subparagraph 2.,
191 the department may enter into contract with any HMO to
192 participate in the state group insurance program which:

193 a. Serves greater than 5,000 recipients on a prepaid basis
194 under the Medicaid program;

195 b. Does not currently meet the 25-percent non-Medicare/non-
196 Medicaid enrollment composition requirement established by the
197 Department of Health excluding participants enrolled in the
198 state group insurance program;

199 c. Meets the minimum benefit package and copayments and
200 deductibles contained in sub-subparagraphs 2.a. and b.;

201 d. Is willing to participate in the state group insurance
202 program at a cost of premiums that is not greater than 95
203 percent of the cost of HMO premiums accepted by the department

585-02369A-20

20207046pb

204 in each service area; and

205 e. Meets the minimum surplus requirements of s. 641.225.

206
207 The department is authorized to contract with HMOs that meet the
208 requirements of sub-subparagraphs a.-d. prior to the open
209 enrollment period for state employees. The department is not
210 required to renew the contract with the HMOs as set forth in
211 this paragraph more than twice. Thereafter, the HMOs shall be
212 eligible to participate in the state group insurance program
213 only through the request for proposal or invitation to negotiate
214 process described in subparagraph 2.

215 5. All enrollees in a state group health insurance plan, a
216 TRICARE supplemental insurance plan, or any health maintenance
217 organization plan have the option of changing to any other
218 health plan that is offered by the state within any open
219 enrollment period designated by the department. Open enrollment
220 shall be held at least once each calendar year.

221 6. When a contract between a treating provider and the
222 state-contracted health maintenance organization is terminated
223 for any reason other than for cause, each party shall allow any
224 enrollee for whom treatment was active to continue coverage and
225 care when medically necessary, through completion of treatment
226 of a condition for which the enrollee was receiving care at the
227 time of the termination, until the enrollee selects another
228 treating provider, or until the next open enrollment period
229 offered, whichever is longer, but no longer than 6 months after
230 termination of the contract. Each party to the terminated
231 contract shall allow an enrollee who has initiated a course of
232 prenatal care, regardless of the trimester in which care was

585-02369A-20

20207046pb

233 initiated, to continue care and coverage until completion of
234 postpartum care. This does not prevent a provider from refusing
235 to continue to provide care to an enrollee who is abusive,
236 noncompliant, or in arrears in payments for services provided.
237 For care continued under this subparagraph, the program and the
238 provider shall continue to be bound by the terms of the
239 terminated contract. Changes made within 30 days before
240 termination of a contract are effective only if agreed to by
241 both parties.

242 7. Any HMO participating in the state group insurance
243 program shall submit health care utilization and cost data to
244 the department, in such form and in such manner as the
245 department shall require, as a condition of participating in the
246 program. The department shall enter into negotiations with its
247 contracting HMOs to determine the nature and scope of the data
248 submission and the final requirements, format, penalties
249 associated with noncompliance, and timetables for submission.
250 These determinations shall be adopted by rule.

251 8. The department may establish and direct, with respect to
252 collective bargaining issues, a comprehensive package of
253 insurance benefits that may include supplemental health and life
254 coverage, dental care, long-term care, vision care, and other
255 benefits it determines necessary to enable state employees to
256 select from among benefit options that best suit their
257 individual and family needs. Beginning with the 2018 plan year,
258 the package of benefits may also include products and services
259 described in s. 110.12303.

260 a. Based upon a desired benefit package, the department
261 shall issue a request for proposal or invitation to negotiate

585-02369A-20

20207046pb

262 for providers interested in participating in the state group
263 insurance program, and the department shall issue a request for
264 proposal or invitation to negotiate for providers interested in
265 participating in the non-health-related components of the state
266 group insurance program. Upon receipt of all proposals, the
267 department may enter into contract negotiations with providers
268 submitting bids or negotiate a specially designed benefit
269 package. Providers offering or providing supplemental coverage
270 as of May 30, 1991, which qualify for pretax benefit treatment
271 pursuant to s. 125 of the Internal Revenue Code of 1986, with
272 5,500 or more state employees currently enrolled may be included
273 by the department in the supplemental insurance benefit plan
274 established by the department without participating in a request
275 for proposal, submitting bids, negotiating contracts, or
276 negotiating a specially designed benefit package. These
277 contracts shall provide state employees with the most cost-
278 effective and comprehensive coverage available; however, except
279 as provided in subparagraph (f)3., no state or agency funds
280 shall be contributed toward the cost of any part of the premium
281 of such supplemental benefit plans. With respect to dental
282 coverage, the division shall include in any solicitation or
283 contract for any state group dental program made after July 1,
284 2001, a comprehensive indemnity dental plan option which offers
285 enrollees a completely unrestricted choice of dentists. If a
286 dental plan is endorsed, or in some manner recognized as the
287 preferred product, such plan shall include a comprehensive
288 indemnity dental plan option which provides enrollees with a
289 completely unrestricted choice of dentists.

