

<b>Tab 1</b>	<b>SB 220 by Brandes (CO-INTRODUCERS) Rodrigues;</b> (Similar to H 00997) Public Records and Public Meetings					
402426	A	S	RCS	GO, Brandes	Delete L.37 - 79:	02/17 11:08 AM

<b>Tab 2</b>	<b>CS/SB 166 by CJ, Perry (CO-INTRODUCERS) Gruters;</b> (Similar to H 00095) Public Records/Nonjudicial Record of the Arrest of a Minor					
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<b>Tab 3</b>	<b>SB 222 by Cruz (CO-INTRODUCERS) Stewart;</b> (Similar to H 00037) Abandoned Cemeteries					
<del>433626</del>	A	S	WD	GO, Cruz	Delete L.123:	02/09 08:56 AM
<del>592004</del>	SA	S	WD	GO, Cruz	Delete L.123 - 128:	02/09 08:56 AM
552312	A	S	RCS	GO, Cruz	Delete L.123 - 128:	02/17 11:08 AM

<b>Tab 4</b>	<b>SB 844 by Hooper;</b> (Similar to H 00781) Public Records					
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<b>Tab 5</b>	<b>SB 378 by Bradley;</b> (Identical to H 00585) Payment for Construction Services					
619058	A	S	RCS	GO, Bradley	Delete L.155 - 171:	02/17 11:08 AM

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

**MEETING DATE:** Wednesday, February 17, 2021  
**TIME:** 9:00—11:30 a.m.  
**PLACE:** Mallory Horne Committee Room, 37 Senate Building

**MEMBERS:** Senator Rodrigues, Chair; Senator Gruters, Vice Chair; Senators Mayfield, Stargel, Stewart, and Torres

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W PENSACOLA STREET, TALLAHASSEE, FL 32301

1	<b>SB 220</b> Brandes (Similar H 997)	Public Records and Public Meetings; Providing an exemption from public records requirements for any personal identifying information of an applicant for president of a state university or a Florida College System institution; specifying that personal identifying information of applicants who are in the final group of applicants is no longer confidential and exempt at a time certain; specifying that certain meetings are not exempt from public meeting requirements; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc.  ED 01/26/2021 Favorable GO 02/17/2021 Fav/CS RC	Fav/CS Yeas 4 Nays 2
2	<b>CS/SB 166</b> Criminal Justice / Perry (Similar H 95, Compare H 93, Linked S 274)	Public Records/Nonjudicial Record of the Arrest of a Minor; Providing an exemption from public records requirements for a nonjudicial record of the arrest of a minor who has successfully completed a diversion program; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc.  CJ 01/26/2021 Fav/CS GO 02/17/2021 Favorable AP	Favorable Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**

Governmental Oversight and Accountability

Wednesday, February 17, 2021, 9:00—11:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	<b>SB 222</b> Cruz (Similar H 37)	Abandoned Cemeteries; Creating the Task Force on Abandoned African-American Cemeteries; requiring the Department of State to partner with specified entities to undertake an investigation of the former Zion Cemetery site; requiring the department to contract with the University of South Florida and Florida Agricultural and Mechanical University for the identification and location of eligible next of kin; directing the Division of Historical Resources of the department to ensure the listing of certain cemeteries in the Florida Master Site File; requiring the division to seek placement of historical markers at certain abandoned cemeteries, subject to certain limitations, etc.  GO 01/27/2021 Temporarily Postponed GO 02/17/2021 Fav/CS ATD AP	Fav/CS Yeas 6 Nays 0
4	<b>SB 844</b> Hooper (Similar H 781)	Public Records; Authorizing certain persons to access information recorded in the Official Records of a county which is otherwise exempt from public records requirements, if specified conditions are met; authorizing clerks of the circuit court to enter into limited access licensing agreements to allow electronic access to official records for specified parties; prohibiting a county recorder or a clerk of the court from placing information subject to specified public records exemptions on a publicly available website; providing procedures for the restoration of previously redacted information, etc.  GO 02/17/2021 Not Considered CA RC	Not Considered
5	<b>SB 378</b> Bradley (Identical H 585)	Payment for Construction Services; Increasing the interest rate for certain payments for purchases of construction services; specifying that a person, firm, or corporation who fails to make certain payments relating to public projects commits a misapplication of constructions funds and is subject to criminal penalties; increasing the interest rate for overdue payments for the purchase of construction services; expanding the list of actions for which a licensee may be disciplined by the Construction Industry Licensing Board; requiring the board to suspend certain licenses for a minimum period of time under certain circumstances, etc.  CA 01/26/2021 Favorable GO 02/17/2021 Fav/CS RC	Fav/CS Yeas 6 Nays 0

**COMMITTEE MEETING EXPANDED AGENDA**  
Governmental Oversight and Accountability  
Wednesday, February 17, 2021, 9:00—11:30 a.m.

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

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

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

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

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BILL: CS/SB 220

INTRODUCER: Governmental Oversight and Accountability Committee and Senators Brandes and Rodrigues

SUBJECT: Public Records and Public Meetings

DATE: February 17, 2021      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Westmark</u>	<u>Bouck</u>	<u>ED</u>	<u>Favorable</u>
2.	<u>Candelaria</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 220 makes confidential and exempt from public disclosure requirements any personal identifying information of an applicant for the position of president of a state university or Florida College System (FCS) institution held by a state university or a FCS institution.

The bill provides that the personal identifying information of an applicant included in a final group of applicants for president is no longer confidential and exempt from public records requirements beginning at the earlier of the date the final group of applicants to be considered for president is established or at least 21 days before either an interview of an applicant or final action on the offer of employment.

The bill also exempts from public meeting requirements any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or FCS institution, including any portion of a meeting that would disclose personal identifying information of such applicants. The bill provides that a complete recording must be made of any portion of a closed meeting, and any closed portion of such meeting may not be held off the record. The recording is also exempt from public disclosure requirements.

The bill specifies that the meeting exemption does not apply to any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation

framework to be offered to an applicant. Additionally, any meeting held after a final group of applicants has been established must be open to the public.

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

The bill provides that the exemption is subject to the Open Government Sunshine Review Act, and is repealed on October 2, 2026, unless saved from repeal by the Legislature.

The bill has no significant fiscal impact on state universities and FCS institutions.

The bill takes effect July 1, 2021.

## **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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> 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.<sup>5</sup>

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<sup>1</sup> Art. I, s. 24(a), Fla. Const.

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

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives* (2020-2022).

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

<sup>5</sup> 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.”

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted 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.”<sup>7</sup>

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.<sup>8</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>9</sup>

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.<sup>10</sup> 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.<sup>11</sup>

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

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.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

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

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

<sup>8</sup> Section 119.07(1)(a), F.S.

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

<sup>10</sup> Art. I, s. 24(c), Fla. Const.

<sup>11</sup> *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).

<sup>12</sup> 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).

<sup>13</sup> 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).

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

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

## Open Meetings Laws

The Florida Constitution provides that the public has a right to access governmental meetings.<sup>16</sup> Each collegial body must provide notice of its meetings to the public and permit the public to attend any meeting at which official acts are taken or at which public business is transacted or discussed.<sup>17</sup> This applies to the meetings of any collegial body of the executive branch of state government, counties, municipalities, school districts, or special districts.<sup>18</sup>

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,”<sup>19</sup> or the “Sunshine Law,”<sup>20</sup> requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken be open to the public.<sup>21</sup> The board or commission must provide the public reasonable notice of such meetings.<sup>22</sup> Public meetings may not be held at any location that discriminates on the basis of sex, age, race, creed, color, origin, or economic status or which operates in a manner that unreasonably restricts the public’s access to the facility.<sup>23</sup> Minutes of a public meeting must be promptly recorded and open to public inspection.<sup>24</sup> Failure to abide by open meetings requirements will invalidate any resolution, rule, or formal action adopted at a meeting.<sup>25</sup> A public officer or member of a governmental entity who violates the Sunshine Law is subject to civil and criminal penalties.<sup>26</sup>

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.<sup>27</sup> The exemption must explicitly lay out the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.<sup>28</sup> A statutory exemption which does not meet these two criteria may be unconstitutional and may not be judicially saved.<sup>29</sup>

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<sup>16</sup> Art. I, s. 24(b), Fla. Const.

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

<sup>18</sup> *Id.* Meetings of the Legislature are governed by Article III, section 4(e) of the Florida Constitution, which states: “The rules of procedure of each house shall further provide that all prearranged gatherings, between more than two members of the legislature, or between the governor, the president of the senate, or the speaker of the house of representatives, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time, or at which formal legislative action is taken, regarding pending legislation or amendments, shall be reasonably open to the public.”

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

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

<sup>21</sup> Section 286.011(1)-(2), F.S.

<sup>22</sup> *Id.*

<sup>23</sup> Section 286.011(6), F.S.

<sup>24</sup> Section 286.011(2), F.S.

<sup>25</sup> Section 286.011(1), F.S.

<sup>26</sup> Section 286.011(3), F.S.

<sup>27</sup> Art. I, s. 24(c), Fla. Const.

<sup>28</sup> *Id.*

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



The Open Government Sunset Review Act (Act) prescribes a legislative review process for newly created or substantially amended public records exemptions,<sup>30</sup> with specified exceptions.<sup>31</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>32</sup> 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.<sup>33</sup>

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

The Open Government Sunset Review Act<sup>34</sup> (Act) prescribes a legislative review process for newly created or substantially amended<sup>35</sup> public records or open meetings exemptions, with specified exceptions.<sup>36</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>37</sup>

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.<sup>38</sup> An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;<sup>39</sup>
- 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;<sup>40</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>41</sup>

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<sup>30</sup> 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.).

<sup>31</sup> 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.

<sup>32</sup> Section 119.15(3), F.S.

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

<sup>34</sup> Section 119.15, F.S.

<sup>35</sup> 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.

<sup>36</sup> 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.

<sup>37</sup> Section 119.15(3), F.S.

<sup>38</sup> Section 119.15(6)(b), F.S.

<sup>39</sup> Section 119.15(6)(b)1., F.S.

<sup>40</sup> Section 119.15(6)(b)2., F.S.

<sup>41</sup> Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.<sup>42</sup> 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.<sup>43</sup> 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.<sup>44</sup>

### **State University System and Florida College System Governance**

The State University System is composed of all public state universities.<sup>45</sup> The Board of Governors (BOG) is required to operate, regulate, control, and be fully responsible for the management of the whole university system.<sup>46</sup> Each state university is governed by a local board of trustees, which is subject to public record and open meetings laws.<sup>47</sup> The BOG establishes the powers and duties of the boards of trustees and may delegate its constitutional or statutory powers and duties to the boards of trustees as its designee.<sup>48</sup> The BOG establishes the personnel system for all state university employees and confirms the selection and reappointment of presidents by state university boards of trustees.<sup>49</sup>

The Florida College System (FCS) is composed of public community and state colleges.<sup>50</sup> FCS institutions are supervised by the State Board of Education (SBE),<sup>51</sup> which establishes standards and guidelines for the FCS institutions.<sup>52</sup> A local board of trustees governs each FCS institution.<sup>53</sup>

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<sup>42</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>43</sup> See generally s. 119.15, F.S.

<sup>44</sup> Section 119.15(7), F.S.

<sup>45</sup> Art. IX, s. 7(b), Fla. Const. The State University System is made up of 12 state universities, specified in s. 1000.21(6), F.S.

<sup>46</sup> Art. IX, s. 7(d), Fla. Const. See also ss. 20.155(4)(a), 1001.70(3), 1001.705(2), and 1001.706(2)(a), F.S.

<sup>47</sup> Art. IX, s. 7(b)-(c), Fla. Const. See also s. 1001.71(1), F.S.

<sup>48</sup> Art. IX, s. 7(c), Fla. Const. See also s. 1001.706(2)(b), F.S.

<sup>49</sup> Sections 1001.705(2)(k) and 1001.706(6)(a), F.S.

<sup>50</sup> Art. IX, s. 8(b), Fla. Const. The Florida College System is made up of 28 community and state colleges specified in s. 1000.21(3), F.S. Such institutions constitute political subdivisions of the state operated by boards of trustees. See s. 1004.67 and ss. 1001.61-1001.64, F.S.

<sup>51</sup> Art. IX, s. 8(d), Fla. Const.

<sup>52</sup> Section 20.15(1), (2), and (5); see also s. 1001.02(1) and (6), F.S.

<sup>53</sup> Art. IX, s. 8(b), Fla. Const. See also ss. 1001.60(3) and 1001.64(2), F.S.

## State University System and Florida College System Presidential Searches

Each state university board of trustees selects its university president, subject to confirmation of the candidate by the BOG and in accordance with BOG regulations. To locate qualified applicants, a presidential search committee is appointed to make recommendations to the full university board of trustees.<sup>54</sup>

BOG regulation specifies criteria to ensure that the search process is transparent, robust, and designed to attract highly qualified individuals.<sup>55</sup> Criteria include requirements that a search firm or consultant a search committee retains must be familiar, or demonstrate its ability to become familiar, with Florida's Sunshine laws,<sup>56</sup> and that the search committee maintain for purposes of transparency a webpage that includes search committee notices, agendas, and meetings; applicant lists; and means to provide input.<sup>57</sup>

Each FCS institution board of trustees is authorized to appoint the president of the FCS institution.<sup>58</sup> The board of trustees is authorized to appoint a search committee to assist in the process.<sup>59</sup> Each board of trustees is required to notify the SBE of the appointment of a president immediately upon such action.<sup>60</sup>

Information obtained by a search committee or consultant, including applications and other information gathered by a committee or consultant regarding applicants, must be made available for copying and inspection upon request. In addition, any meetings associated with the search process are open to the public.<sup>61</sup>

The consultants assist by identifying and recruiting highly-talented individuals, as well as responding to all nominations, applications, and inquiries for the position. The consultants develop selection criteria and conduct preliminary screening interviews with each candidate who meets the stated criteria. The consultants provide the search committee with information gathered during the interviews, along with background investigations concluded by the search firm. The search committee will identify semi-finalists, and finalists for the position.

### III. Effect of Proposed Changes:

**Section 1** creates s. 1004.098, F.S., to establish an exemption from public records and public meetings requirements for applicants for president of a state university of FCS institution.

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<sup>54</sup> Board of Governors (BOG) Regulation 1.001(5)(c).

<sup>55</sup> BOG Regulation 1.002(1).

<sup>56</sup> BOG Regulation 1.002(1)(b)ii.

<sup>57</sup> BOG Regulation 1.002(1)(c)i.

<sup>58</sup> Section 1001.61 F.S.

<sup>59</sup> Section 1001.64(19), F.S.

<sup>60</sup> Rule 6A-14.026, F.A.C.

<sup>61</sup> FCS institutions and state universities are considered state agencies, subject to public records and public meetings laws. See *Wood v. Marston*, 442 So. 2d 934, 938 (Fla. 1983) (holding that a University of Florida screening committee was subject to Florida's Sunshine Law); *Rhea v. District Bd. Of Trustees of Santa Fe College*, 109 So. 3d 851 at 855, n. 1 (Fla. 1st DCA 2013) (noting that Santa Fe College, as part of the Florida College System, is a state agency having a duty to provide access to public records).

The bill specifies that any personal identifying information of an applicant for president of a state university or FCS institution held by a state university or a FCS institution is confidential and exempt from public records requirements.

The bill provides that the personal identifying information of an applicant included in a final group of applicants for president of a state university or FCS institution is no longer confidential and exempt beginning at the earlier of the date the final group of applicants to be considered for president is established or at least 21 days before the date of a meeting at which an interview of an applicant will be conducted or at which final action or a vote is to be taken on the offer of the employment of an applicant as president.

The bill exempts from public meetings requirements any portion of a meeting held for the purpose of identifying or vetting applicants for president of a state university or FCS institution, including any portion of a meeting that would disclose personal identifying information of such applicants. The bill provides that a complete recording must be made of any portion of a meeting that is closed and any closed portion of such meeting may not be held off the record. The recording of the closed portion of a meeting is exempt from s. 119.07(1) and s. 24(a), Art. 1 of the State Constitution.

The bill specifies that the public meeting exemption does not apply to:

- Any portion of a meeting held for the purpose of establishing qualifications for the position or establishing any compensation framework to be offered to an applicant for president of a state university or FCS institution.
- Any meeting held after a final group of applicants for president of a state university or FCS institution has been established.

The exemption from public records and public meetings established in the bill is subject to the Open Government Sunset Review Act and will be repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

**Section 2** sets forth the public necessity justifying the exemptions.<sup>62</sup> The bill asserts that applicants for president who are currently employed could jeopardize their current positions if it were known that they were seeking employment elsewhere. Further, the bill specifies that an exemption is necessary to allow a presidential search committee to access the most experienced and desirable pool of qualified applicants from which to fill the position of president.

The bill takes effect July 1, 2021.