290 b. Pursuant to the applicable provisions of s. 110.161, and

585-02369A-20

20207046pb

291 s. 125 of the Internal Revenue Code of 1986, the department
292 shall enroll in the pretax benefit program those state employees
293 who voluntarily elect coverage in any of the supplemental
294 insurance benefit plans as provided by sub-subparagraph a.

295 c. Nothing herein contained shall be construed to prohibit
296 insurance providers from continuing to provide or offer
297 supplemental benefit coverage to state employees as provided
298 under existing agency plans.

299 ~~(j) For the 2020 plan year and each plan year thereafter,~~
300 ~~health plans shall be offered in the following benefit levels:~~

301 ~~1. Platinum level, which shall have an actuarial value of~~
302 ~~at least 90 percent.~~

303 ~~2. Gold level, which shall have an actuarial value of at~~
304 ~~least 80 percent.~~

305 ~~3. Silver level, which shall have an actuarial value of at~~
306 ~~least 70 percent.~~

307 ~~4. Bronze level, which shall have an actuarial value of at~~
308 ~~least 60 percent.~~

309 ~~(k) In consultation with the independent benefits~~
310 ~~consultant described in s. 110.12304, the department shall~~
311 ~~develop a plan for implementation of the benefit levels~~
312 ~~described in paragraph (j). The plan shall be submitted to the~~
313 ~~Governor, the President of the Senate, and the Speaker of the~~
314 ~~House of Representatives by January 1, 2019, and include~~
315 ~~recommendations for:~~

316 ~~1. Employer and employee contribution policies.~~

317 ~~2. Steps necessary for maintaining or improving total~~
318 ~~employee compensation levels when the transition is initiated.~~

319 ~~3. An education strategy to inform employees of the~~

585-02369A-20

20207046pb

320 ~~additional choices available in the state group insurance~~
321 ~~program.~~

322

323 ~~This paragraph expires July 1, 2019.~~

324 (13) OTHER-PERSONAL-SERVICES EMPLOYEES (OPS).—

325 (c) The ~~initial~~ measurement period used to determine
326 whether an employee hired ~~before April 1, 2013,~~ and paid from
327 OPS funds is a full-time employee described in ~~subparagraph~~
328 ~~(2)(c)1. is the 6-month period from April 1, 2013, through~~
329 ~~September 30, 2013.~~

330 ~~(d) All other measurement periods used to determine whether~~
331 ~~an employee paid from OPS funds is a full-time employee~~
332 ~~described in paragraph (2)(c) must be for 12 consecutive months.~~

333 (14) REGIONS FOR HEALTH MAINTENANCE ORGANIZATIONS.—

334 (a) The following regions are established for purposes of
335 the department entering into contracts with HMOs to provide
336 services on a regional basis on or after January 1, 2023,
337 pursuant to paragraph (3)(h):

338 1. Region 1 consists of Bay, Calhoun, Escambia, Gulf,
339 Holmes, Jackson, Okaloosa, Santa Rosa, Walton, and Washington
340 Counties.

341 2. Region 2 consists of Franklin, Gadsden, Jefferson, Leon,
342 Liberty, Madison, Taylor, and Wakulla Counties.

343 3. Region 3 consists of Alachua, Bradford, Columbia, Dixie,
344 Gilchrist, Hamilton, Lafayette, Levy, Marion, Suwannee, and
345 Union Counties.

346 4. Region 4 consists of Baker, Clay, Duval, Flagler,
347 Nassau, Putnam, St. Johns, and Volusia Counties.

348 5. Region 5 consists of Brevard, Indian River, Lake,

585-02369A-20

20207046pb

349 Orange, Osceola, and Seminole Counties.

350 6. Region 6 consists of Citrus, DeSoto, Hardee, Hernando,
 351 Highlands, Hillsborough, Manatee, Pasco, Pinellas, Polk,
 352 Sarasota, and Sumter Counties.

353 7. Region 7 consists of Martin, Okeechobee, Palm Beach, and
 354 St. Lucie Counties.

355 8. Region 8 consists of Charlotte, Collier, Glades, Hendry,
 356 and Lee Counties.

357 9. Region 9 consists of Broward, Miami-Dade, and Monroe
 358 Counties.

359 (b) The establishment of these regions does not limit the
 360 department's authority to contract for HMO services on a
 361 statewide basis.