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

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

Not applicable. The bill does not require counties or municipalities to take action requiring the expenditure of funds, reduce the authority that counties or municipalities

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<sup>62</sup> Art. I, s. 24(c), Fla. Const.

have to raise revenue in the aggregate, or 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 bill creating or expanding an exemption to the public records requirements or to the public meetings requirements. This bill enacts a new exemption for personal identifying information about applicants for the position of president at a state university or Florida College System (FCS) institution and a new exemption for certain portions of meetings that may discuss applicants for the position, thus, the bill requires a two-thirds vote to be enacted.

***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. Section two of the bill contains a statement of public necessity for the exemption.

***Breadth of Exemption***

**Public Records 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 personal identifying information of applicants for the position of president of a state university or FCS institution. This bill exempts from inspection and copying only personal identifying information of such individuals unless the applicant makes the list of finalists. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

**Public Meetings Exemption**

Article I, s. 24(c) of the State Constitution also requires an exemption to the public meetings requirements to be no broader than necessary to accomplish the stated purpose of the law. Like the public records exemption, the stated purpose of the law is to protect personal identifying information of applicants for the position of president of a state university or FCS institution prior to the selection of the final group. The bill appears to only exempt the portion of the meeting held for the purpose of identifying or vetting applicants, including any portion of a meeting which would disclose personal identifying information. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

**V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

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

C. Government Sector Impact:

State universities and FCS institutions may incur costs related to the redaction of records in responding to public records requests.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill creates section 1004.098 of the Florida Statutes.

This bill creates an unnumbered section of law.

**IX. Additional Information:**

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

**CS by Governmental Oversight and Accountability on February 17, 2021:**

- Limits the exemption to personal identifying information of applicants for president held by a university or FCS institution.
- Establishes that the public meetings exemption does not apply to any meeting held after the final group of applicants have been recognized.

- Adds that the personal identifying information of an applicant included in the final group of applicants is no longer confidential and exempt beginning at the earlier of the date the final group of applicants to be considered for president is established.

**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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402426

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2021	.	
	.	
	.	
	.	

---

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

**Senate Amendment (with title amendment)**

Delete lines 37 - 79  
and insert:  
institution held by a state university or a Florida College  
System institution is confidential and exempt from s. 119.07(1)  
and s. 24(a), Art. I of the State Constitution.

(b) Notwithstanding paragraph (a), the personal identifying  
information of an applicant included in the final group of  
applicants for president of a state university or a Florida





402426

11 College System institution is no longer confidential and exempt  
12 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
13 beginning at the earlier of the date the final group of  
14 applicants to be considered for president is established or 21  
15 days before the date of a meeting at which an interview of an  
16 applicant will be conducted or at which final action or a vote  
17 is to be taken on the offer of the employment of an applicant as  
18 president.

19 (2) (a) Any portion of a meeting held for the purpose of  
20 identifying or vetting applicants for president of a state  
21 university or a Florida College System institution, including  
22 any portion of a meeting which would disclose personal  
23 identifying information of such applicants which is otherwise  
24 confidential and exempt under subsection (1), is exempt from s.  
25 286.011 and s. 24(b), Art. I of the State Constitution.

26 (b) A complete recording must be made of any portion of a  
27 meeting which is closed pursuant to paragraph (a), and any  
28 closed portion of such meeting may not be held off the record.  
29 The recording of the closed portion of a meeting is exempt from  
30 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

31 (c) The public meeting exemption provided in paragraph (a)  
32 does not apply to:

33 1. Any portion of a meeting held for the purpose of  
34 establishing qualifications for the position or establishing any  
35 compensation framework to be offered to an applicant for  
36 president of a state university or a Florida College System  
37 institution.

38 2. Any meeting that is held after a final group of  
39 applicants for president of a state university or a Florida



402426

40 College System institution has been established.

41 (3) This section is subject to the Open Government Sunset  
42 Review Act in accordance with s. 119.15 and shall stand repealed  
43 on October 2, 2026, unless reviewed and saved from repeal  
44 through reenactment by the Legislature.

45 Section 2. The Legislature finds that it is a public  
46 necessity that any personal identifying information of an  
47 applicant for president of a state university or a Florida  
48 College System institution held by a state university or a  
49 Florida College System institution be made confidential and  
50 exempt from

51  
52 ===== T I T L E A M E N D M E N T =====

53 And the title is amended as follows:

54 Delete lines 7 - 15

55 and insert:

56 institution held by a state university or a Florida  
57 College System institution; specifying that personal  
58 identifying information of applicants who are in the  
59 final group of applicants is no longer confidential  
60 and exempt at a time certain; providing an exemption  
61 from public meeting requirements for any portion of a  
62 meeting held for the purpose of identifying or vetting  
63 applicants for president of a state university or a  
64 Florida College System institution, including any  
65 portion of a meeting which would disclose certain  
66 identifying information

By Senator Brandes

24-00341-21

2021220\_\_

1 A bill to be entitled  
 2 An act relating to public records and public meetings;  
 3 creating s. 1004.098, F.S.; providing an exemption  
 4 from public records requirements for any personal  
 5 identifying information of an applicant for president  
 6 of a state university or a Florida College System  
 7 institution; specifying that personal identifying  
 8 information of applicants who are in the final group  
 9 of applicants is no longer confidential and exempt at  
 10 a time certain; providing an exemption from public  
 11 meeting requirements for any portion of a meeting held  
 12 for the purpose of identifying or vetting applicants  
 13 for president of a state university or a Florida  
 14 College System institution, including any portion of a  
 15 meeting which would disclose identifying information  
 16 of such applicants; requiring that a recording be made  
 17 of any portion of a closed meeting which would  
 18 disclose identifying information of such applicants;  
 19 providing that no portion of a closed meeting may be  
 20 held off the record; providing that the recording of  
 21 any closed portion of a meeting is exempt from public  
 22 records requirements; specifying that certain meetings  
 23 are not exempt from public meeting requirements;  
 24 providing for future legislative review and repeal of  
 25 the exemptions; providing a statement of public  
 26 necessity; providing an effective date.

28 Be It Enacted by the Legislature of the State of Florida:  
 29

Page 1 of 4

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

24-00341-21

2021220\_\_

30 Section 1. Section 1004.098, Florida Statutes, is created  
 31 to read:  
 32 1004.098 Applicants for president of a state university or  
 33 Florida College System institution; public records exemption;  
 34 public meetings exemption.-  
 35 (1) (a) Any personal identifying information of an applicant  
 36 for president of a state university or a Florida College System  
 37 institution is confidential and exempt from s. 119.07(1) and s.  
 38 24(a), Art. I of the State Constitution.  
 39 (b) Notwithstanding paragraph (a), the personal identifying  
 40 information of an applicant included in the final group of  
 41 applicants for president of a state university or a Florida  
 42 College System institution is no longer confidential and exempt  
 43 from s. 119.07(1) and s. 24(a), Art. I of the State Constitution  
 44 during the period beginning 21 days before the date of a meeting  
 45 at which an interview of an applicant will be conducted or at  
 46 which final action or a vote is to be taken on the offer of the  
 47 employment of an applicant as president.  
 48 (2) (a) Any portion of a meeting held for the purpose of  
 49 identifying or vetting applicants for president of a state  
 50 university or a Florida College System institution, including  
 51 any portion of a meeting which would disclose personal  
 52 identifying information of such applicants, is exempt from s.  
 53 286.011 and s. 24(b), Art. I of the State Constitution.  
 54 (b) A complete recording must be made of any portion of a  
 55 meeting which is closed pursuant to paragraph (a), and any  
 56 closed portion of such meeting may not be held off the record.  
 57 The recording of the closed portion of a meeting is exempt from  
 58 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

Page 2 of 4

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

24-00341-21

2021220\_\_

59 (c) The public meeting exemption provided in paragraph (a)  
 60 does not apply to:

61 1. Any portion of a meeting held for the purpose of  
 62 establishing qualifications for the position or establishing any  
 63 compensation framework to be offered to an applicant for  
 64 president of a state university or a Florida College System  
 65 institution.

66 2. Any meeting that is held after a final group of  
 67 applicants for president of a state university or a Florida  
 68 College System institution has been established and at which an  
 69 interview of an applicant is conducted or at which final action  
 70 or a vote is to be taken on the offer of the employment of an  
 71 applicant as president.

72 (3) This section is subject to the Open Government Sunset  
 73 Review Act in accordance with s. 119.15 and shall stand repealed  
 74 on October 2, 2026, unless reviewed and saved from repeal  
 75 through reenactment by the Legislature.

76 Section 2. The Legislature finds that it is a public  
 77 necessity that any personal identifying information of an  
 78 applicant for president of a state university or a Florida  
 79 College System institution be made confidential and exempt from  
 80 s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the  
 81 State Constitution. The Legislature also finds that it is a  
 82 public necessity that any portion of a meeting held for the  
 83 purpose of identifying or vetting applicants for president of a  
 84 state university or a Florida College System institution,  
 85 including any portion of a meeting which would disclose personal  
 86 identifying information of such applicants, be made exempt from  
 87 s. 286.011, Florida Statutes, and s. 24(b), Article I of the

24-00341-21

2021220\_\_

88 State Constitution, and that the recording of such meeting be  
 89 made exempt from s. 119.07(1), Florida Statutes, and s. 24(a),  
 90 Article I of the State Constitution. The task of filling the  
 91 position of president of a state university or a Florida College  
 92 System institution is often conducted by an executive search  
 93 committee. Many, if not most, applicants for such a position are  
 94 currently employed at another job at the time they apply and  
 95 could jeopardize their current positions if it were to become  
 96 known that they were seeking employment elsewhere. These  
 97 exemptions from public records and public meeting requirements  
 98 are needed to ensure that such a search committee can avail  
 99 itself of the most experienced and desirable pool of qualified  
 100 applicants from which to fill the position of president of a  
 101 state university or a Florida College System institution. If  
 102 potential applicants fear the possibility of losing their  
 103 current jobs as a consequence of attempting to progress along  
 104 their chosen career path or simply seeking different and more  
 105 rewarding employment, failure to have these safeguards in place  
 106 could have a chilling effect on the number and quality of  
 107 applicants available to fill the position of president of a  
 108 state university or a Florida College System institution.

109 Section 3. This act shall take effect July 1, 2021.



The Florida Senate

## Committee Agenda Request

**To:** Senator Ray Wesley Rodrigues, Chair  
Committee on Government Oversight and Accountability

**Subject:** Committee Agenda Request

**Date:** February 2, 2021

---

I respectfully request that **Senate Bill # 220**, relating to Public Records and Public Meetings, be placed on the:

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

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

\_\_\_\_\_  
Senator Jeff Brandes  
Florida Senate, District 24

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/2020  
Meeting Date

220  
Bill Number (if applicable)

Topic University President Selection

Amendment Barcode (if applicable)

Name Pamela C. Marsh

Job Title Executive Director

Address 317 E. Park Ave

Phone 850/224-4555

Tallahassee FL 32301

City State Zip

Email pmarsh@floridafaf.org

Speaking:  For  Against  Information

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

Representing First Amendment Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17

Meeting Date

220

Bill Number (if applicable)

Topic \_\_\_\_\_

Amendment Barcode (if applicable)

Name MATTHEW LATA

Job Title PROFESSOR

Address 3556 GARDENVIEW  
Street

Phone 8503221361

TALLAHASSEE FL 32309  
City State Zip

Email matthwlata@gmail.com

Speaking:  For  Against  Information

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

Representing UNITED FACULTY OF FLORIDA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17/21 Meeting Date

SB 220 Bill Number (if applicable)

Topic Presidential Searches

Amendment Barcode (if applicable)

Name Dr. Karen Morian

Job Title President, United Faculty of Florida

Address 2043 Dunsford Ter Phone 904-704-1033

Street

Jax City

FL State

32207 Zip

Email Karen.Morian@Florida.edu

Speaking: For Against Information

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

Representing UFF

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

APPEARANCE RECORD

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

2/17 Meeting Date

SB 220 Bill Number (if applicable)

Topic Open Records

Amendment Barcode (if applicable)

Name Dr. Rich Templin

Job Title

Address 135 S. Monroe

Phone 224-0926

Street

Tallahassee

FL

32301

City

State

Zip

Email

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

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

Representing Florida AFL-CIO

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

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

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2/17/21

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

220

Meeting Date

Bill Number (if applicable)

Topic Public Records

Amendment Barcode (if applicable)

Name Yale Olenick

Job Title Attorney / Lobbyist

Address 310 S. Adams

Phone 850-228-2336

Street

Tallahassee FL

Email \_\_\_\_\_

City

State

Zip

Speaking:  For  Against  Information

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

Representing Florida Education Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

FEB 11 2021  
Meeting Date

SB 220  
Bill Number (if applicable)

Topic Public Records/Exemption Amendment Barcode (if applicable)

Name DAVID SENDAK

Job Title STATES MAN / Primary Worker / DECEASED FATHER  
ELEM. SCHOOL PRINC

Address (ob) 100 WINTERGREEN DR Phone 352 805 6597

Street Fruitland Park FL 34731 Email gotfredave

City State Zip

Speaking:  For  Against  Information

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

Representing Self At Large Candidate / DECEASED FATHER  
ELEM. PRINC

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

---

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

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**BILL:** CS/SB 166

**INTRODUCER:** Criminal Justice Committee and Senator Perry

**SUBJECT:** Public Records/Nonjudicial Record of the Arrest of a Minor

**DATE:** February 16, 2021      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Stokes	Jones	CJ	<b>Fav/CS</b>
2.	Candelaria	McVaney	GO	<b>Favorable</b>
3.			AP	

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

COMMITTEE SUBSTITUTE - Technical Changes

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**I. Summary:**

CS/SB 166 is the public records exemption linked to SB 274. This bill provides that a nonjudicial record of the arrest of a minor who has successfully completed a diversion program and is eligible for expunction is made confidential and exempt from public disclosure, except that the record must be made available only to criminal justice agencies for specified purposes. SB 274 amends s. 943.0582, F.S., to permit a juvenile who completed a diversion program for any offense, including a felony offense, to apply to have the nonjudicial arrest record expunged. Additionally, SB 274 amends s. 985.126, F.S., to permit a juvenile who completed a diversion program for any offense, including a felony or subsequent offense, to lawfully deny or fail to acknowledge his or her participation in the program and the expunction.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

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

This bill takes effect on the same date as SB 274 or similar legislation takes effect. SB 274 is effective on July 1, 2021.

## 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.<sup>1</sup> 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.<sup>2</sup>

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.<sup>3</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>4</sup> 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.<sup>5</sup>

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>6</sup> The Florida Supreme Court has interpreted 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.”<sup>7</sup>

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

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

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

<sup>3</sup> See Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2020-2022).

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

<sup>5</sup> 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.”

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

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

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

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.<sup>10</sup> 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.<sup>11</sup>

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

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.<sup>14</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.<sup>15</sup>

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

The Open Government Sunset Review Act<sup>16</sup> (the Act) prescribes a legislative review process for newly created or substantially amended<sup>17</sup> public records or open meetings exemptions, with specified exceptions.<sup>18</sup> It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.<sup>19</sup>

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.<sup>20</sup>

---

<sup>8</sup> Section 119.07(1)(a), F.S.

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

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

<sup>11</sup> *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).

<sup>12</sup> *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).

<sup>13</sup> *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).

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

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

<sup>16</sup> Section 119.15, F.S.

<sup>17</sup> 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.

<sup>18</sup> Section 119.15(2)(a) and (b), F.S., provides 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.

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

<sup>20</sup> 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;<sup>21</sup>
- 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;<sup>22</sup> or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.<sup>23</sup>

The Act also requires specified questions to be considered during the review process.<sup>24</sup> 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.<sup>25</sup> 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.<sup>26</sup>

### **Juvenile Diversion Program Expunction**

The exceptions to accessibility of a criminal history record do not apply if the record has been sealed<sup>27</sup> or expunged.<sup>28</sup> 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

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<sup>21</sup> Section 119.15(6)(b)1., F.S.

<sup>22</sup> Section 119.15(6)(b)2., F.S.

<sup>23</sup> Section 119.15(6)(b)3., F.S.

<sup>24</sup> Section 119.15(6)(a), F.S. The specified questions are:

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

<sup>25</sup> See generally s. 119.15, F.S.

<sup>26</sup> Section 119.15(7), F.S.

<sup>27</sup> "Sealing of a criminal history record" means the preservation of a record under such circumstances that it is secure and inaccessible to any person not having a legal right of access to the record or the information contained and preserved therein. Section 943.045(19), F.S.