362 Section 2. Section 110.12305, Florida Statutes, is created
 363 to read:

364 110.12305 Provider fraud.—

365 (1) As used in this section, the term:

366 (a) "Item or service" includes:

367 1. Any particular item, device, medical supply, or service
 368 claimed to have been provided to a health plan member and listed
 369 in an itemized claim for payment; or

370 2. In the case of a claim based on costs, any entry in the
 371 cost report, books of account, or other documents supporting
 372 such claim.

373 (b) "Knowingly" means that the act was done voluntarily and
 374 intentionally and not because of mistake or accident. As used in
 375 this section, the term also includes the word "willfully" or
 376 "willful," which means that an act was committed voluntarily and
 377 purposely, with the specific intent to do something prohibited

585-02369A-20

20207046pb

378 by law, and that the act was committed with bad purpose, either
379 to disobey or disregard the law.

380 (c) "Prescription drug" means any drug, including, but not
381 limited to, finished dosage forms or active ingredients that are
382 subject to, defined in, or described in s. 503(b) of the Federal
383 Food, Drug, and Cosmetic Act or in s. 465.003(8), s.
384 499.003(17), s. 499.007(13), or s. 499.82(10).

385 (d) "Provider" means any person providing health care
386 services or prescription drugs and supplies funded by the
387 program.

388 (e) "Value" means the amount billed to the program for the
389 property dispensed or the market value of a legend drug or goods
390 or services at the time and place of the offense. If the market
391 value cannot be determined, the term means the replacement cost
392 of the legend drug or goods or services within a reasonable time
393 after the offense.

394 (2) (a) A person may not:

395 1. Knowingly make, cause to be made, or aid and abet in the
396 making of any false statement or false representation of a
397 material fact, by commission or omission, in any claim submitted
398 to the department or its contracted vendors for payment.

399 2. Knowingly make, cause to be made, or aid and abet in the
400 making of a claim for items or services that are not authorized
401 to be reimbursed by the program.

402 3. Knowingly charge, solicit, accept, or receive anything
403 of value, other than an authorized copayment from a health plan
404 member, from any source in addition to the amount legally
405 payable for an item or service provided to a health plan member
406 under the program or knowingly fail to credit the department or

585-02369A-20

20207046pb

407 its contracted vendors for any payment received from a third-
408 party source.

409 4. Knowingly solicit, offer, pay, or receive any
410 remuneration, including any kickback, bribe, or rebate, directly
411 or indirectly, overtly or covertly, in cash or in kind, in
412 return for referring an individual to a person for the
413 furnishing or arranging of any item or service for which payment
414 may be made, in whole or in part, under the program, or in
415 return for obtaining, purchasing, leasing, ordering, or
416 arranging for or recommending, obtaining, purchasing, leasing,
417 or ordering any goods, facility, item, or service for which
418 payment may be made, in whole or in part, under the program.

419 (b)1. A person who violates this subsection and receives or
420 endeavors to receive anything of value of:

421 a. Ten thousand dollars or less commits a felony of the
422 third degree, punishable as provided in s. 775.082, s. 775.083,
423 or s. 775.084.

424 b. More than \$10,000, but less than \$50,000, commits a
425 felony of the second degree, punishable as provided in s.
426 775.082, s. 775.083, or s. 775.084.

427 c. Fifty thousand dollars or more commits a felony of the
428 first degree, punishable as provided in s. 775.082, s. 775.083,
429 or s. 775.084.

430 2. The value of separate funds, goods, or services that a
431 person received or attempted to receive pursuant to a scheme or
432 course of conduct may be aggregated in determining the degree of
433 the offense.

434 3. In addition to the sentence authorized by law, a person
435 who is convicted of a violation of this subsection shall pay a

585-02369A-20

20207046pb

436 fine in an amount equal to five times the pecuniary gain
437 unlawfully received or the loss incurred by the program or
438 contracted vendor, whichever amount is greater.

439 (3) The repayment of any payments wrongfully obtained, or
440 the offer or endeavor to repay funds wrongfully obtained, does
441 not constitute a defense to or a ground for dismissal of
442 criminal charges brought under this section.

443 (4) Property paid for by the program includes all property
444 furnished or intended to be furnished to any health plan member
445 of benefits under the program, regardless of whether
446 reimbursement is ever actually made by the program.

447 (5) All records in the custody of the department or its
448 contracted vendors which relate to provider fraud are business
449 records within the meaning of s. 90.803(6).