<sup>28</sup> Section 943.053(3)(b), F.S.

having custody of the record.<sup>29</sup> The following are authorized expungement processes for the criminal history record of a juvenile:

- Juvenile diversion;<sup>30</sup>
- Automatic juvenile;<sup>31</sup> and
- Early juvenile.<sup>32</sup>

Diversion refers to a program that is designed to keep a juvenile from entering the juvenile justice system through the legal process.<sup>33</sup>

The decision to refer a juvenile to a diversion program is at the discretion of either the law enforcement officer that confronted the juvenile at the time of the incident or the state attorney that has been referred the case. While participation in a diversion program may be restricted to misdemeanor offenses, there are some programs that enable a juvenile who has committed a felony to participate. In FY 2019-20, there were 2,770 juveniles who were referred to diversion programs for felony offenses.<sup>34</sup>

After completing an eligible diversion program, a juvenile seeking to have his or her nonjudicial arrest record expunged must:

- Submit an application for diversion expunction to the FDLE.
- Submit, with the application, an official written statement from the state attorney for the county in which the arrest occurred certifying that:
  - He or she has completed the diversion program;
  - The arrest was for a misdemeanor; and
  - He or she has not otherwise been charged by the state attorney with or have been found to have committed, any criminal offense or comparable ordinance violation.
- Have not, before the application for expunction, been charged by the state attorney with, or found to have committed, any criminal offense or comparable ordinance violation.<sup>35</sup>

If the juvenile meets such criteria and submits the appropriate documentation, the FDLE must expunge the nonjudicial arrest record of the juvenile.<sup>36</sup>

A criminal history record that is expunged under this section is only available to criminal justice agencies<sup>37</sup> for the purpose of determining eligibility for diversion programs, a criminal

<sup>29</sup> Criminal history records in the custody of the FDLE must be retained in all cases for purposes of evaluating subsequent requests by the subject of the record for sealing or expunction, or for purposes of recreating the record in the event an order to expunge is vacated by a court of competent jurisdiction. Section 943.045(16), F.S.

<sup>30</sup> Section 943.0582, F.S.

<sup>31</sup> Section 943.0515, F.S.

<sup>32</sup> Section 943.0515(1)(b)2., F.S.

<sup>33</sup> Florida Department of Juvenile Justice, *Glossary*, available at <http://www.djj.state.fl.us/youth-families/glossary> (last accessed February 5, 2021).

<sup>34</sup> Florida Department of Juvenile Justice, *Delinquency Profile 2020, Statewide Diversion – Felony Youth*, available at <http://www.djj.state.fl.us/research/reports/reports-and-data/interactive-data-reports/delinquency-profile/delinquency-profile-dashboard> (last accessed February 5, 2021, 2021).

<sup>35</sup> Section 943.0582(3), F.S.

<sup>36</sup> Section 943.0582(3), F.S.

<sup>37</sup> “Criminal justice agency” means: a court; the FDLE; the DJJ; the protective investigations component of the Department of Children and Families, which investigates the crimes of abuse and neglect; and any other governmental agency or subunit



investigation, or making a prosecutorial decision. Records that are eligible for expunction under this section must be sealed.<sup>38</sup> A juvenile who successfully completes a diversion program for a first-time misdemeanor offense may lawfully deny or fail to acknowledge his or her participation in the program and the expunction of the nonjudicial arrest record, unless the inquiry is made by a criminal justice agency for one of the purposes stated above.<sup>39</sup>

A juvenile who receives an expunction under this section is not prevented from petitioning for the expunction or sealing of a later criminal history record for human trafficking victim expunction,<sup>40</sup> court ordered expunction,<sup>41</sup> or court ordered sealing,<sup>42</sup> if the juvenile is otherwise eligible for relief under those sections.<sup>43</sup>

### III. Effect of Proposed Changes:

CS/SB 166 is the public records exemption linked to SB 274. This bill provides that the nonjudicial records of arrest of minors who have successfully completed a diversion program and are eligible for expunction are made confidential and exempt from public disclosure, except that the record must be made available only to criminal justice agencies for specified purposes.<sup>44</sup>

SB 274 amends s. 943.0582, F.S., to permit a juvenile who completed a diversion program for any offense, including a *felony offense*, to apply to have the nonjudicial arrest record expunged. This expands the current law, which only permits juvenile diversion expunction for a misdemeanor offense.

Additionally, SB 274 amends s. 985.126, F.S., to permit a juvenile who completed a diversion program for any offense, including a *felony offense or subsequent offense*, to lawfully deny or fail to acknowledge his or her participation in the program and the expunction. This expands the current law, which only permits a juvenile who completes diversion for a first-time misdemeanor offense to lawfully deny or fail to acknowledge his or her participation in the program and the expunction.

This bill is subject to the Open Government Sunset Review Act and stands repealed on October 2, 2026, unless reviewed and saved from the repeal through reenactment by the Legislature.

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thereof that performs the administration of criminal justice pursuant to a statute or rule of court and that allocates a substantial part of its annual budget to the administration of criminal justice. Section 942.045(11), F.S.

<sup>38</sup> Section 943.0582(2)(b), F.S.

<sup>39</sup> Section 985.126(5), F.S.

<sup>40</sup> Section 943.0583, F.S.

<sup>41</sup> Section 943.0585, F.S.

<sup>42</sup> Section 943.059, F.S.

<sup>43</sup> Section 943.0582, F.S.

<sup>44</sup> Section 943.0582(2)(b), F.S., provides that the criminal history record of a person whose record is expunged pursuant to this section must be made available only to criminal justice agencies for the purpose of: determining eligibility for diversion programs; a criminal investigation; or making a prosecutorial decision under s. 985.15, F.S.

This bill provides a public necessity statement as required by Article I, s. 24(c) of the State Constitution. The public necessity statement provides that:

The Legislature finds that it is a public necessity that the nonjudicial record of the arrest of a minor who successfully completed a diversion program for minors, which is sealed or expunged pursuant to s. 943.0582, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The purpose of diversion programs is to redirect youth from the justice system with opportunities for programming, rehabilitation, and restoration. This purpose will be undermined if the nonjudicial record of arrest is not confidential and exempt. The presence of a nonjudicial record of arrest of a minor who completed a diversion program can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to become a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was successfully diverted from further delinquency proceedings through the completion of a diversion program. For these reasons, the Legislature finds that it is a public necessity that the criminal history records of minors which have received an expunction due to the successful completion of a diversion program be confidential and exempt from public records requirements.

This bill takes effect on the same date as SB 274 or similar legislation takes effect. As filed, SB 274 is effective July 1, 2021.

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

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

Not applicable. 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:**

###### ***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 or public meeting exemption. The bill creates a public record exemption for a nonjudicial record of arrest of a juvenile who has successfully completed a diversion program that is sealed or expunged and therefore requires a two-thirds vote for final passage.

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

Article I, s. 24(c) of the State Constitution requires a public necessity statement for a newly created or expanded public record or public exemption. The bill creates a public

record exemption for a nonjudicial record of arrest of a juvenile who has successfully completed a diversion program that is sealed or expunged. Section 2 of the bill provides a public necessity statement.

***Breadth of Exemption***

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill makes confidential and exempt limited types of nonjudicial arrest records. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

**C. Trust Funds Restrictions:**

None.

**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:**

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

**C. Government Sector Impact:**

Indeterminate. The FDLE will incur minor costs relating to the redaction of exempt records.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 943.0582 of the Florida Statutes.

**IX. Additional Information:**

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

**CS by Criminal Justice on January 26, 2021:**  
The committee substitute links this bill to SB 274.

- B. **Amendments:**

None.

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

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By the Committee on Criminal Justice; and Senator Perry

591-01270-21

2021166c1

A bill to be entitled

An act relating to public records; amending s. 943.0582, F.S.; providing an exemption from public records requirements for a nonjudicial record of the arrest of a minor who has successfully completed a diversion program; providing for retroactive application; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (5) is added to section 943.0582, Florida Statutes, to read:

943.0582 Diversion program expunction.—

(5) A nonjudicial record of the arrest of a minor who has successfully completed a diversion program which is sealed or expunged under this section and which is retained by the department is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, except that the record may be made available to criminal justice agencies only for the purposes specified in subparagraph (2)(b)1. The exemption under this subsection applies to records held by the department before, on, or after July 1, 2021. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Page 1 of 2

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

591-01270-21

2021166c1

Section 2. The Legislature finds that it is a public necessity that the nonjudicial record of the arrest of a minor who successfully completed a diversion program for minors which is sealed or expunged pursuant to s. 943.0582, Florida Statutes, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The purpose of diversion programs is to redirect youth from the justice system with opportunities for programming, rehabilitation, and restoration. This purpose will be undermined if the nonjudicial record of arrest is not confidential and exempt. The presence of a nonjudicial record of arrest of a minor who completed a diversion program can jeopardize his or her ability to obtain education, employment, and other opportunities necessary to become a productive, contributing, self-sustaining member of society. Such negative consequences are unwarranted in cases in which the minor was successfully diverted from further delinquency proceedings through the completion of a diversion program. For these reasons, the Legislature finds that it is a public necessity that the criminal history records of minors which have received an expunction due to the successful completion of a diversion program be confidential and exempt from public records requirements.

Section 3. This act shall take effect on the same date that SB 274 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

Page 2 of 2

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/2021  
Meeting Date

CS/SB 166  
Bill Number (if applicable)

Topic Pub Acc. / Nonjudicial Record Arrest of Minor Amendment Barcode (if applicable)

Name Nancy Lawther

Job Title legislation committee member

Address 1747 Orlando Central Parkway Phone 407 855 7604

Street

Orlando

City

FL

State

32809

Zip

Email legislation@florida  
pta.org

Speaking:  For  Against  Information

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

Representing Florida PTA

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

17 Feb 2021

Meeting Date

SB 166

Bill Number (if applicable)

Topic Public Records Arrest of a Minor

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI

Job Title Legislative Liaison

Address 200 W College Ave

Phone \_\_\_\_\_

Street

TLH

City

FL

State

Zip

Email decheverri@afphg.org

Speaking:  For  Against  Information

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

Representing Americans For Prosperity

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2/17/21  
Meeting Date

SB 166  
Bill Number (if applicable)

Topic Public Records / Non-Judicial Record of Arrest of Minor

Amendment Barcode (if applicable)

Name Christian Minor

Job Title Executive Director

Address 1300 N Adams St.

Phone (321) 223-4232

Street

Tallahassee

City

FL

State

32303

Zip

Email cmminor@fjja.org

Speaking:  For  Against  Information

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

Representing Florida Juvenile Justice Association

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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





The Florida Senate

## Committee Agenda Request

**To:** Senator Ray Wesley Rodrigues, Chair  
Committee on Governmental Oversight and Accountability

**Subject:** Committee Agenda Request

**Date:** January 28, 2021

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I respectfully request that **Senate Bill #166**, relating to Public Records/Nonjudicial Record of the Arrest of a Minor, be placed on the:

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

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

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Senator Keith Perry  
Florida Senate, District 8

# BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

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BILL: CS/SB 222

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Cruz

SUBJECT: Abandoned Cemeteries

DATE: February 17, 2021

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

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

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

COMMITTEE SUBSTITUTE - Substantial Changes

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## I. Summary:

CS/SB 222 creates a ten-member Task Force on Abandoned African-American Cemeteries. The stated purpose of the task force is to study the extent to which unmarked or abandoned African-American cemeteries and burial grounds exist throughout the state and to develop and recommend strategies for identifying and recording cemeteries and burial grounds while preserving local history and ensuring dignity and respect for the deceased. The task force is required to review the findings and recommendations made by the Task Force on Abandoned and Neglected Cemeteries and to make recommendations regarding standards for the creation, placement, and maintenance of a memorial at any identified locations of unmarked and abandoned African-American cemeteries or burial grounds throughout the state. The Department of State (DOS) must provide administrative and staff support relating to the functions of the task force. The task force must submit a report by January 1, 2022, that details its findings and recommendations. The task force is terminated on March 11, 2022.

The bill also requires the DOS, upon receiving consent of the property owners at the former Zion Cemetery site in Tampa, to partner with the University of South Florida (USF), the Florida Agricultural and Mechanical University (FAMU), and the Zion Cemetery Archaeological Committee to initiate an investigation to determine how many graves remain at the site. The DOS is directed to contract with the USF and the FAMU for the identification and location of eligible next of kin. The universities are required to provide the DOS, no later than January 1, 2022, with a list of possible descendants of those buried at the site and, to the extent possible, their contact information.

The Division of Historical Resources (Division) of the DOS must ensure that any abandoned African-American Cemetery identified by the task force is listed in the Florida Master Site File and seek placement of an Official Florida Historical Marker at a site with the approval of the land owner.

The bill specifies that, as funded by the Legislature pursuant to Specific Appropriation 3153A of the 2020-2021 General Appropriations Act, the DOS shall create, place, and maintain a memorial at the site of the former Zion Cemetery in Tampa and at the site of the former Ridgewood Cemetery at C. Leon King High School in Tampa.

The bill takes effect July 1, 2021.

## II. Present Situation:

### **Task Force Requirements under Section 20.03, Florida Statutes**

Section 20.03(8), F.S., defines “task force” to mean an “advisory body created without specific statutory enactment for a time not to exceed 1 year or created by specific statutory enactment for a time not to exceed 3 years and appointed to study a specific problem and recommend a solution or policy alternative related to that problem.” This provision specifies that the existence of the task force terminates upon the completion of its assignment. Further, members, unless expressly provided otherwise by specific statutory enactment, serve without additional compensation and are authorized to receive only per diem and reimbursement for travel expenses.<sup>1</sup>

### **Florida Law Related to Historic and Abandoned Cemeteries, and to Unmarked Human Remains**

#### *Cemetery Regulation*

Chapter 470, F.S., known as the Florida Funeral, Cemetery, and Consumer Services Act (the Act), generally regulates funeral and cemetery services.<sup>2</sup> The Act authorizes the Board of Funeral, Cemetery, and Consumer Services within the Department of Financial Services to regulate cemeteries, columbaria, cremation services and practices, cemetery companies, dealers and monument builders, funeral directors, and funeral establishments.<sup>3</sup>

Section 497.005(13), F.S., defines the term “cemetery” to mean:

“a place dedicated to and used or intended to be used for the permanent interment of human remains or cremated remains. A cemetery may contain land or earth interment; mausoleum, vault, or crypt interment; a columbarium, ossuary, scattering garden, or other structure or place used or intended to be used for the interment or disposition of cremated remains; or any combination of one or more of such structures or places.”

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<sup>1</sup> Section 20.052(2)(d), F.S.

<sup>2</sup> See Section 497.001, F.S.

<sup>3</sup> Sections 497.101, F.S., and 497.103, F.S.

The Act allows for the moving of graves – disinterment and reinterment.<sup>4</sup> Disinterment and reinterment must be made in the physical presence of a licensed funeral director, unless reinterment occurs in the same cemetery.<sup>5</sup> Further, the funeral director is to obtain written authorization from a legally authorized person or court of competent jurisdiction prior to any disinterment and reinterment. Section 497.05(43), F.S., defines the term “legally authorized person” by providing a priority listing which begins with the decedent (when written inter vivos authorizations and directions are provided by the decedent) and includes relatives of the decedent.<sup>6</sup> Additionally, the definition provides for other persons who may qualify– such as a public health officer, medical examiner or county commission – should a family member not exist or be available.<sup>7</sup> Thus, if a legally authorized person is not available, a court of competent jurisdiction may provide the written authorization prior to the disinterment and reinterment of a dead human body.<sup>8</sup>

There is a large number of abandoned cemeteries in Florida.<sup>9</sup> Section 497.284, F.S., governs abandoned cemeteries, and authorizes counties and municipalities, upon notice to the Department of Financial Services, to maintain and secure an abandoned cemetery or one that has not been maintained for more than six months. The solicitation of private funds and the expenditure of public funds are authorized for such maintenance and security.<sup>10</sup> These efforts of maintenance and security are statutorily exempt from civil liabilities or penalties for damages to property at the cemetery.<sup>11</sup> Additionally, the county or municipality is permitted to maintain an action against the cemetery owner to recover costs for maintenance or security.<sup>12</sup>

### ***Criminal Offenses Concerning Dead Bodies and Graves under Chapter 872, F.S.***

In Florida, criminal offenses concerning dead bodies and graves are governed by Chapter 872, F.S.<sup>13</sup> Section 872.02(1), F.S., provides that it is a third degree felony<sup>14</sup> to willfully and knowingly destroy, mutilate, deface, injure or remove any tomb<sup>15</sup> containing human skeletal remains and disturb memorials including fences associated with a monument containing human skeletal remains<sup>16</sup> It is a second degree felony<sup>17</sup> to willfully and knowingly disturb the contents of

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<sup>4</sup> See Section 497.384, F.S.

<sup>5</sup> Section 487.384(1), F.S.

<sup>6</sup> Section 497.05(43), F.S.

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

<sup>8</sup> Section 497.384(3), F.S.

<sup>9</sup> See *What are the applicable laws and regulations?* <https://dos.myflorida.com/historical/archaeology/human-remains/abandoned-cemeteries/what-are-the-applicable-laws-and-regulations/> (last visited January 5, 2021).

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

<sup>11</sup> Section 497.284(2), F.S.

<sup>12</sup> Section 497.284(3), F.S.

<sup>13</sup> Chapter 872, F.S., is entitled, “Offenses Concerning Dead Bodies and Graves.”

<sup>14</sup> A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

<sup>15</sup> This section provides that the term “tomb” includes any mausoleum, columbarium, or below ground crypt.

<sup>16</sup> Section 872.02(1), F.S.

<sup>17</sup> A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

a grave or tomb.<sup>18</sup> Section 872.02, F.S., specifies that the offenses described above do not apply to:

- Any person acting under the direction or authority of the Division of the DOS;<sup>19</sup>
- Cemeteries operating under chapter 497, F.S.;
- Any cemeteries removing or relocating the contents of a grave or tomb as a response to a natural disaster; or
- Any person otherwise authorized by law to remove or disturb a tomb, monument, gravestone, burial mound, or similar structure, or its contents as set forth in subsection (1).

The section provides that a “tomb” includes any mausoleum,<sup>20</sup> columbarium,<sup>21</sup> or below ground crypt.<sup>22</sup>

### **The 1998 Task Force on Abandoned and Neglected Cemeteries**

In 1998, prompted by the many neglected and abandoned cemeteries throughout Florida, the Legislature enacted the Cemetery Preservation and Consumer Protection Act (CPCPA).<sup>23</sup> The CPCPA mandated and funded the creation of an 11-member Task Force on Abandoned and Neglected Cemeteries (the “1998 Task Force”) within the Department of Banking and Finance.<sup>24</sup> The CPCPA directed the 1998 Task Force to review and report on the status of neglected and abandoned cemeteries and, if necessary, propose legislation to counter this problem.<sup>25</sup>

The 1998 Task Force submitted its Final Report on January 15, 1999.<sup>26</sup> The Task Force determined that the abandonment and neglect of cemeteries was “sufficiently wide spread to warrant government intervention.”<sup>27</sup> Specifically, the Task Force found that:

- The data collected on some 3,580 cemeteries suggested 40 percent to 50 percent of the cemeteries in Florida are abandoned or neglected.
- Lack of funding appears to be a significant factor contributing to the neglect by private, unlicensed cemeteries.
- City and County representatives on the 1998 Task Force verified that neglected cemeteries create problems for citizens and local governments and burden governmental resources.
- Older neglected cemeteries may represent a loss of historic or archeological values.

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<sup>18</sup> Section 872.02(2), F.S.

<sup>19</sup> The powers and duties of the Division of Historical Resources of the Department of State are set forth in s. 267.031, F.S. Subject to some limitations, a State Archaeologist, as employed by the Division, may assume jurisdiction over an unmarked human burial site in order to initiate efforts for the proper protection of the burial and the human skeletal remains and associated burial artifacts. See ss. 872.05(4), (5), and (6), F.S.

<sup>20</sup> Section 497.005(46), F.S., defines a “mausoleum” as “a structure or building that is substantially exposed above the ground and that is intended to be used for the entombment of human remains.”

<sup>21</sup> Section 497.005(18), F.S., defines a “columbarium” as “a structure or building that is substantially exposed above the ground and that is intended to be used for the inurnment of cremated remains.”

<sup>22</sup> Section 872.02(4), F.S.

<sup>23</sup> See Chapter 98-268, L.O.F.

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

<sup>25</sup> *Id.*

<sup>26</sup> *Final Report of Task Force on Abandoned and Neglected Cemeteries*, available at <https://www.coj.net/city-council/docs/brccemeteries-1999-statetaskforce-finalreport.aspx> (last visited January 5, 2021).

<sup>27</sup> *Id.* at p. 3.

- Legislation is needed to establish guidelines, definitions, methods of establishing care for neglected and abandoned cemeteries, agencies responsible for providing such care, the funding mechanism for such projects, as well as a permanent structure to continue the location, identification, protection, preservation and care of such cemeteries.
- A grants-in-aid type program using matching funds would help ameliorate the problems created by abandoned and neglected cemeteries.
- Funding to address the problems and recommends in the proposed legislation may be derived from: (1) a one-time appropriation by the legislature, (2) a fee on death certificates, (3) enabling legislation to permit Cities and Counties to include in their budgets funds for this purpose; and (4) the establishment of a non-profit corporation within the Department of Banking and Finance to obtain donations.
- It is imperative to stop the proliferation of neglected and abandoned cemeteries.
- The legislature has already established in Chapter 872 protection for all human burial sites and all human remains regardless of whether or not the site is abandoned.<sup>28</sup>

The 1998 Task Force recommended that it be allowed to continue by either (i) “continu[ing] in its present form for a finite time” to more thoroughly examine the extent of the problems; or, (ii) the “non-profit corporation” suggested as part of proposed legislation “should continue these functions on a permanent basis.”<sup>29</sup> The 1998 Task Force also recommended to:

- Establish that local governments - combined with a statewide approach via the designated agency and non-profit - are the best way to manage issues created by abandoned and neglected cemeteries.
- Establish that owners of unlicensed cemeteries have a duty to care for their cemeteries in such a manner as to avoid neglect.
- Proscribe abandonment and neglect of cemeteries.
- Establish that a copy of all burial transit permits be filed with the Clerk of Court in the county of burial.
- Establish an easement or right of entry to enter and inspect private cemeteries for officially designated persons other than the next of kin.
- Establish that unlicensed cemeteries be required to post a sign providing notice of the existence of a cemetery at the posted location.
- Proscribe the creation of new cemeteries except under the provisions of Part I of Chapter 497, thereby insuring that a care and maintenance fund is established for each new cemetery.<sup>30</sup>

The specific findings and recommendations of the 1998 Task Force have not been addressed by subsequent legislation.

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<sup>28</sup> *Id.* at 7-8.

<sup>29</sup> *Id.* at 8.

<sup>30</sup> *Id.* at 8-9.

## Zion Cemetery

Zion Cemetery, established in 1901, is believed to be Tampa's first cemetery for African-Americans with room for some 800 graves.<sup>31</sup> Zion Cemetery disappeared from public view and city maps by 1929.<sup>32</sup> In 1951, the Tampa Housing Authority started construction on the Robles Park Apartments on land that includes part of the Zion Cemetery site, and construction crews found several unmarked graves and three caskets.<sup>33</sup>

The Robles Park Village housing (still owned by the Tampa Housing Authority) and two other commercial businesses owned by two private sector individuals now stand on the land that once was the site of the African-American cemetery. Upon learning that the Zion Cemetery might still lie beneath at least a portion of its Robles Park Village Apartments, the Tampa Housing Authority organized a consultation committee and hired archaeologists to survey its property.<sup>34</sup> In August 2019, archeologists used a ground-penetrating radar and discovered what they believe to be 126 caskets beneath the Tampa Housing Authority land.<sup>35</sup> The Tampa Housing Authority spent between \$70,000 and \$80,000 to relocate about 29 families who occupied five buildings within the housing complex atop where Zion Cemetery is believed to sit underground.<sup>36</sup>

## Other Rediscovered Abandoned Cemeteries in the Tampa Area

### *Ridgewood Cemetery*

In October 2019, the Hillsborough County School District (HCS D) learned the old Ridgewood Cemetery may have been located at the southeast corner of the King High School campus, which is now occupied by a small building and open land used for the agricultural program.<sup>37</sup> Ridgewood was designated as a pauper's cemetery and at least 280 people – mostly African Americans – were interred between 1942 and 1954.<sup>38</sup>

On October 28, 2019, the HCS D created an advisory committee, the Historical Response Committee, to determine how to handle the search for unmarked graves at King High School and

<sup>31</sup> Paul Guzzo, *A community, not just Zion Cemetery, disappeared to build homes for whites*, TAMPA BAY TIMES, Nov. 4, 2019, <https://www.tampabay.com/news/hillsborough/2019/11/04/a-community-not-just-zion-cemetery-disappeared-to-build-homes-for-whites/#talk-wrapper>.

<sup>32</sup> *Id.*

<sup>33</sup> Paul Guzzo, *Key dates in the history of Tampa's forgotten Zion Cemetery*, TAMPA BAY TIMES, Jun. 19, 2019 (Updated Aug. 28, 2019) <https://www.tampabay.com/florida/2019/06/23/key-dates-in-the-history-of-tampas-forgotten-zion-cemetery>.

<sup>34</sup> Paul Guzzo, *Richard Gonzmart believes no coffins will be found on his Zion Cemetery land*, TAMPA BAY TIMES, Sep. 24, 2019, <http://ttt-hiweb.newscyclecloud.com/news/hillsborough/2019/09/24/richard-gonzmart-believes-no-coffins-will-be-found-on-his-zion-cemetery-land>.

<sup>35</sup> *Id.*

<sup>36</sup> Morrow, Emerald, *Lost African American grave discoveries highlight the need for affordable housing*, 10NEWS WTSP, Feb. 24, 2020; see also Divya Kumar, *Tenant leaders seek quicker relocation for people living near Zion Cemetery*, TAMPA BAY TIMES, Oct. 10, 2019, <https://www.tampabay.com/news/tampa/2019/10/10/tenant-leaders-seek-quicker-relocation-for-people-living-near-zion-cemetery>.

<sup>37</sup> Paul Guzzo, *Records show King High gym may have been built atop paupers cemetery*, TAMPA BAY TIMES, Oct. 22, 2019 (updated Oct. 23, 2019), <https://www.tampabay.com/news/education/2019/10/22/map-shows-king-high-gym-may-have-been-built-atop-paupers-cemetery>.

<sup>38</sup> Lori Rozsa, *Lost lives, fresh heartache as a black cemetery is found buried under a high school*, WASHINGTON POST, November 24, 2019, [https://www.washingtonpost.com/national/lost-lives-fresh-heartache-as-a-black-cemetery-is-found-buried-under-a-high-school/2019/11/24/5e755e4a-0ed4-11ea-bf62-eadd5d11f559\\_story.html](https://www.washingtonpost.com/national/lost-lives-fresh-heartache-as-a-black-cemetery-is-found-buried-under-a-high-school/2019/11/24/5e755e4a-0ed4-11ea-bf62-eadd5d11f559_story.html).

what to do if they were found. The HCSD hired a geotechnical firm, Geoview, to conduct a survey on the south end of King High School campus using a ground penetrating radar to look for any signs of the lost Richwood Cemetery on the campus.<sup>39</sup> On November 20, 2019, the HCSD released the of the ground penetrating radar survey (November Press Release).<sup>40</sup> The survey of the southern edge of the King High School campus showed evidence of burials, approximately 145 suspected graves.<sup>41</sup> The scan performed on the northeast corner of the campus showed no evidence of burials or graves.<sup>42</sup>

Historical records generally indicate that there were between 250 and 268 burials at Ridgewood Cemetery.<sup>43</sup> Possible reasons why the radar survey only revealed a total of approximately 145 possible graves include:

- The radar may have more difficulty locating smaller coffins of infants and children.
- Some coffins may have decayed underground preventing detection by scan some 75 years later.
- Some graves may be under the agricultural workshop building.
- Some graves may have been moved to another cemetery.
- Limitations of radar technology.<sup>44</sup>

On November 21, 2019, pursuant to s. 872.05, F.S., the HCSD notified the county Medical Examiner in Hillsborough County and the Florida Division of Historical Resources, which serves as the state archeologist, of the unmarked human burials<sup>45</sup> found on the King High Campus. When an unmarked human burial is discovered – other than during an authorized archaeological excavation<sup>46</sup> – all disturbing activity of the burial must cease, and the district medical examiner must be notified.<sup>47</sup> Activity may not resume until authorized by the district medical examiner or the State Archaeologist.<sup>48</sup>

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<sup>39</sup> Jordan, Dave, *Forgotten Cemetery Under King High School? District Awaits Answers*, SPECTRUM NEWS 9, Oct. 28, 2019, <https://www.baynews9.com/fl/tampa/news/2019/10/28/forgotten-cemetery-under-king-high-school--district-awaits-answers>.

<sup>40</sup> Hillsborough County School District, Press Release, *School District Releases Findings from Scans on King High School Property*, <https://www.sdhc.k12.fl.us/newsdesk/article/1578/school-district-releases-findings-from-scans-on-king-high-school-property> (last visited January 5, 2021).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

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

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

<sup>45</sup> Section 872.05(2)(f), F.S., defines the term “unmarked human burial” as any human skeletal remains or associated burial artifacts or any location, including any burial mound or earthen or shell monument, where human skeletal remains or associated burial artifacts are discovered or believed to exist on the basis of archaeological or historical evidence, excluding any burial marked or previously marked by a tomb, monument, gravestone, or other structure or thing placed or designed as a memorial of the dead.

<sup>46</sup> Section 872.05(5), F.S., provides for a similar process if an unmarked human burial is discovered during an authorized archeological excavation.

<sup>47</sup> Section 872.05(4), F.S.

<sup>48</sup> *Id.*



Almost a year later, the Division informed the HCSD that it does not have jurisdiction, unless the cemetery is located on state lands.<sup>49</sup> The cemetery is not located on state lands, thus, jurisdiction was returned to the HCSD. On or about November 3, 2020, the Historical Response Committee met to discuss proper ways to honor the individuals buried at the site, care for the space and provide learning opportunities to students at King High School and other schools.<sup>50</sup> No decision has yet been announced as to how those buried at Ridgewood will be memorialized.

### ***Fort Brooke Estuary Cemetery***

Archeologists, in September 2018, uncovered three grave shafts with human remains during the development of the 50-plus acre Water Street Tampa project.<sup>51</sup> The grave shafts were believed to be of an old military burial ground from the Seminole War era, known as Estuary Cemetery.<sup>52</sup> The archeologists' July 2019 report announced that the three grave shafts had human remains, but it did not identify the ancestry and indicated that work could resume on the development site. However, not much more is known about the findings or what may have been discovered due to it being a private site.

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

**Section 1** creates the Task Force on Abandoned African-American Cemeteries to study the extent to which unmarked or abandoned African-American cemeteries and burial grounds exist throughout the state and developing and recommending strategies for identifying and recording cemeteries and burial grounds while preserving local history and ensuring dignity and respect for the deceased.

The task force is to be chaired by the Secretary of State, or his or her designee, and is composed of:

- A representative of the Bureau of Archaeological Research of the Division of Historical Resources, appointed by the Secretary of State;
- One person nominated by the President of the Florida State Conference of the National Association for the Advancement of Colored People and appointed by the Secretary of State;
- One representative of the Florida Council of Churches, nominated by the executive director of the council and appointed by the Secretary of State;
- One representative of the Florida African American Heritage Preservation Network, nominated by the executive director of the network and appointed by the Secretary of State;
- One representative of the Florida Public Archaeology Network, appointed by the Secretary of State;
- One representative of the cemetery industry, appointed by the Secretary of State;
- One member of the Senate, appointed by the President of the Senate;

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<sup>49</sup> Hillsborough County School District, Press Release, *Historical Response Committee Seeks Input for Ridgewood Memorial*, <https://sdhc.k12.fl.us/newsdesk/article/1795/historical-response-committee-seeks-input-for-ridgewood-memorial> (last visited January 5, 2021).

<sup>50</sup> *Id.*

<sup>51</sup> Paul Guzzo, *More lost cemeteries will be found, historians say*, TAMPA BAY TIMES, Oct. 28, 2019, <https://www.tampabay.com/news/tampa/2019/10/28/more-lost-cemeteries-will-be-found-historians-say>.

<sup>52</sup> *Id.*

- One member of the House of Representatives, appointed by the Speaker of the House of Representatives;
- One elected official from a local government, appointed by the Secretary of State.

The task force is required to hold its first meeting by August 1, 2021, and shall meet as many times as it deems necessary to complete its duties. The task force is required to:

- Review the findings and recommendations made by the 1998 Task Force and any legislative or administrative action that was taken in response to the task force's findings and recommendations;
- Examine the adequacy of current practices regarding the preservation of unmarked and abandoned African-American cemeteries and burial grounds and identify any challenges unique to African-American cemeteries and burial grounds;
- Identify locations of unmarked and abandoned African-American cemeteries and burial grounds throughout the state and propose strategies, including any proposed legislation, for the preservation and evaluation of such sites; and
- Make recommendations regarding standards for the creation, placement, and maintenance of a memorial at any identified locations of unmarked and abandoned African-American cemeteries or burial grounds throughout the state.

The task force is required to submit a report by January 1, 2022, detailing its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

This section expires on March 11, 2022.

**Section 2** requires the DOS, upon receiving consent of the property owners at the former Zion Cemetery site in Tampa, to partner with the USF, the FAMU, and the Zion Cemetery Archaeological Committee formed under the auspices of the Tampa Housing Authority to continue an investigation to determine how many graves remain at the site. Any historical resource, record, archive, artifact, public research, or medical record recovered through the course of the investigation by USF or FAMU shall remain in the custody of either university for archiving and preservation until the DOS requests custody of such resource, record, archive, artifact, public research, or medical record.

This section requires the DOS to contract with USF and FAMU for the identification and location of eligible next of kin of those buried at the site.

By January 1, 2022, the universities must provide the DOS with a list of possible descendants of those buried at the site and, to the extent possible, their contact information. For any identification of next of kin occurring on or after January 1, 2022, the universities must provide contact information of the next of kin to the DOS.