450 (6) Proof that a claim was submitted to the department or
451 its contracted vendors which contained a false statement or a
452 false representation of a material fact, by commission or
453 omission, unless satisfactorily explained, gives rise to an
454 inference that the person whose signature appears as the
455 provider's authorizing signature on the claim form, or whose
456 signature appears on an electronic claim submission agreement
457 submitted for claims made to the contracted vendor by electronic
458 means, had knowledge of the false statement or false
459 representation. This subsection applies whether the signature
460 appears on the claim form or the electronic claim submission
461 agreement by means of handwriting, typewriting, facsimile
462 signature stamp, computer impulse, initials, or otherwise.

463 (7) Any person who knowingly sells, who knowingly attempts
464 or conspires to sell, or who knowingly causes any other person

585-02369A-20

20207046pb

465 to sell or attempt or conspire to sell a legend drug that was
466 paid for by the program commits a felony.

467 (a) If the value of the legend drug involved is less than
468 \$20,000, the crime is a felony of the third degree, punishable
469 as provided in s. 775.082, s. 775.083, or s. 775.084.

470 (b) If the value of the legend drug involved is \$20,000 or
471 more but less than \$100,000, the crime is a felony of the second
472 degree, punishable as provided in s. 775.082, s. 775.083, or s.
473 775.084.

474 (c) If the value of the legend drug involved is \$100,000 or
475 more, the crime is a felony of the first degree, punishable as
476 provided in s. 775.082, s. 775.083, or s. 775.084.

477 (8) Any person who knowingly purchases, or who knowingly
478 attempts or conspires to purchase, a legend drug that was paid
479 for by the program and intended for use by another person
480 commits a felony.

481 (a) If the value of the legend drug is less than \$20,000,
482 the crime is a felony of the third degree, punishable as
483 provided in s. 775.082, s. 775.083, or s. 775.084.

484 (b) If the value of the legend drug is \$20,000 or more but
485 less than \$100,000, the crime is a felony of the second degree,
486 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

487 (c) If the value of the legend drug is \$100,000 or more,
488 the crime is a felony of the first degree, punishable as
489 provided in s. 775.082, s. 775.083, or s. 775.084.

490 (9) Any person who knowingly makes or knowingly causes to
491 be made, or who attempts or conspires to make, any false
492 statement or representation to any person for the purpose of
493 obtaining goods or services from the program commits a felony.

585-02369A-20

20207046pb

494 (a) If the value of the goods or services is less than
495 \$20,000, the crime is a felony of the third degree, punishable
496 as provided in s. 775.082, s. 775.083, or s. 775.084.

497 (b) If the value of the goods or services is \$20,000 or
498 more but less than \$100,000, the crime is a felony of the second
499 degree, punishable as provided in s. 775.082, s. 775.083, or s.
500 775.084.

501 (c) If the value of the goods or services involved is
502 \$100,000 or more, the crime is a felony of the first degree,
503 punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

504
505 The value of individual items of the legend drugs or goods or
506 services involved in distinct transactions committed during a
507 single scheme or course of conduct, whether involving a single
508 person or several persons, may be aggregated when determining
509 the punishment for the offense.

510 (10) A person who provides the state, any state agency, or
511 any political subdivision of the state or an agency thereof with
512 information about fraud or suspected fraudulent acts by a
513 provider is immune from civil liability for libel, slander, or
514 any other relevant tort for providing such information unless
515 the person acted with knowledge that the information was false
516 or with reckless disregard for the truth or falsity of the
517 information. Such immunity extends to reports of fraudulent acts
518 or suspected fraudulent acts conveyed to or from the department
519 in any manner, including any forum and with any audience as
520 directed by the department, and includes all discussions
521 subsequent to the report and subsequent inquiries from the
522 department, unless the person acted with knowledge that the

585-02369A-20

20207046pb

523 information was false or with reckless disregard for the truth
524 or falsity of the information. As used in this subsection, the
525 term "fraudulent acts" includes actual or suspected fraud and
526 abuse, insurance fraud, or licensure fraud, including any fraud-
527 related matters that a provider or health plan is required to
528 report to the department or a law enforcement agency.

529 (11) The department must publicize to state employees and
530 the public the ability of persons to bring a civil action under
531 the provisions of the Florida False Claims Act and the potential
532 for the persons bringing a civil action under the act to obtain
533 a monetary award.

534 Section 3. Section 110.12306, Florida Statutes, is created
535 to read:

536 110.12306 Anti-fraud investigative units.-

537 (1) As used in this section, the term "designated anti-
538 fraud unit" means a distinct unit within the division which is
539 made up of employees whose principal responsibilities are the
540 investigation and disposition of claims and who are also
541 assigned investigation of fraud.

542 (2) By December 31, 2020, the division:

543 (a)1. Shall establish and maintain a designated anti-fraud
544 unit to investigate and report possible fraudulent insurance
545 acts by insureds, persons making claims for services against the
546 State Employees Health Insurance Trust Fund, or vendors under
547 contract with the division.