**Section 3** requires the Division of the DOS to ensure that any abandoned African-American cemetery identified by the task force is listed on the Florida Master Site File. Upon such a cemetery's listing in the Florida Master Site, the Division is required to – in lieu of the normal application process – seek placement of an Official Florida Historical Marker at a site with

approval of the property owner. The bill permits a person or organization affiliated with an abandoned cemetery to assist the Division in researching the history of such a site in the preparation of a historical marker's creation and placement. The costs for the creation and placement of a historical marker are to be borne by the Division.

**Section 4** provides that, as funded by the Legislature, pursuant to Specific Appropriation 3153A of the 2020-2021 General Appropriations Act, the Department of State shall create, place and maintain a memorial at the site of the former Zion Cemetery in Tampa and at the site of the former Ridgewood Cemetery at C. Leon King High School in Tampa.

**Section 5** provides that the act takes effect July 1, 2021.

#### **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:

None.

B. Private Sector Impact:

None.

**C. Government Sector Impact:*****Task Force***

Because the bill is silent as to compensation and travel expense, s. 20.052(4)(d), F.S., governs, and the task force members will not be entitled to additional compensation but are authorized to receive per diem and reimbursement for travel expenses as provided in s. 112.061, F.S. These costs will be borne by the DOS as the administering agency of the task force.

The DOS will incur an indeterminate amount of administrative expenses as the agency providing administrative and technical support for the task force.

***Memorials and Placement of Florida Historical Markers***

The DOS will incur costs each time it is required to place an Official Florida Historical Marker at a site of a cemetery identified by the task force. Currently, the cost of a Florida Historical Marker is determined by the amount of text. For a single-sided marker with the same text on both sides of the marker, the cost is \$2,110. For a double-sided marker with different text appearing on both sides of the marker, the cost is \$2,420.<sup>53</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

None.

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

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

**CS by Governmental Oversight and Accountability on February 17, 2021:**

The CS moves up the deadline for the submission of the task force's report from March 1, 2022, to January 1, 2022, to comport with the start of the legislative session. It also moves up the expiration date of the task force from July 1, 2022, to March 11, 2022.

**B. Amendments:**

None.

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

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<sup>53</sup> See Historical Markers FAQ, <https://dos.myflorida.com/historical/about/division-faqs/marker/> (last visited January 5, 2021).



433626

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/09/2021	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete line 123  
and insert:  
(5) By January 1, 2022, the task force shall submit a  
report



592004

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/09/2021	.	
	.	
	.	
	.	

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

**Senate Substitute for Amendment (433626)**

Delete lines 123 - 128

and insert:

(5) By January 1, 2022, the task force shall submit a report detailing its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

(6) This section expires March 11, 2022.



552312

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2021	.	
	.	
	.	
	.	

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

**Senate Amendment**

Delete lines 123 - 128

and insert:

(5) By January 1, 2022, the task force shall submit a report detailing its findings and recommendations to the Governor, the President of the Senate, the Speaker of the House of Representatives, the Minority Leader of the Senate, and the Minority Leader of the House of Representatives.

(6) This section expires March 11, 2022.

By Senator Cruz

18-00321-21

2021222\_\_

1 A bill to be entitled  
 2 An act relating to abandoned cemeteries; creating the  
 3 Task Force on Abandoned African-American Cemeteries;  
 4 specifying the purpose of the task force; requiring  
 5 the Department of State to provide administrative and  
 6 staff support; specifying the composition of the task  
 7 force; providing meeting requirements; prescribing  
 8 duties of the task force; requiring the task force to  
 9 submit a report to the Governor and the Legislature by  
 10 a specified date; providing for expiration of the task  
 11 force; requiring the department to partner with  
 12 specified entities to undertake an investigation of  
 13 the former Zion Cemetery site; specifying custody of  
 14 certain historical resources, records, archives,  
 15 artifacts, research, and medical records; requiring  
 16 the department to contract with the University of  
 17 South Florida and Florida Agricultural and Mechanical  
 18 University for the identification and location of  
 19 eligible next of kin; requiring the universities to  
 20 provide certain information regarding descendants to  
 21 the department by a specified date; directing the  
 22 Division of Historical Resources of the department to  
 23 ensure the listing of certain cemeteries in the  
 24 Florida Master Site File; requiring the division to  
 25 seek placement of historical markers at certain  
 26 abandoned cemeteries, subject to certain limitations;  
 27 authorizing certain persons and organizations to  
 28 assist the division in researching the history of such  
 29 cemeteries; specifying that costs associated with the

Page 1 of 7

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

18-00321-21

2021222\_\_

30 creation and placement of such historical markers be  
 31 borne by the division; requiring the department to  
 32 create, place, and maintain memorials at certain  
 33 sites; providing an effective date.  
 34

35 WHEREAS, until the conclusion of the Civil War, millions of  
 36 African Americans in the United States, including Florida, were  
 37 enslaved, and

38 WHEREAS, following the end of slavery, African Americans  
 39 continued to be subject to various discriminatory practices,  
 40 including restrictions on burying the dead, which resulted in  
 41 segregated cemeteries and burial grounds, and

42 WHEREAS, unlike predominantly white cemeteries and burial  
 43 grounds, African-American cemeteries and burial grounds were not  
 44 subject to regulations and recordkeeping necessary to protect  
 45 the dignity of the deceased, and

46 WHEREAS, as a result, many abandoned African-American  
 47 cemeteries and burial grounds have been inadvertently discovered  
 48 following years of disrepair and neglect when land is being  
 49 redeveloped or has been sold, and

50 WHEREAS, to this day, abandoned African-American cemeteries  
 51 and burial grounds throughout this state continue to be  
 52 uncovered, as evidenced by recent reports regarding the former  
 53 Zion Cemetery site in the Tampa Heights neighborhood and the  
 54 former Ridgewood Cemetery on the grounds of C. Leon King High  
 55 School, both in the City of Tampa, and

56 WHEREAS, the State of Florida recognizes its obligation to  
 57 identify and properly record abandoned African-American  
 58 cemeteries and burial grounds in order to preserve history,

Page 2 of 7

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



18-00321-21 2021222\_\_

59 better inform development decisions, and ensure dignity and  
60 respect for the deceased, NOW, THEREFORE,

61  
62 Be It Enacted by the Legislature of the State of Florida:

63  
64 Section 1. (1) The Task Force on Abandoned African-American  
65 Cemeteries, a task force as defined in s. 20.03(8), Florida  
66 Statutes, is created adjunct to the Department of State for the  
67 express purpose of studying the extent to which unmarked or  
68 abandoned African-American cemeteries and burial grounds exist  
69 throughout the state and developing and recommending strategies  
70 for identifying and recording cemeteries and burial grounds  
71 while also preserving local history and ensuring dignity and  
72 respect for the deceased. Except as otherwise provided in this  
73 section, the task force shall operate in a manner consistent  
74 with s. 20.052, Florida Statutes. The department shall provide  
75 administrative and staff support relating to the functions of  
76 the task force.

77 (2) The task force is composed of the following members:

78 (a) The Secretary of State, or his or her designee, who  
79 shall serve as chair.

80 (b) A representative of the Bureau of Archaeological  
81 Research of the Division of Historical Resources, appointed by  
82 the Secretary of State.

83 (c) One person nominated by the President of the Florida  
84 State Conference of the National Association for the Advancement  
85 of Colored People and appointed by the Secretary of State.

86 (d) One representative of the Florida Council of Churches,  
87 nominated by the executive director of the council and appointed

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88 by the Secretary of State.

89 (e) One representative of the Florida African American  
90 Heritage Preservation Network, nominated by the executive  
91 director of the network and appointed by the Secretary of State.

92 (f) One representative of the Florida Public Archaeology  
93 Network, appointed by the Secretary of State.

94 (g) One representative of the cemetery industry, appointed  
95 by the Secretary of State.

96 (h) One member of the Senate, appointed by the President of  
97 the Senate.

98 (i) One member of the House of Representatives, appointed  
99 by the Speaker of the House of Representatives.

100 (j) One elected official from a local government, appointed  
101 by the Secretary of State.

102 (3) The task force shall hold its first meeting by August  
103 1, 2021. The task force may meet as many times as it deems  
104 necessary to complete the duties prescribed in this section.

105 (4) The task force shall:

106 (a) Review the findings and recommendations made by the  
107 Task Force on Abandoned and Neglected Cemeteries created  
108 pursuant to chapter 98-268, Laws of Florida, and any legislative  
109 or administrative action that was taken in response to the task  
110 force's findings and recommendations.

111 (b) Examine the adequacy of current practices regarding the  
112 preservation of unmarked and abandoned African-American  
113 cemeteries and burial grounds and identify any challenges unique  
114 to African-American cemeteries and burial grounds.

115 (c) Identify locations of unmarked and abandoned African-  
116 American cemeteries and burial grounds throughout the state and

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117 propose strategies, including any proposed legislation, for the  
 118 preservation and evaluation of such sites.

119 (d) Make recommendations regarding standards for the  
 120 creation, placement, and maintenance of a memorial at any  
 121 identified locations of unmarked and abandoned African-American  
 122 cemeteries or burial grounds throughout the state.

123 (5) By March 1, 2022, the task force shall submit a report  
 124 detailing its findings and recommendations to the Governor, the  
 125 President of the Senate, the Speaker of the House of  
 126 Representatives, the Minority Leader of the Senate, and the  
 127 Minority Leader of the House of Representatives.

128 (6) This section expires July 1, 2022.

129 Section 2. (1)(a) Upon receiving consent of the property  
 130 owners at the former Zion Cemetery site in Tampa, the Department  
 131 of State shall partner with the University of South Florida,  
 132 Florida Agricultural and Mechanical University, and the Zion  
 133 Cemetery Archaeological Committee formed under the auspices of  
 134 the Tampa Housing Authority to continue an investigation to  
 135 determine how many graves remain at the site.

136 (b) Any historical resource, record, archive, artifact,  
 137 public research, or medical record that is recovered through the  
 138 course of the investigation by the University of South Florida  
 139 or the Florida Agricultural and Mechanical University shall  
 140 remain in the custody of either university for archiving and  
 141 preservation until the Department of State requests custody of  
 142 such resource, record, archive, artifact, public research, or  
 143 medical record.

144 (2)(a) The Department of State shall contract with the  
 145 University of South Florida and Florida Agricultural and

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146 Mechanical University for the identification and location of  
 147 eligible next of kin of those buried at the site.

148 (b) No later than January 1, 2022, the universities shall  
 149 provide the Department of State with a list of possible  
 150 descendants of those buried at the site and, to the extent  
 151 possible, their contact information.

152 (c) For any identification of next of kin occurring on or  
 153 after January 1, 2022, the universities must provide contact  
 154 information of the next of kin to the Department of State.

155 Section 3. The Division of Historical Resources of the  
 156 Department of State shall ensure that any abandoned African-  
 157 American cemetery identified by the Task Force on Abandoned  
 158 African-American Cemeteries is listed in the Florida Master Site  
 159 File. Upon such a cemetery's listing in the Florida Master Site  
 160 File and in lieu of the normal application process for  
 161 historical markers, the division must seek placement of an  
 162 Official Florida Historical Marker at a site so long as the  
 163 approval of the owner of the property where the marker will be  
 164 placed has been obtained. A person or an organization affiliated  
 165 with an abandoned cemetery may assist the division in  
 166 researching the history of such a site in the preparation of a  
 167 historical marker's creation and placement. The costs for the  
 168 creation and placement of a historical marker authorized  
 169 pursuant to this section shall be borne by the division.

170 Section 4. As funded by the Legislature, pursuant to  
 171 Specific Appropriation 3153A of the 2020-2021 General  
 172 Appropriations Act, the Department of State shall create, place,  
 173 and maintain a memorial at the site of the former Zion Cemetery  
 174 in Tampa and at the site of the former Ridgewood Cemetery at C.

18-00321-21

2021222\_\_

175 Leon King High School in Tampa.

176 Section 5. This act shall take effect July 1, 2021.

THE FLORIDA SENATE  
**APPEARANCE RECORD**

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

2-17-21

Meeting Date

222

Bill Number (if applicable)

Topic Abandoned Cemeteries

Amendment Barcode (if applicable)

Name Barbara DeVane

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

Address 625 E. Broad ST

Phone 257-4280

Street

Jal

City

FL 32308

State

Zip

Email barbaradevane7

@yahoo.com

Speaking:  For  Against  Information

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

Representing FL NOW

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

FEB 17 2021  
Meeting Date

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

SB222  
Bill Number (if applicable)

Topic Abandoned Cemeteries

Amendment Barcode (if applicable)

Name David Sordani

Job Title Statesman Retired Part time

Address 106 W. Water Green Dr Phone Trusted Soul of

Street Fruitland Lane #1 City FL State 34731 Zip 34731 Email goldfardave@gmail.com

Speaking:  For  Against  Information

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

Representing Self & wife Burienwood Florist  
30 yr Florist expert

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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

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

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

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

---

BILL: SB 844

INTRODUCER: Senator Hooper

SUBJECT: Public Records

DATE: February 16, 2021

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>CA</u>	_____
3.	_____	_____	<u>RC</u>	_____

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**I. Summary:**

SB 844 amends s. 28.222, F.S., to provide a mechanism for the access to certain information in the Official Records, as maintained by a clerk of circuit court, which is otherwise exempt from public records inspection and copying requirements. A person may access such exempt information by presenting (in person, by mail, facsimile or electronically) a government-issued photo identification credential and written request with attestation that the purpose of the request meets a lawful purpose to which includes, but is not limited to:

- Determining marketability of title;
- Perfecting or enforcing a lien or other interest in real or personal property; and
- Purchasing, leasing, or lending involving real or personal property.

The bill provides that access may also be given via a limited access licensing agreement and authorizes a clerk of court to enter into such agreements with specified entities and professionals. The bill provides for criminal penalties for the unlawful use of any Official Record.

The bill amends s. 28.2221, F.S., which governs electronic access to Official Records. Current law prohibits a county recorder or clerk of court (Clerk) from placing an image or copy of a public record, including an Official Record, on a publicly available website for general public display if that copy or image is of a (1) military discharge; (2) death certificate; or (3) a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.<sup>1</sup> The bill amends s. 28.2221, F.S., to include information made exempt from inspection or copying under s. 119.071, F.S., within this prohibition.

Current law provides for notice to affected parties of the right to request redaction or removal of records prohibited from being placed by the Clerk on a publicly available website and specifies

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<sup>1</sup> Section 28.2221(5)(a), F.S.

that no fee may be charged for such request. The bill provides that a request for removal of information by eligible individuals claiming an exemption under s. 119.071, F.S., must:

- Be written;
- Be notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Contain confirmation of the individual's eligibility for exempt status.

The bill provides that a party making a false attestation is subject to the penalty of perjury.

Current law does not provide an expiration date for when the redacted or removed information is restored. Thus, most individuals do not need to renew their request to keep the information redacted or removed. The bill provides for the restoration of information that has been restricted from public display pursuant to a request for removal under s. 119.071, F.S., at:

- The request of any affected party at any time, or
- The request of any person after the passage of 5 years through July 1, 2026, or the date of the most recent request for the exemption, whichever is later, unless any affected party makes an additional request for removal.

The bill provides that a request for restoration be made in writing and must identify the Official Records book and page number for any document to be restored. There is no fee for the restoration of any document.

The bill amends s. 119.071, F.S., which contains several general exemptions to the Public Records Act. The bill limits the applicability of the public records exemptions relating to agency investigations, agency personnel, and other personal information, to Official Records and the current index of documents under s. 28.2221(2), F.S., to restricting a Clerk from placing on a publicly available website information that is restricted from general public display. The bill provides that agency investigations, agency personnel, and other personal information do not limit the inspection and copying of exempt information at a Clerk's office or electronically through a limited access licensing agreement. The bill requires Clerks, by October 1, 2021, to:

- Restore any previously redacted names of parties to an instrument; and
- Not redact the names of parties to an instrument in the register and current index of documents.

The bill provides a similar provision of application to county property appraisers or county tax collectors (County Officers) and restricts them from placing the names of any individual entitled to an exemption in all publicly available records maintained by County Officers. The bill requires County Officers to restore any previously redacted street address, legal description, or other information identifying real property within the agency's records as long as the name of the individual entitled to the exemption is not associated with the property or otherwise displayed in the public records of the agency.

The bill requires any information redacted pursuant to the public records exemptions relating to agency investigations, agency personnel, and other personal information to be restored to the publicly available records maintained by County Officers at the request of any affected party at

any time, or at the request of any person after the passage of 5 years through July 1, 2026, or the date of the most recent request for the exemption, whichever is later. The request for restoration of the information must be made in writing and delivered in person or by mail, facsimile, or electronic transmission to the County Officer.

The bill also removes obsolete language.

Clerks may incur additional costs associated with processing requests for access, facilitating limited access license agreements, processing renewed removal requests and in restoring previously redacted information pursuant to s. 119.071. Other county officers may also incur additional costs in complying with the restoration requirement of exempt information under s. 119.071, F.S.

The bill takes effect July 1, 2021.

## 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.<sup>2</sup> 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.<sup>3</sup>

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.<sup>4</sup> Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.<sup>5</sup> 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.<sup>6</sup>

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

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

<sup>4</sup> 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)

<sup>5</sup> *State v. Wooten*, 260 So. 3d 1060 (Fla. 4<sup>th</sup> DCA 2018).

<sup>6</sup> 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.”



A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.<sup>7</sup> The Florida Supreme Court has interpreted 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.”<sup>8</sup>

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.<sup>9</sup> A violation of the Public Records Act may result in civil or criminal liability.<sup>10</sup>

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.<sup>11</sup> 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.<sup>12</sup>

General exemptions from the public records requirements are contained in the Public Records Act.<sup>13</sup> Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.<sup>14</sup>

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.<sup>15</sup> Custodians of records designated as “confidential and exempt” may not disclose the record except under circumstances specifically defined by the Legislature.

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<sup>7</sup> Section 119.011(12), F.S., defines “public record” to mean “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

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

<sup>9</sup> Section 119.07(1)(a), F.S.

<sup>10</sup> Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.

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

<sup>12</sup> *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).

<sup>13</sup> 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).

<sup>14</sup> 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).

<sup>15</sup> See *Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

## General Exemptions from Inspection under the Public Records Act

Section 119.071, F.S., provides categories of public records that are exempt from inspection or copying and is entitled “General exemptions from inspection or copying of public records.” It contains five subparts and exempts information related to:

- Agency Administration;<sup>16</sup>
- Agency Investigations;<sup>17</sup>
- Security and Firesafety;<sup>18</sup>
- Agency Personnel Information;<sup>19</sup> and
- Other Personal Information.<sup>20</sup>

Section 119.071, F.S., provides for disclosure of certain exempt information under specified circumstances. The individuals covered by the exemptions found in s. 119.071, F.S., are eligible for redaction of their personal identifying information from public records. Many agencies make requests for removal or redaction on behalf of their current employees.

### *Public Records Exemption for Agency Investigations*

Section 119.071(2), F.S., protects information related to agency investigations and makes exempt:

- Criminal intelligence and criminal investigative information received by a criminal justice agency prior to January 25, 1979;<sup>21</sup> Whenever criminal intelligence information or criminal investigative information held by a non-Florida criminal justice agency is available to a Florida criminal justice agency only on a confidential or similarly restricted basis, the Florida criminal justice agency may obtain and use such information in accordance with the conditions imposed by the providing agency;<sup>22</sup>
- Active criminal intelligence information and active criminal investigative information;<sup>23</sup>
- Any information revealing surveillance techniques or procedures or personnel;<sup>24</sup>
- Any information revealing the substance of a confession of a person arrested until such time as the criminal case is finally determined by adjudication, dismissal, or other final disposition;<sup>25</sup>
- Any information revealing the identity of a confidential informant or a confidential source;

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<sup>16</sup> Section 119.071(1), F.S. Includes information related to (1) examinations administered by an agency for purposes of licensure, certification or employment; (2) certain specified information related to a competitive solicitation; (3) any financial statement of a prospective bidder in submitted to prequalify for bidding or for responding to a proposal for a road or any other public works project; (4) certain attorney work product; (5) videotape or video signals involving a federally licensed radio television station; (6) certain data processing software; and (7) specified United States Census Bureau address and map information.

<sup>17</sup> Section 119.071(2), F.S.

<sup>18</sup> Section 119.071(3), F.S.

<sup>19</sup> Section 119.071(4), F.S.

<sup>20</sup> Section 119.071(5), F.S.

<sup>21</sup> Section 119.071(2)(a)

<sup>22</sup> Section 119.071(2)(b), F.S.

<sup>23</sup> Section 119.071(2)(c), F.S.

<sup>24</sup> Section 119.071(2)(d), F.S.

<sup>25</sup> Section 119.071(2)(e), F.S.

- All complaints and other records in the custody of any agency which relate to a complaint of discrimination relating to race, color, religion, sex, national origin, age, handicap, or marital status in connection with hiring practices, position classifications, salary, benefits, discipline, discharge, employee performance, evaluation, or other related activities;<sup>26</sup>
- Certain specified criminal intelligence information;<sup>27</sup>
- Specified criminal intelligence information or criminal investigative information revealing the personal assets of a victim of a crime, other than property stolen or destroyed during the commission of the crime;<sup>28</sup>
- Any document that reveals the identity, home or employment telephone number, home or employment address, or personal assets of the victim of a crime and identifies that person as the victim of a crime, which document is received by any agency that regularly receives information from or concerning the victims of crime;<sup>29</sup>
- A complaint of misconduct filed with an agency against an agency employee and all information obtained pursuant to an investigation by the agency of the complaint of misconduct;<sup>30</sup>
- A body camera recording, or a portion thereof;<sup>31</sup>
- Criminal intelligence information or criminal investigative information that reveals the personal identifying information of a witness to a murder, as described in s. 782.04, F.S.;<sup>32</sup>
- Personal identifying information of the alleged victim in an allegation of sexual harassment;<sup>33</sup>
- The address of a victim of an incident of mass violence;<sup>34</sup>
- A photograph or 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;<sup>35</sup>

***Public Records Exemption for Agency Personnel Information***

Provisions in s. 119.071(4)(d), F.S., exempt from public disclosure certain personal identification and location information of specified agency personnel and their spouses and children. Personnel covered by these exemptions include:

- Active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, certain investigative personnel of the Department of Children and Families and Department of Health, and certain personnel of the Department of Revenue and local governments involved in revenue collection and revenue and child support enforcement;<sup>36</sup>

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<sup>26</sup> Section 119.071(2)(g), F.S.

<sup>27</sup> Section 119.(2)(h), F.S.

<sup>28</sup> Section 119.071(2)(i), F.S.

<sup>29</sup> Section 119.071(2)(j), F.S.

<sup>30</sup> Section 119.071(2)(k), F.S.

<sup>31</sup> Section 119.071(2)(l)2., F.S.

<sup>32</sup> Section 119.071(2)(m)1., F.S.

<sup>33</sup> Section 119./071(2)(n), F.S.

<sup>34</sup> Section 119.071(2)(o), F.S.

<sup>35</sup> Section 119.071(2)(p)2., F.S.

<sup>36</sup> Section 119.071(4)(d)2.a., F.S.

- Certain current or former nonsworn investigative personnel of the Department of Financial Services;<sup>37</sup>
- Certain current or former nonsworn investigative personnel of the Office of Financial Regulation’s Bureau of Financial Investigations;<sup>38</sup>
- Current or former certified firefighters;<sup>39</sup>
- Current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges;<sup>40</sup>
- Current or former state attorneys, assistant state attorneys, statewide prosecutors, and assistant statewide prosecutors;<sup>41</sup>
- General magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers;<sup>42</sup>
- Certain current or former human resource, labor relations, or employee relations directors, assistant directors, managers, and assistant managers of any local government agency or water management district;<sup>43</sup>
- Current or former code enforcement officers;<sup>44</sup>
- Current or former guardians ad litem;<sup>45</sup>
- Current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II, juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice;<sup>46</sup>
- Current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel;<sup>47</sup>
- Current or former investigators or inspectors of the Department of Business and Professional Regulation;<sup>48</sup>
- County tax collectors;<sup>49</sup>
- Certain current or former personnel of the Department of Health;<sup>50</sup>
- Certain current or former impaired practitioner consultants who are retained by an agency and certain current or former employees of an impaired practitioner consultant;<sup>51</sup>

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<sup>37</sup> Section 119.071(4)(d)2.b., F.S.

<sup>38</sup> Section 119.071(4)(d)2.c., F.S.

<sup>39</sup> Section 119.071(4)(d)2.d., F.S.

<sup>40</sup> Section 119.071(4)(d)2.e., F.S.

<sup>41</sup> Section 119.071(4)(d)2.f., F.S.

<sup>42</sup> Section 119.071(4)(d)2.g., F.S.

<sup>43</sup> Section 119.071(4)(d)2.h., F.S.

<sup>44</sup> Section 119.071(4)(d)2.i., F.S.

<sup>45</sup> Section 119.071(4)(d)2.j., F.S.

<sup>46</sup> Section 119.071(4)(d)2.k., F.S.

<sup>47</sup> Section 119.071(4)(d)2.l., F.S.

<sup>48</sup> Section 119.071(4)(d)2.m., F.S.

<sup>49</sup> Section 119.071(4)(d)2.n., F.S.

<sup>50</sup> Section 119.071(4)(d)2.o., F.S.

<sup>51</sup> Section 119.071(4)(d)2.p., F.S.

- Current or former certified emergency medical technicians and paramedics;<sup>52</sup>
- Certain current or former personnel employed in an agency's office of inspector general or internal audit department;<sup>53</sup>
- Current or former directors, managers, supervisors, nurses, and clinical employees of an addiction treatment facility;<sup>54</sup> and
- Current or former directors, managers, supervisors, and clinical employees of certain child advocacy centers.<sup>55</sup>

The employing agency as well as the employee is authorized assert the maintenance of the exempt status by submitting a written request for maintenance of the exemption (Request for Maintenance of an Exemption) to each agency which holds the employee's information.<sup>56</sup> Further, all of these exemptions have retroactive application.<sup>57</sup>

The information exempted by the various provisions of s. 119.071(4)(d)2., F.S., is similar but not identical. All of the provisions in s. 119.071(4)(d)2., F.S., exempt from public disclosure the home addresses, telephone numbers, and dates of birth of the specified personnel. However, exemptions are not uniform for names, photographs, and places of employment.

In 2019, the legislature defined term "home address" in s. 119.071(4), F.S., for the first time.<sup>58</sup> "Home address" is defined to mean:

the dwelling location at which an individual resides and includes the physical address, mailing address, street address, parcel identification number, plot identification number, legal property description, neighborhood name and lot number, GPS coordinates, and any other descriptive property information that may reveal the home address.

Thus, the rights of individuals specified under s. 119.071(4)(d), F.S., and their spouses and their children, to request redaction of specified information is applicable to property records throughout their entire lives with no requirement for renewal.<sup>59</sup> This change allows qualifying individuals to redact all property descriptions from a public record, which may limit the ability to determine ownership of or encumbrances on a property.<sup>60</sup>

Redacting this information may limit the effectiveness of the public record to give notice of property ownership to interested parties, which may:

- Create potential issues related to constructive notice and chain of title;

<sup>52</sup> Section 119.071(4)(d)2.q., F.S.

<sup>53</sup> Section 119.071(4)(d)2.r., F.S.

<sup>54</sup> Section 119.071(4)(d)2.s., F.S.

<sup>55</sup> Section 119.071(4)(d)2.t., F.S.

<sup>56</sup> Section 119.071(4)(d)3., F.S.

<sup>57</sup> Section 119.071(4)(d)4., F.S.

<sup>58</sup> Chapter 2019-12, L.O.F.

<sup>59</sup> See OPPAGA Report at 2.

<sup>60</sup> Florida Office of Program Policy Analysis & Government Accountability, *A Review of Home Address Redaction Processes and Real Property Interests*, (hereinafter the "OPPAGA Report"), Report 20-06, December 2020, available at <https://oppaga.fl.gov/Documents/Reports/20-06.pdf> (last visited February 11, 2021).

- Increase the possibility of fraud;
- Provide protected parties a false sense of safety;
- Cause problems accurately surveying property; and
- Delay real property transactions.<sup>61</sup>

### ***Public Records Exemption for Other Personal Information***

Section 119.071(5), F.S., prevents the disclosure of

- Social security numbers held by an agency;<sup>62</sup>
- Bank account numbers and debit, charge, and credit card numbers held by an agency;<sup>63</sup>
- Information that would identify or locate a child who participates in a government-sponsored recreation program;<sup>64</sup>
- Information that would identify or locate a parent or guardian of a child who participates in a government-sponsored recreation program;<sup>65</sup>
- All records supplied by a telecommunications company, as defined by s. 364.02, to an agency which contain the name, address, and telephone number of subscribers;<sup>66</sup>
- Any information provided to an agency for the purpose of forming ridesharing arrangements, which information reveals the identity of an individual who has provided his or her name for ridesharing, as defined in s. 341.031;<sup>67</sup>
- Certain information held by the Department of Economic Opportunity, the Florida Housing Finance Corporation, a county, a municipality, or a local housing finance agency;<sup>68</sup>
- Biometric identification information held by an agency;<sup>69</sup>
- Personal identifying information of an applicant for or a recipient of paratransit services which is held by an agency;<sup>70</sup>
- Identification and location information, if such attorney, judge, or magistrate submits to an agency that has custody of the identification and location information a written request to exempt such information from public disclosure and a written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public;<sup>71</sup>
- Any information furnished by a person to an agency for the purpose of being provided with emergency notification by the agency;<sup>72</sup> and
- Identification and location information of a servicemember, if the servicemember submits to an agency that has custody of the identification and location information a written request to

<sup>61</sup> The OPPAGA Report at 10.

<sup>62</sup> Section 119.071(5)(a)5., F.S. This exemption applies to social security numbers held by an agency before, on, or after the effective date of this exemption. This exemption does not supersede any federal law prohibiting the release of social security numbers or any other applicable public records exemption for social security numbers existing prior to May 13, 2002, or created thereafter.

<sup>63</sup> Section 119.071(5)(b), F.S.

<sup>64</sup> Section 119.071(5)(c)2., F.S.

<sup>65</sup> Section 119.071(5)(c)3., F.S.

<sup>66</sup> Section 119.071(5)(d), F.S.

<sup>67</sup> Section 119.071(5)(e), F.S.

<sup>68</sup> Section 119.071(5)(f), F.S.

<sup>69</sup> Section 119.071(5)(g), F.S.

<sup>70</sup> Section 119.071(5)(h), F.S.

<sup>71</sup> Section 119.071(5)(j), F.S.

<sup>72</sup> Section 119.071(5)(j), F.S.

exempt the identification and location information from public disclosure; and a written statement that he or she has made reasonable efforts to protect the identification and location information from being accessible through other means available to the public.<sup>73</sup>

### **Civil and Criminal Penalties Under The Public Records Act**

If a person willfully and knowingly violates public records laws either by failing to release unprotected information or by releasing exempt or confidential information, that employee may be subject to criminal prosecution for a first degree misdemeanor, which carries a sentence of imprisonment up to one year and a fine of up to \$1000.<sup>74</sup> Additionally, knowing and willful failure to protect the public records of victims of crimes or accidents under s. 119.105, F.S., constitutes a third degree felony, punishable by a sentence of imprisonment up to five years and a fine of up to \$5,000.<sup>75</sup>

Reasonable attorney's fees will be assessed against an agency found to have violated public records law.<sup>76</sup>

### **Clerks of the Courts**

Clerks of the circuit courts (Clerks) are constitutionally elected officers.<sup>77</sup> A Clerk is considered to be the county recorder.<sup>78</sup> As county recorder, the Clerk must record all instruments in one general series called "official records."<sup>79</sup> Official records consist of each instrument that the Clerk is required or authorized to record.

The Clerk is responsible for:

- Keeping and maintaining all court documents and electronic filings in the Clerk's office;<sup>80</sup>
- Affixing a stamp, which may be electronic, to each document indicating the date and time that the submission was filed;<sup>81</sup>
- Maintaining a progress docket on which the filing of each pleading or motion is noted;<sup>82</sup>
- Maintaining a general alphabetical index, direct and inverse of all instruments filed for recordation;<sup>83</sup> and
- Implementing an electronic filing process.<sup>84</sup>

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<sup>73</sup> Section 119.071(5)(k)2., F.S.

<sup>74</sup> Section 119.10(2)(a), F.S.

<sup>75</sup> Section 119.10(2)(b), F.S.

<sup>76</sup> Section 286.011(4), F.S.

<sup>77</sup> See, FLA. CONST., art. V, s. 16 and art. VIII, s. 1.

<sup>78</sup> Section 28.222(1), F.S.

<sup>79</sup> Section 28.222(2), F.S.

<sup>80</sup> Section 28.13, F.S.

<sup>81</sup> *Id.*

<sup>82</sup> Section 28.211, F.S.

<sup>83</sup> Section 28.222(2), F.S.

<sup>84</sup> Section 28.22205, F.S.

### *Official Records as Public Records*

All instruments recorded in the Official Records must always be available to the public for inspection under the supervision of the Clerk.<sup>85</sup> The term “public records” includes each official record.<sup>86</sup> The purpose of recording a document is to put the public on notice about a particular matter. Clerks record numerous types of documents that are eligible for redaction or removal pursuant to s. 119.071, F.S.

Section 119.0714(3), F.S., provides that a person who prepares or files a record for recording in the Official Records may not include in that record a social security number or a bank account, debit, charge, or credit card number (Card Number) “unless otherwise expressly required by law.” If the social security number or Card Number is in electronic format, the county recorder must use his or her best effort to keep the social security numbers confidential and exempt pursuant to s. 119.071(5)(a), F.S., and to keep the complete Card Numbers exempt pursuant to s. 119.071(5)(b), F.S., without any person having to request redaction.<sup>87</sup> A holder of a social security number or a Card Number, or the attorney or legal guardian may request that a county record redact his social security number or Card Number that is part of an Official Record and made publicly available.<sup>88</sup> A request for redaction must be:

- Signed;
- Legibly written;
- Delivered by mail, facsimile, electronic transmission, or in person to the county recorder; and
- Specify the identification page number of the record that contains the number to be redacted.<sup>89</sup>

The county recorder does not have a duty to inquire beyond the written request to verify the identity of a person requesting redaction.