548 2. May contract with others to investigate and report
549 possible fraudulent insurance acts by insureds, persons making
550 claims for services against the State Employees Health Insurance
551 Trust Fund, or vendors under contract with the division.

585-02369A-20

20207046pb

552 (b) Shall adopt an anti-fraud plan.

553 (c) Shall designate at least one employee with the primary
554 responsibility of implementing the requirements of this section.

555 Section 4. Paragraph (a) of subsection (9) and subsection
556 (10) of section 110.12315, Florida Statutes, are amended, and
557 subsection (11) is added to that section, to read:

558 110.12315 Prescription drug program.—The state employees'
559 prescription drug program is established. This program shall be
560 administered by the Department of Management Services, according
561 to the terms and conditions of the plan as established by the
562 relevant provisions of the annual General Appropriations Act and
563 implementing legislation, subject to the following conditions:

564 (9) (a) 1. Beginning with the 2020 plan year, the department
565 must implement formulary management for prescription drugs and
566 supplies. Such management practices must require prescription
567 drugs to be subject to formulary inclusion or exclusion but may
568 not restrict access to the most clinically appropriate,
569 clinically effective, and lowest net-cost prescription drugs and
570 supplies. Drugs excluded from the formulary must be available
571 for inclusion if a physician, an advanced practice registered
572 nurse, or a physician assistant prescribing a pharmaceutical
573 clearly states on the prescription, or otherwise in the manner
574 specified in s. 465.025(2), that the excluded drug is medically
575 necessary. The department or its pharmacy benefit manager may
576 not substitute its judgment over the judgment of the prescriber
577 of a prescription drug as to whether the drug is medically
578 necessary.

579 2. The department or its pharmacy benefit manager must
580 ensure that:

585-02369A-20

20207046pb

581 a. The condition for which the patient is being treated is
582 covered under the program;

583 b. The prescribed drug is approved by the Federal Drug
584 Administration or supported in the compendia of current
585 literature for the treatment of the patient's condition; and

586 c. The prescribed dosage falls within the Federal Drug
587 Administration approved labeling or within dosing guidelines
588 found in the compendia of current literature as treatment for
589 the patient's condition.

590 3. If the prescription drug or supply is not included on
591 the formulary but is prescribed as medically necessary for the
592 treatment of the patient, the department or its pharmacy benefit
593 manager must inquire of the prescribing authority as to whether:

594 a. The prescribing authority has considered alternative
595 prescription drugs and supplies that are included on the
596 formulary;

597 b. The patient has tried and had inadequate treatment
598 response or intolerance to alternative prescription drugs that
599 are included on the formulary; and

600 c. The patient has a contraindication to the alternative
601 prescription drugs that are included on the formulary.

602
603 Such inquiries must be made as soon as practicable but no later
604 than the next business day after the pharmacist received the
605 prescription.

606 4. Prescription drugs and supplies first made available in
607 the marketplace after January 1, 2020, may not be covered by the
608 prescription drug program until specifically included in the
609 list of covered prescription drugs and supplies.

585-02369A-20

20207046pb

610 (10) In addition to the comprehensive package of health
611 insurance and other benefits required or authorized to be
612 included in the state group insurance program, the program must
613 provide coverage for medically necessary prescription and
614 nonprescription enteral formulas and amino-acid-based elemental
615 formulas for home use, regardless of the method of delivery or
616 intake, which are ordered or prescribed by a physician. As used
617 in this subsection, the term "medically necessary" means the
618 formula to be covered represents the only medically appropriate
619 source of nutrition for a patient. ~~Such coverage may not exceed~~
620 ~~an amount of \$20,000 annually for any insured individual.~~

621 (11) The department must ensure that the prescription drug
622 program receives the benefits of all discounts, rebates, and
623 other fees associated with the prescription drugs and supplies
624 provided through the program. The department shall annually
625 audit the amounts of discounts, rebates, and other fees received
626 by the department or its pharmacy benefit manager for the
627 prescription drugs and supplies provided through the program.

628 Section 5. Subsection (5) of section 110.131, Florida
629 Statutes, is amended to read:

630 110.131 Other-personal-services employment.-

631 (5) Beginning January 1, 2014, an other-personal-services
632 (OPS) employee who has worked an average of at least 30 or more
633 hours per week during the measurement period described in s.
634 110.123(13) (c) ~~s. 110.123(13) (e) or (d)~~, or who is reasonably
635 expected to work an average of at least 30 or more hours per
636 week following his or her employment, is eligible to participate
637 in the state group insurance program as provided under s.
638 110.123.

585-02369A-20

20207046pb

639

Section 6. This act shall take effect July 1, 2020.