Since October 1, 2002, any person has a right to request a county recorder to remove from a publicly available website, any social security number contained in an Official Record. Such request must be:

- Made in writing;
- Delivered by mail, facsimile, or electronic transmission, or delivered in person, to the county recorder; and
- Specify the identification page number that contains the social security number to be redacted.<sup>90</sup>

A fee may not be charged for the redaction of a social security number pursuant to such a request.

Section 119.0714(3)(e), F.S., specifies that the county recorder is not liable for the inadvertent release of social security numbers, or Card Numbers, filed with the county recorder.

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<sup>85</sup> Section 28.222(7), F.S.

<sup>86</sup> Section 28.001(2), F.S.

<sup>87</sup> Section 119.0714(3)(a)1., F.S.

<sup>88</sup> Section 119.0714(3)(b), F.S.

<sup>89</sup> Section 119.0714(3)(b)1., F.S.

<sup>90</sup> Section 119.0714(3)(c)2., F.S.



A Request for Maintenance of an Exemption made pursuant to s. 119.071(4)(d) 3., F.S., must specify the document type, name, identification number, and page number of the official record that contains the exempt information.

**Clerk Records That May Have Personal Identifying Information Eligible for Redaction<sup>91</sup>**

Type of Official Record		
<ul style="list-style-type: none"> <li>• Affidavit</li> <li>• Agreement</li> <li>• Assignment</li> <li>• Bond</li> <li>• Certificate</li> <li>• Certified Copy of Judgements</li> <li>• Condominium</li> <li>• Death Certificate</li> <li>• Deed</li> <li>• Easement</li> <li>• Financing Statement</li> </ul>	<ul style="list-style-type: none"> <li>• Government Related</li> <li>• Judgment</li> <li>• Lien</li> <li>• Lis Pendens</li> <li>• Maps</li> <li>• Marriage Record</li> <li>• Mortgage</li> <li>• Military Discharge</li> <li>• Notices</li> <li>• Order</li> </ul>	<ul style="list-style-type: none"> <li>• Plat Related</li> <li>• Plats</li> <li>• Powers of Attorney</li> <li>• Probate Documents</li> <li>• Releases</li> <li>• Restitution Orders</li> <li>• Restrictions</li> <li>• Satisfaction</li> <li>• Termination</li> <li>• Transfers of Security</li> </ul>

In December 2020, the Florida Office of Program Policy Analysis and Government Accountability (the OPPAGA Report) issued a report entitled *A Review of Home Address Redaction Processes and Real Property Interests*. The OPPAGA Report states that the Florida Association of Court Clerks & Comptrollers has identified best practices for redaction requests.<sup>92</sup> Each requestor, even those residing in the same home, are required to complete a request form:

- Identifying themselves;
- Stating what makes them eligible for redaction; and
- Enumerating the specific documents and identifying pieces of information to be redacted (specific instrument number, book, and page of the document).<sup>93</sup>

If an eligible individual seeks additional redactions in the future, they must complete a new redaction request each time.<sup>94</sup> Most requestors self-attest that they meet the eligibility criteria for redaction.<sup>95</sup> The OPPAGA Report states that several Clerks reported that they require individuals to show identification or have the request form notarized to attest to their identity, most Clerks interviewed by OPPAGA do not further verify eligibility.<sup>96</sup> “When asked, staff from multiple Clerk’s offices stated that they do not have the authority or the ability to investigate or verify that the requestor meets the statutory criteria for redaction.”<sup>97</sup>

<sup>91</sup> OPPAGA Report at 6.

<sup>92</sup> *Id.* at 8.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

<sup>96</sup> *Id.*

<sup>97</sup> *Id.*

### ***Electronic Access To Official Records***

Since January 1, 2002, under s. 28.2221, F.S., the county recorder or Clerk must provide a current index of documents in the Official Records on a publicly accessible website of instruments recorded on or after January 1, 1990, limited to grantor and grantee names, party names, date, book and page number, comments, and type of record.<sup>98</sup> Since January 1, 2006, the Clerk has also been required to provide electronic access to images of the indexed documents.

Florida law prohibits a county recorder or a Clerk from placing certain images or copies of public records, including an Official Record, on a publicly available Internet website.<sup>99</sup> Specifically, no county recorder or Clerk may place an image or copy of a public record, including an Official Record, on a publicly available Internet website if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

Section 28.2221(5)(c), F.S., provides for notice to affected parties of the right to request removal or redaction of any image or copy of a public record, including an Official Record, if that image or copy is of a military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules. This request must be in writing (via mail, facsimile, or electronic transmission or in person) to the county recorder or Clerk. The request must identify the document identification page number of the document to be removed. No fee is charged for the removal or redaction of a document pursuant to such request. An affected person may petition the circuit court for an order directing compliance with this subsection.<sup>100</sup>

### **Court Records as Public Records**

To implement article 1, section 24(a) of The Florida Constitution, the Florida Supreme Court adopted Florida Rule of Judicial Administration 2.051, which has since been renumbered to rule 2.420. Rule 2.420 governs public access to judicial branch records and provides that “[t]he public shall have access to all records of the judicial branch of government” except in limited circumstances.”<sup>101</sup>

### **County Property Appraisers and County Tax Collectors**

A “county property appraiser” is defined to mean “the county officer charged with determining the value of all property within the county, with maintaining certain records connected therewith, and with determining the tax on taxable property after taxes have been levied.”<sup>102</sup> A “county tax collector” is defined to mean “the county officer charged with the collection of ad valorem taxes levied by the county, the school board, any special taxing districts within the county, and all municipalities within the county.”<sup>103</sup> The County Officers maintain records, such as property

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<sup>98</sup> In 2000, the Legislature passed CS/CS/SB 1334, codified as s. 28.221, F.S.

<sup>99</sup> Section 28.2221(5)(a), F.S.

<sup>100</sup> Section 28.2221(5)(d), F.S.

<sup>101</sup> Fla. R. Jud. Admin. 2.420(a).

<sup>102</sup> Section 192.001(3), F.S.

<sup>103</sup> Section 192.001(4), F.S.

records, that contain information that is exempt under s. 119.071, F.S. For example, a county property appraiser's website may have a property owner name and a legal description of the property.<sup>104</sup> A county property appraiser's website can also include courtesy web-links to images of deeds found on Clerks' internet-based index of official records.<sup>105</sup>

### III. Effect of Proposed Changes:

This bill allows access to information in the Official Records held by the clerk of court that is otherwise exempt from public inspection and copying. This otherwise exempt information includes names, home addresses, and other personal identifying information of law enforcement officers, correctional officers, certain personnel of the Department of Children and Families, the Department of Revenue, the Department of Health, the Department of Financial Services, firefighters, judges and justices, assistant state attorneys and assistant public defenders, and others. Typically, this information is exempt when held by the person's employing agency. It may be made exempt if the person or the employing agency submits in writing a request to other custodians of the information to maintain the exemption.

Under current law, the person whose information is exempt may submit a notarized written request for the release of the information by the custodial agency. The request to release must specify the information to be released and the party that is authorized to receive the information. The bill allows the person whose information is exempt to request the release to the public at any time, or any person after the information has been held exempt for five years, unless the person whose information is exempt submits to the records custodian an additional request for the exemption. The process for the request appears to allow only the person whose information is exempt (not the employing agency) to make the request to the records custodian.

**Section 1** amends s. 28.222(7), F.S., to improve the readability and substitutes the word "copies" for "extracts" in referring to instruments recorded in the Official Records. This section permits access to information that is otherwise exempt under s. 119.071, F.S. Specifically, the section provides that a person seeking access, electronically or in person, to information contained in the Official Records which is otherwise exempt under s. 119.071, F.S., may access such information upon presenting a government-issued photo identification credential to the Clerk/county recorder of court and a notarized written request for access. The copy of the government-issued photo identification credential and written request may be delivered in person or by mail, facsimile, or electronic transmission to the Clerk/county recorder.

This section provides that the notarized written request should include:

- The filing number of the instrument;
- The name of a party to the instrument(s), or the description of real or personal property associated with the instruments to be inspected; and
- An attestation that there exist a specific lawful purpose for requesting access, including but not limited to: (1) determining marketability of title; (2) perfecting or enforcing a lien or other interest in real or personal property; and (3) purchasing, leasing, or lending involving real or personal property.

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<sup>104</sup> OPPAGA Report at 6.

<sup>105</sup> *Id.*

This section also authorizes the Clerk to enter into limited access licensing agreements granting users access to the Official Records through electronic means that are not subject to the general public display. The limited access licensing agreements may be made with:

- Attorneys who are admitted to The Florida Bar and members in good standing;
- Authorized title insurers, as defined in s. 624.09, F.S., and their affiliates, as defined in s. 624.10, F.S.;
- Title insurance agents or title insurance agencies, as defined in s. 626.841, F.S.;
- Financial institutions and their affiliates, as defined in s. 655.055; and
- Entities that provide access to title information, tax information, and document images for insurance companies, real estate and mortgage investors, attorneys, and governmental agencies.

This section also provides that a person who unlawfully uses any Official Record in a manner not authorized in this subsection commits a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or s. 775.083, F.S. Further, a person who unlawfully uses any Official Record with intent to cause bodily harm or with intent to threaten to cause bodily harm commits a felony of the third degree, punishable as provided in s. 775.082, F.S., s. 775.083, F.S., or s. 775.084, F.S.

**Section 2** amends s. 28.2221, F.S., to remove past implementation dates regarding notice, make clarifying changes, and prohibit a county recorder or Clerk of court from placing information made exempt under s. 119.071, F.S., on a publicly available website for general public display. The section permits an affected party to request removal of information.

This section provides that the request to remove information or records must identify the Official Records book and page number, instrument number; or Clerk's file number of such document to be removed.

Any request for removal from a person claiming a public records exemption under s. 119.071, F.S., must:

- Be made in writing;
- Be notarized;
- State under oath the statutory basis for removal of the information, image, or copy that is restricted from general public display; and
- Confirm the individual's eligibility for exempt status.

A party making a false attestation is subject to the penalty of perjury under s. 837.012, F.S.

This section provides that any information restricted from public display pursuant to a request for removal made under s. 119.071, F.S., must be restored for general public display to the publicly available website at:

- The request of any affected party, at any time; or
- At the request of any person after the passage of 5 years, through July 1, 2026, or the date of the most recent request for the exemption, whichever is later, unless an affected party makes an additional request for removal.

The request for restoration, must be made in writing and delivered in person or by mail, facsimile, or electronic transmission to the county recorder or Clerk. The request must identify the Official Records book and page number or instrument number for any document to be restored. A fee may not be charged for the restoration of any document pursuant to such request.

**Section 3** amends s. 119.071, F.S., which sets forth general exemptions to the Public Records Act, to create new subsection (6) entitled “Applicability.” The bill provides that application of subsections (2) Agency Investigations, (4) Agency Personnel Information, and (5) Other Personal Information to official records under s. 28.222(2), and the current index of documents under s. 28.2221(2), F.S., are limited to restricting a county recorder or Clerk from placing information that is restricted from general public display on a publicly available website.

This section provides that subsections (2), (4), and (5), relating to agency investigations, agency personnel, and other personal information, respectively, do not limit the inspection and copying of exempt information at the office of the county recorder or Clerk or by electronic means through a limited access licensing agreement as provided in this chapter.

Current law provides social security numbers that are exempt under 119.071(4)(a)1., F.S. (the social security numbers of all current and former agency employees held by the employing agency), may be disclosed only:

- If disclosure of the social security number is expressly required by federal or state law or a court order;
- To another agency or governmental entity if disclosure of the social security number is necessary for the receiving agency or entity to perform its duties and responsibilities; or
- If the current or former agency employee expressly consents in writing to the disclosure of his or her social security number.

Section 119.071(5)(a), F.S., applies to social security numbers collected by an agency and provides that those social security numbers may be disclosed if:

- Such disclosure is expressly required by federal or state law or a court order;
- Such disclosure is necessary for the receiving agency or governmental entity to perform its duties and responsibilities;
- The individual expressly consents in writing to the disclosure of his or her social security number;
- Such disclosure is made to comply with the USA Patriot Act of 2001, Pub. L. No. 107-56, or Presidential Executive Order 13224;
- Such disclosure is made to a commercial entity for the permissible uses set forth in the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. ss. 2721 et seq.; the Fair Credit Reporting Act, 15 U.S.C. ss. 1681 et seq.; or the Financial Services Modernization Act of 1999, 15 U.S.C. ss. 6801 et seq., provided that the authorized commercial entity complies with the requirements of this paragraph; and
- Such disclosure is for the purpose of the administration of health benefits for an agency employee or his or her dependents;

- Such disclosure is for the purpose of the administration of a pension fund administered for the agency employee's retirement fund, deferred compensation plan, or defined contribution plan; or
- Such disclosure is for the purpose of the administration of the Uniform Commercial Code by the office of the Secretary of State.<sup>106</sup>

This section is inconsistent with the provisions governing disclosure of social security numbers under ss. 119.071(4)(a)1. and 119.071(5)(a)6., F.S., as the section permits social security numbers to be accessed by any person via inspection and copying at the office of the Clerk or by a limited licensing agreement to specified individuals and entities.

This section requires a county recorder or Clerk, by October 1, 2021, to restore any previously redacted names of parties to an instrument and not redact the names of parties to an instrument in the register under s. 28.222(2), F.S., and current index of documents under s. 28.2221(2), F.S.

This section also provides that the application to a county property appraiser or county tax collector is limited to restricting the county property appraiser or county tax collector from placing the names of any individual entitled to exemption in all publicly available records maintained by the property appraiser or tax collector. County property appraisers or county tax collectors are required to restore any previously redacted street address, legal description, or other information identifying real property within the agency's records as long as the name of any individual entitled to exemption is not associated with the property or otherwise displayed in the public records of the agency.

This section requires any information redacted or removed from general public display pursuant to the public records exemptions relating to agency investigations, agency personnel, and other personal information to be restored to the publicly available records maintained by the County Officers at the request of any affected party at any time, or at the request of any person after the passage of 5 years through July 1, 2026, or the date of the most recent request for the exemption, whichever is later. The request must be made in writing and delivered in person or by mail, facsimile, or electronic transmission to the property appraiser or tax collector.

**Section 4** provides that the bill takes effect on July 1, 2021.

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

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

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that:

No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of

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<sup>106</sup> Section 119.071(5)(a)6., F.S.

the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments....

As drafted the bill does not contain a finding that the bill fulfills an important state interest nor does it apply to all persons similarly situated (records custodians).

Article VII, s. 18(d) of the State Constitution provides “laws having insignificant impact . . . are exempt from the requirements” of s. 18(a). The “insignificant” threshold, for the Fiscal Year 2021-2022, is forecast at approximately \$2.2 million.<sup>107</sup> The cumulative cost for counties and municipalities to comply with the provisions of the bill is unknown at this time. If the cumulative costs are less than \$2.2 million, the bill is exempt from the requirements in s. 18(a).

**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:**

An individual or a business that is currently unauthorized to obtain exempt records under s. 119.071, F.S., will now have access such information to the extent they comply with the process provided in the bill. The bill provides for an automatic restoration of redacted information every 5 years, starting on January 1, 2026. Thus, individuals eligible for an exemption under to s. 119.071, F.S., will now be required to affirmatively act by renewing their request for removal.

<sup>107</sup> Based on the Florida Demographic Estimating Conference’s Nov. 30, 20120 population forecast for 2021 of 21,893,919. The conference packet is *available at*: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 16, 2021).

### C. Government Sector Impact:

Indeterminate. The bill may have an indeterminate negative fiscal impact for clerks of court as they process requests for access, facilitate limited access license agreements with specified entities, and process renewed removal requests. Additionally, the bill seems to impose a five year restoration requirement beginning July 1, 2026, and the clerks of court will undergo a substantial investment in resources as they restore previously redacted material. Additionally, they will likely be faced with an onslaught of additional requests for removal. County property appraisers and county tax collectors will also see an indeterminate negative fiscal impact in restoring information that has previously been redacted or removed from general public display.

The bill only permits “affected parties” to file a request for removal. Agencies are not authorized to file a request for removal on behalf of their employees nor a Request for Maintenance of Exemption (as provided for in s. 119.071(4)(d)3., F.S.). Accordingly, agencies will likely need to expend resources to educate their employees on this change as well as the new restoration requirement.