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A black and white copy of this document is not official

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STATE OF FLORIDA
DEPARTMENT OF STATE
Division of Elections

I, Laurel M. Lee, Secretary of State,
do hereby certify that

John R. Jones, Jr.

is duly appointed a member of the
Investment Advisory Council

for a term beginning on the Twelfth day of March, A.D., 2019,
until the First day of February, A.D., 2023 and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Thirteenth day of January, A.D., 2020.*

Laurel M. Lee

Secretary of State



DSDE 99 (3/03)

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

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

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



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CHIEF INVESTMENT OFFICER

January 13, 2020

Inez Williams
Division of Elections
Department of State
R. A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399

RE: Investment Advisory Council Appointment – Bobby Jones

Dear Ms. Williams:

I am writing to provide the correct term for Mr. Jones' term on the Investment Advisory Council. Mr. Jones' term will be March 12, 2019 through February 1, 2023.

Please let me know if any additional information is required.

Sincerely,

A handwritten signature in black ink, appearing to read "John Kuczynski".

John Kuczynski
Manager of External Affairs

HAND DELIVERED

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

2019 DEC -3 AM 10:34

County of ORANGE

DIVISION OF ELECTIONS
TALLAHASSEE, FL

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

Investment Advisory Council, State Board of Administration

(Title of Office)

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

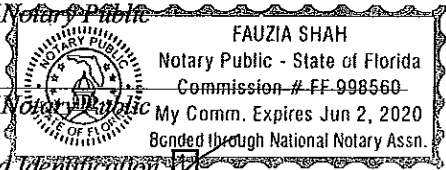
[NOTE: If you affirm, you may omit the words "so help me God." See § 92.52, Fla. Stat.]

John Robert Jones Jr.
Signature

Sworn to and subscribed before me this 18th day of November, 2019.

Fauzia Shah
Signature of Officer Administering Oath or of Notary Public

FAUZIA SHAH
Print, Type, or Stamp Commissioned Name of Notary Public



Personally Known OR Produced Identification

Type of Identification Produced Florida Drivers License

ACCEPTANCE

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

Mailing Address: Home Office

1645 CHASE LANDING WAY

Street or Post Office Box

WINTER PARK, FL 32789

City, State, Zip Code

JOHN R. JONES

Print Name

John Robert Jones Jr.
Signature

RECEIVED

2019 DEC -3 AM 10:37

HAND DELIVERED

DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

CONFIDENTIAL
GOVERNOR'S OFFICE

IN RE: MEETING OF THE GOVERNOR AND
CABINET

CABINET MEMBERS:

GOVERNOR RON DESANTIS
ATTORNEY GENERAL ASHLEY MOODY
CHIEF FINANCIAL OFFICER JIMMY
PATRONIS
COMMISSIONER OF AGRICULTURE
NIKKI FRIED

DATE:

TUESDAY, MARCH 12, 2019

LOCATION:

CABINET MEETING ROOM
LOWER LEVEL, THE CAPITOL
TALLAHASSEE, FLORIDA

REPORTED BY:

NANCY S. METZKE, RPR, FPR
COURT REPORTER

C & N REPORTERS
POST OFFICE BOX 3093
TALLAHASSEE, FLORIDA 32315-3093
(850) 697-8314
nancy@metzke.com
candnreporters.com

C & N REPORTERS 850-697-8314

STATE BOARD OF ADMINISTRATION

GOVERNOR DESANTIS: SBA.

EXECUTIVE DIRECTOR WILLIAMS: Good morning,
Governor.

GOVERNOR DESANTIS: Good morning.

EXECUTIVE DIRECTOR WILLIAMS: Trustees,
Cabinet members.

As an opener, performance update, fiscal year
to date as of the close on March 11, the Fund is
plus 1.82 percent. That is 84 basis points ahead
of target. The balance in the Fund is down 1.8
billion from the beginning of the fiscal year, and
that is net of approximately \$5.6 billion in
benefit payment distributions.

I also wanted to share with you some
information that came to us last Friday, I believe
it was. We had a firm called Cost Effectiveness
Management in. They are a private third-party cost
analysis and performance analysis firm that covers
pension funds across north America. And we have
them in every year to analyze our cost structure
and validate where we are in our efficiency
relative to our peers and how our performance is
in terms of value added relative to risk taken.

C & N REPORTERS 850-697-8314

et cetera.

And they gave us a trailing five-year number that breaks out as follow -- numbers and qualifications as follows: Five years trailing, net return, 9.8 percent; policy return target, which is if we had simply hit what our benchmarks provide for the exposures we choose and you approve, 8.8 percent for a net value added of 1.0 percent over five years.

The context on that is where the real message is. I'll read directly from the report: Your five-year net value added of 1.0 percent compares to a median of 0.1 percent for your peers -- Meaning other very large U.S. funds. -- and 0.2 percent for the U.S. public fund universe.

That's all of the public pension funds in the U.S.

Your 1.0 percent five-year value added translates into approximately \$9.3 billion of cumulative value added over five years or 7.7 billion more than if you had earned the U.S. public fund median of .2 percent.

So if we had performed like all of the other public funds in the country, we'd be 7.7 billion

poorer, is the conclusion I take from that. I just thought you might find that of interest.

So absent any questions, I'll go on into the agenda.

(NO RESPONSE).

EXECUTIVE DIRECTOR WILLIAMS: Item 1, a resolution of the State Board of Administration approving the fiscal sufficiency of an amount not exceeding \$28 million, State of Florida, Department of Environmental Protection, Everglades restoration revenue refunding bonds.

Request approval.

GOVERNOR DESANTIS: Is there a motion?

CFO PATRONIS: So move.

GOVERNOR DESANTIS: Second?

ATTORNEY GENERAL MOODY: Second.

GOVERNOR DESANTIS: Any comments or objection? (NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion carries.

EXECUTIVE DIRECTOR WILLIAMS: Thank you.

Item 2, a resolution of the State Board of Administration approving the fiscal sufficiency of an amount not exceeding \$500 million, State of Florida, full faith and credit, State Board of

1 Education, public education capital outlay
2 refunding bonds.

3 Request approval.

4 GOVERNOR DESANTIS: Is there a motion?

5 CFO PATRONIS: So move.

6 GOVERNOR DESANTIS: Second?

7 ATTORNEY GENERAL MOODY: Second.

8 GOVERNOR DESANTIS: Any objections?
9 (NO RESPONSE).

10 GOVERNOR DESANTIS: Hearing none, the motion
11 carries.

12 EXECUTIVE DIRECTOR WILLIAMS: Thank you.

13 Items 3 and 4 are both appointments to the
14 State Board of Administration's Investment Advisory
15 Council or IAC.

16 The individuals who are here, Bobby Jones and
17 Vinny Olmstead, are both serving currently and have
18 done so with distinction and have extraordinarily
19 strong backgrounds for this work. Both of them
20 would be confirmed or appointed effective 12,
21 March, and they're both subject to Senate
22 confirmation.

23 I would request approval of both appointments.

24 GOVERNOR DESANTIS: A motion to approve both
25 appointees?

CFO PATRONIS: So move.

GOVERNOR DESANTIS: Second?

ATTORNEY GENERAL MOODY: Second.

GOVERNOR DESANTIS: Any comments or objection?
(NO RESPONSE).

GOVERNOR DESANTIS: Hearing none, the motion
carries for both items 3 and 4.
Anything else?

EXECUTIVE DIRECTOR WILLIAMS: No, sir, we're
good. Thank you.

GOVERNOR DESANTIS: All right. Thank you very
much.

And that concludes today's Cabinet meeting.

Our next meeting is scheduled for Tuesday,
April 2nd.

(WHEREUPON, THE MEETING WAS ADJOURNED).

* * *

CourtSmart Tag Report

Room: SB 301

Case No.:

Type:

Caption: Senate Committee on Governmental Oversight and Accountability

Judge:

Started: 1/27/2020 1:30:53 PM

Ends: 1/27/2020 2:05:44 PM

Length: 00:34:52

1:30:52 PM Meeting called to order
1:30:59 PM Roll Call - Quorum is present
1:31:07 PM Chair
1:31:17 PM Tab 7 - SB 822 by Senator Albritton - Drones
1:31:55 PM Amendment 472536 by Senator Albritton
1:32:47 PM Questions? None
1:32:53 PM Appearance Cards on amendment?
1:32:59 PM Emily Duda Buckley, Legislative Affairs Director, Fla. Dept. of Agric. and Consumer Services, waives in support of amendment
1:33:05 PM Debate?
1:33:09 PM Objection to adoption of amendment? None. Show amendment as adopted.
1:33:16 PM Back on bill as amended
1:33:22 PM Questions?
1:33:24 PM Senator Rader
1:33:33 PM Senator Albritton
1:35:01 PM Appearance Cards?
1:35:52 PM Emily Duda Buckley, waives in support
1:35:56 PM Chief Ray Colburn, Executive Director, Fla. Fire Chiefs Association, speaking in support
1:37:18 PM Barney Bishop, Florida Smart Justice Alliance, waives in support
1:37:31 PM Debate?
1:37:35 PM Senator Albritton waives close
1:37:41 PM Roll Call on CS/SB 822
1:38:01 PM Tab 1 - SB 1212 by Gruters - International Affairs
1:38:54 PM Amendment 316316 by Senator Gruters
1:39:15 PM Questions on amendment? None
1:39:18 PM Appearance Cards on amendment? None
1:39:22 PM Debate?
1:39:28 PM Objection to adoption of amendment? None, Show amendment is adopted.
1:39:41 PM Back on bill as amended
1:39:56 PM Appearance Cards? Brittany Dover, Legislative Affairs Director, Dept. of State, waives in support
1:40:05 PM Debate? None
1:40:09 PM Roll Call CS/SB 1212
1:40:31 PM Tab 8 - SB 1690 by Senator Torres - Preservation of Memorials
1:43:44 PM Questions? None
1:44:43 PM Appearance Cards?
1:44:48 PM Jeff Kottkamp, Guardians of American History waives in support
1:44:56 PM Yvette Siegel, Guardian of American History, waives in support
1:45:13 PM Debate?
1:45:19 PM Senator Albritton
1:46:09 PM Chair
1:46:12 PM Senator Torres waives close
1:46:21 PM Roll Call on SB 1690
1:46:38 PM Tab 9 - SB 240 by Senator Rader, State Symbols
1:47:12 PM Chair
1:47:23 PM Questions? None
1:47:29 PM Appearance Cards?
1:47:31 PM Jack Cory, FIX Florida, waives in support
1:47:41 PM Debate? None
1:47:44 PM Senator Rader to close
1:47:54 PM Roll Call SB 240
1:48:13 PM Gavel turned over to Vice Chair Rader
1:48:46 PM Tab 10 - SPB 7046 - by Senate Committee on Governmental Oversight and Accountability relating to

State Group Insurance Program

1:50:59 PM Questions? None
1:51:03 PM Appearance Forms? None
1:51:12 PM Debate? None
1:51:15 PM Senator Hooper moves that SPB 7046 be submitted as a Committee Bill
1:51:17 PM Objections? None, the motion is adopted.
1:51:26 PM Roll Call on SB 7046
1:51:55 PM Chair
1:52:00 PM Tab 11 - John Robert Jones, Jr. re-appointment to Investment Council
1:52:40 PM Motion by Senator Bean to reconfirm
1:53:00 PM 2nd by Senator Torres
1:53:17 PM Any objection - None, motion is adopted
1:53:32 PM Roll call on re-appointment of Mr. John Robert Jones, Jr.
1:53:51 PM Gavel turned back over to Chair Hooper
1:54:07 PM Tab 3 - SB 7032 Criminal Justice Committee, Senator Perry, OSGR/Body Camera Recordings Obtained by Law Enforcement Officers
1:54:38 PM Questions? None
1:54:45 PM Appearance Cards? None
1:54:49 PM Debate? None
1:54:53 PM Roll Call SB 7032
1:55:04 PM Tab 4 - SB 7034 by Criminal Justice presented by Senator Perry, OGSR/Residential Facilities Serving Victims of Sexual Exploitation
1:55:30 PM Questions? None
1:55:36 PM Appearance Cards? None
1:55:38 PM Debate? None
1:55:42 PM Roll Call on SB 7034
1:55:51 PM Tab 5 -7036 By CJ Senator Perry, OGSR/Criminal Intelligence Information/Criminal Investigation
1:56:16 PM Questions? None
1:56:22 PM Appearance Cards? None
1:56:25 PM Debate? None
1:56:30 PM Roll Call on SB 7036
1:56:38 PM Tab 6 - SB 7038 by CJ and Senator Perry- OGSR/Information Held by an Investigative Agency
1:57:06 PM Questions? None
1:57:11 PM App? None
1:57:13 PM Debate? None
1:57:16 PM Senator Perry waives close
1:57:21 PM Roll Call on SB 7038
1:57:30 PM Recording Paused
1:59:02 PM Recording Resumed
1:59:05 PM Tab 2 - SB 7002 by Children, Families, and Elder Affairs, Senator Book - OGSR/State Child Abuse Death
Review Committee
1:59:10 PM Questions? None
1:59:44 PM Appearance Cards? None
1:59:47 PM Debate? None
1:59:50 PM Senator Book waives close
1:59:55 PM Roll Call on SB 7002
2:00:05 PM Chair
2:00:14 PM Any missed votes? None
2:00:24 PM Senator Bean on point of personal privilege
2:00:36 PM Business before committee?
2:01:08 PM Senator Rader
2:01:30 PM Chair
2:01:49 PM Senator Torres to Introduce group from RCMS Leadership Program from Hillsborough County here to speak for immigrant families and other issues
2:04:27 PM Chair
2:05:29 PM Vice Chair Rader moves to adjourn meeting. Meeting adjourned.