### VI. Technical Deficiencies:

Lines 159 through 169 limit the applicability of the public records exemptions relating to agency investigations, agency personnel, and other personal information by only restricting the access on a publicly available website while allowing access through either a limited access licensing agreement or a notarized written request for access to such otherwise exempt information. It is unclear to what extent information relating to agency investigations (subsection (2)), social security numbers (subsection (5)), and bank account numbers (subsection (5)) is recorded in the Official Records, and thus made subject to inspection and copying. This may result in confusion regarding whether the clerk is permitted to hold social security numbers or bank account numbers in such records.<sup>108</sup>

### VII. Related Issues:

#### *Statutory Construction – Specific Lawful Purpose*

The bill states that a request to access records must include an attestation to a “specific lawful purpose for requesting access, which includes, but is not limited to, determining marketability of title; perfecting or enforcing a lien or other interest in real or personal property; and purchasing, leasing or lending involving real or personal property.”

The term “lawful” is defined by Black’s Law Dictionary as “warranted or authorized by the law; ... not contrary to nor forbidden by the law.”<sup>109</sup> “A specific lawful purpose” is plain in its broad meaning and intention and encompasses a multitude of purposes that extend beyond the real and personal property context. The use of the words “which includes, but is not limited to,” does not restrict what may be included under the umbrella of a “specific lawful purpose” but expands it to

<sup>108</sup> Section 119.0714(3), F.S.

<sup>109</sup> Black’s Law Dictionary (11<sup>th</sup> ed. 2019).



include such matters related to real or personal property.<sup>110</sup> Thus, the phrase “which includes, but is not limited to” in reference to a “specific lawful purpose” notifies the public that any purpose not contrary to law in addition to those listed fulfills the stated requirement for a request to access exempt information under s. 119.071, F.S.

If a court determines this phrase<sup>111</sup> to be ambiguous, then it would be subject to the principles of statutory construction and the rule of ejusdem generis would likely be applied. The principle of ejusdem generis literally means “of the same kind or class.”<sup>112</sup> Black’s Law Dictionary gives the following example of ejusdem generis:

in the phrase *horses, cattle, sheep, pigs, goats, or any other farm animals*, the general language *or any other farm animals* — despite its seeming breadth — would probably be held to include only four-legged, hooved mammals typically found on farms, and thus would exclude chickens.

Ejusdem generis provides that where the enumeration of specific things is followed or preceded by a more general word or phrase, the general phrase is construed to refer to a thing of the same nature as the specific things.<sup>113</sup> Thus, when a general term like “specific lawful purpose” precedes a list of more specific items (a determination of marketability of title, perfecting or enforcing a lien ...), the general term is construed to refer to items similar to the specific items listed. Accordingly, a “specific lawful purpose” would likely be construed to include only lawful purposes related to real and personal property.

The legislature may want to consider whether it wants to amend the bill to specify that a “specific lawful purpose” constitutes only those matters related to real and personal property, or if it is intended for a broader application such that any reason authorized by law permits access to exempt information.

***Information Made Exempt from Inspection or Copying Under Section 119.071, F.S.***

On lines 94 to 102, the bill provides, in pertinent part, that:

A county recorder or clerk of the court may not place information made exempt from inspection or copying under s. 119.071, or any an image or copy of a public record, including an official record, on a publicly available Internet website for general public display if that image or copy is of a military discharge; death certificate ... or the Florida Probate Rules. (emphasis added)

<sup>110</sup> See *Horton v. City of St. Augustine, Fla.*, 272 F.3d 1318, 1331 (11th Cir. 2001) ( ... if anything, the use of the phrase “includes, but is not limited to” in the definition of “perform” notifies the public that street performance is any kind of street performance in addition to those specifically listed).

<sup>111</sup> “... specific lawful purpose for requesting access, which includes, but is not limited to, determining marketability of title; perfecting or enforcing a lien or other interest in real or personal property; and purchasing, leasing or lending involving real or personal property.”

<sup>112</sup> Black’s Law Dictionary (11<sup>th</sup> ed. 2019).

<sup>113</sup> See *Eicoff v. Denson*, 896 So. 2d 795, 798 (Fla. 5th DCA 2005).

If the legislature wants to include “information made exempt from inspection or copying under s. 119.071, F.S. within the prohibition to Clerks that is applicable to the other records specified,<sup>114</sup> it may want to consider amending the bill to include “information made exempt from inspection or copying under s. 119.071, F.S.,” following the word “if” on line 98.

Likewise, on lines 119 and 121, the bill uses the term “information” without the clarifying language “made exempt from inspection or copying under s. 119.071.” Thus, as drafted it appears the bill will not include “information made exempt from inspection or copying under s. 119.071” as permissible subject matter for a request to remove. If the legislature intends to include such information, it is suggested an amendment be made to specify “information made exempt from inspection or copying under s. 119.071” on line 119 and 121.

#### **VIII. Statutes Affected:**

This bill substantially amends sections 28.222, 28.2221, and 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.

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

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<sup>114</sup> Military discharge; death certificate; or a court file, record, or paper relating to matters or cases governed by the Florida Rules of Family Law, the Florida Rules of Juvenile Procedure, or the Florida Probate Rules.

By Senator Hooper

16-00848-21

2021844\_\_

1 A bill to be entitled  
 2 An act relating to public records; amending s. 28.222,  
 3 F.S.; authorizing certain persons to access  
 4 information recorded in the Official Records of a  
 5 county which is otherwise exempt from public records  
 6 requirements, if specified conditions are met;  
 7 prescribing requirements for a person to request  
 8 access to such information; authorizing clerks of the  
 9 circuit court to enter into limited access licensing  
 10 agreements to allow electronic access to official  
 11 records for specified parties; providing criminal  
 12 penalties for the unlawful use of any official record;  
 13 amending s. 28.2221, F.S.; deleting obsolete language;  
 14 prohibiting a county recorder or a clerk of the court  
 15 from placing information subject to specified public  
 16 records exemptions on a publicly available website;  
 17 requiring a person claiming a public records exemption  
 18 to request removal of information from a website in a  
 19 specified manner, subject to penalty of perjury;  
 20 prescribing procedures for restoring public access to  
 21 exempt information; amending s. 119.071, F.S.;;  
 22 specifying applicability of specified public records  
 23 exemptions to county recorders, clerks of the court,  
 24 county tax collectors, and county property appraisers;  
 25 providing procedures for the restoration of previously  
 26 redacted information; providing an effective date.  
 27  
 28 Be It Enacted by the Legislature of the State of Florida:  
 29

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

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30 Section 1. Subsection (7) of section 28.222, Florida  
 31 Statutes, is amended to read:  
 32 28.222 Clerk to be county recorder.-  
 33 (7) (a) All instruments recorded in the Official Records are  
 34 ~~shall always be~~ open to the public, under the supervision of the  
 35 clerk, for the purpose of inspection thereof and of making  
 36 copies extracts therefrom; but the clerk ~~is shall not be~~  
 37 required to perform any service in connection with such  
 38 inspection or making of copies extracts without payment of  
 39 service charges as provided in s. 28.24.  
 40 (b) A person who seeks access, whether in person or by  
 41 electronic means, to information contained in instruments  
 42 recorded in the Official Records which is exempt from public  
 43 records requirements pursuant to s. 119.071 may access such  
 44 information upon presenting a government-issued photo  
 45 identification credential to the county recorder or clerk of the  
 46 court and a notarized written request for access. The request  
 47 should identify the filing number of the instrument, the name of  
 48 a party to the instrument or instruments, or the description of  
 49 real or personal property associated with the instruments to be  
 50 inspected and attest to a specific lawful purpose for requesting  
 51 access, which includes, but is not limited to, determining  
 52 marketability of title; perfecting or enforcing a lien or other  
 53 interest in real or personal property; and purchasing, leasing,  
 54 or lending involving real or personal property. The copy of the  
 55 government-issued photo identification credential and written  
 56 request may be delivered in person or by mail, facsimile, or  
 57 electronic transmission to the county recorder or clerk of the  
 58 court.

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

16-00848-21

2021844\_\_

59 (c) The clerk may enter into limited access licensing  
 60 agreements that grant users access to the Official Records  
 61 through electronic means that are not subject to general public  
 62 display. Limited access licensing agreements may be made with  
 63 attorneys who are admitted to The Florida Bar and members in  
 64 good standing; authorized title insurers, as defined in s.  
 65 624.09, and their affiliates, as defined in s. 624.10; title  
 66 insurance agents or title insurance agencies, as defined in s.  
 67 626.841; financial institutions and their affiliates, as defined  
 68 in s. 655.005; and entities that provide access to title  
 69 information, tax information, and document images for insurance  
 70 companies, real estate and mortgage investors, attorneys, and  
 71 governmental agencies.

72 (d) A person who unlawfully uses any Official Record in a  
 73 manner not authorized in this subsection commits a misdemeanor  
 74 of the second degree, punishable as provided in s. 775.082 or s.  
 75 775.083. A person who unlawfully uses any Official Record with  
 76 intent to cause bodily harm or with intent to threaten to cause  
 77 bodily harm commits a felony of the third degree, punishable as  
 78 provided in s. 775.082, s. 775.083, or s. 775.084.

79 Section 2. Subsection (2) and paragraphs (a) and (c) of  
 80 subsection (5) of section 28.2221, Florida Statutes, are  
 81 amended, and subsection (6) is added to that section, to read:

82 28.2221 Electronic access to official records.—

83 (2) ~~No later than January 1, 2002,~~ The county recorder in  
 84 each county shall provide a current index of documents recorded  
 85 in the official records of the county for the period beginning  
 86 no later than January 1, 1990, on a publicly available ~~Internet~~  
 87 website which shall also contain a document requisition point

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

16-00848-21

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88 for obtaining images or copies of the documents reflected in the  
 89 index and which has the capability of electronically providing  
 90 the index data to a central statewide search site. The index  
 91 ~~must include the shall be limited to~~ grantor and grantee names,  
 92 party names, date, book and page number, comments, and type of  
 93 record.

94 (5) (a) A ~~No~~ county recorder or clerk of the court may not  
 95 place information made exempt from inspection or copying under  
 96 s. 119.071, or any ~~an~~ image or copy of a public record,  
 97 including an official record, on a publicly available ~~Internet~~  
 98 website for general public display if that image or copy is of a  
 99 military discharge; death certificate; or a court file, record,  
 100 or paper relating to matters or cases governed by the Florida  
 101 Rules of Family Law, the Florida Rules of Juvenile Procedure, or  
 102 the Florida Probate Rules.

103 (c) ~~No later than 30 days after June 5, 2002,~~ Notice of the  
 104 right of any affected party to request removal of information or  
 105 records pursuant to this subsection shall be conspicuously and  
 106 clearly displayed by the county recorder or clerk of the court  
 107 on the publicly available ~~Internet~~ website on which images or  
 108 copies of the county's public records are placed and in the  
 109 office of each county recorder or clerk of the court. ~~In~~  
 110 ~~addition, no later than 30 days after June 5, 2002, the county~~  
 111 ~~recorder or the clerk of the court must have published, on two~~  
 112 ~~separate dates, a notice of such right in a newspaper of general~~  
 113 ~~circulation in the county where the county recorder's office is~~  
 114 ~~located as provided for in chapter 50.~~ Such notice must contain  
 115 appropriate instructions for making the removal request in  
 116 person, by mail, by facsimile, or by electronic transmission.

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

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117 The notice ~~must shall~~ state, in substantially similar form, that  
 118 any person has a right to request that a county recorder or  
 119 clerk of the court remove information or an image or copy of a  
 120 public record, including an official record, from a publicly  
 121 available ~~Internet~~ website if that information, image, or copy  
 122 is of a military discharge; death certificate; or a court file,  
 123 record, or paper relating to matters or cases governed by the  
 124 Florida Rules of Family Law, the Florida Rules of Juvenile  
 125 Procedure, or the Florida Probate Rules. Such request must be  
 126 made in writing and delivered in person or by mail, facsimile,  
 127 or electronic transmission, ~~or in person~~ to the county recorder  
 128 or clerk of the court. The request must identify the Official  
 129 Records book and page number, instrument number, or clerk's file  
 130 number for any document identification page number of the  
 131 document to be removed. For requests from a person claiming a  
 132 public records exemption pursuant to s. 119.071, the request  
 133 must be written, be notarized, and state under oath the  
 134 statutory basis for removal of the information, image, or copy  
 135 that is restricted from general public display, and confirm the  
 136 individual's eligibility for exempt status. A party making a  
 137 false attestation is subject to the penalty of perjury under s.  
 138 837.012. A ~~No~~ fee ~~may not will~~ be charged for the removal of a  
 139 document pursuant to such request.

140 (6) Any information restricted from public display under  
 141 paragraph (5) (a) pursuant to a request made under s. 119.071  
 142 shall be restored for general public display to the publicly  
 143 available website at the request of any affected party at any  
 144 time, or at the request of any person after the passage of 5  
 145 years through July 1, 2026, or the date of the most recent

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146 request for the exemption, whichever is later, unless any  
 147 affected party makes an additional request under paragraph  
 148 (5) (c). The request must be made in writing and delivered in  
 149 person or by mail, facsimile, or electronic transmission to the  
 150 county recorder or clerk of the court. The request must identify  
 151 the Official Records book and page number or instrument number  
 152 for any document to be restored. A fee may not be charged for  
 153 the restoration of any document pursuant to such request.

154 Section 3. Subsection (6) is added to section 119.071,  
 155 Florida Statutes, to read:

156 119.071 General exemptions from inspection or copying of  
 157 public records.—

158 (6) APPLICABILITY.—

159 (a) The application of subsections (2), (4), and (5) to  
 160 official records under s. 28.222, the register of the Official  
 161 Records under s. 28.222(2), and the current index of documents  
 162 on a publicly available website under s. 28.2221(2) is limited  
 163 to restricting a county recorder or clerk of the court from  
 164 placing information that is restricted from general public  
 165 display on a publicly available website. Subsections (2), (4),  
 166 and (5) do not limit the inspection and copying of exempt  
 167 information at the office of the county recorder or clerk of the  
 168 court or by electronic means through a limited access licensing  
 169 agreement in accordance with s. 28.222(7) (b) and (c). By October  
 170 1, 2021, a county recorder or clerk of the court shall restore  
 171 any previously redacted names of parties to an instrument and  
 172 not redact the names of parties to an instrument in the register  
 173 under s. 28.222(2) and the current index of documents under s.  
 174 28.2221(2).

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175 (b) The application of this paragraph to a county property  
176 appraiser or county tax collector as defined in s. 192.001 is  
177 limited to restricting the county property appraiser or county  
178 tax collector from placing the names of any individual entitled  
179 to exemption in all publicly available records maintained by the  
180 property appraiser or tax collector. A county property appraiser  
181 or county tax collector shall restore any previously redacted  
182 street address, legal description, or other information  
183 identifying real property within the agency's records and not  
184 redact the street address, legal description, or other  
185 information identifying real property within the agency's  
186 records as long as the name of any individual entitled to  
187 exemption is not associated with the property or otherwise  
188 displayed in the public records of the agency.

189 (c) Any information redacted or removed from general public  
190 display pursuant to subsection (2), subsection (4), or  
191 subsection (5) shall be restored to the publicly available  
192 records maintained by the county property appraiser or county  
193 tax collector at the request of any affected party at any time,  
194 or at the request of any person after the passage of 5 years  
195 through July 1, 2026, or the date of the most recent request for  
196 the exemption, whichever is later. The request must be made in  
197 writing and delivered in person or by mail, facsimile, or  
198 electronic transmission to the property appraiser or tax  
199 collector.

200 Section 4. This act shall take effect July 1, 2021.



The Florida Senate

## Committee Agenda Request

**To:** Senator Ray Wesley Rodrigues, Chair  
Committee on Governmental Oversight and Accountability

**Subject:** Committee Agenda Request

**Date:** February 4, 2021

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I respectfully request that **Senate Bill # 844**, relating to Public Records, be placed on the:

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

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

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Senator Ed Hooper  
Florida Senate, District 16

THE FLORIDA SENATE  
**APPEARANCE RECORD**

2/17/2021  
Meeting Date

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

844  
Bill Number (if applicable)

Topic Agreements to review exempt property Amendment Barcode (if applicable)  
records

Name Pamela C. Marsh

Job Title Exec Dir., First Amendment Foundation

Address 317 E. Park Ave. Phone 850/224-4555  
Street

Tallahassee, FL 32301  
City State Zip

Email pmarsh@floridafaf.org

Speaking:  For  Against  Information

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

Representing First Amendment Foundation

Appearing at request of Chair:  Yes  No

Lobbyist registered with Legislature:  Yes  No

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

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



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

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

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

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BILL: CS/SB 378

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Bradley

SUBJECT: Payment for Construction Services

DATE: February 17, 2021      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<b>Favorable</b>
2.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	<b>Fav/CS</b>
3.	_____	_____	<u>RC</u>	_____

---

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 378 enhances the statutory interest rate for public and private parties that fail to make required payments for certain construction labor, services, and material.

The bill increases, by one percent per month, the remedial interest rate applied to payments wrongfully withheld for construction services for public and private construction projects. For public sector construction projects, the bill increases the interest rate from one percent to two percent per month. Public entities that wrongfully withhold payment to contractors and, likewise, contractors who wrongfully withhold payment to subcontractors and sub-subcontractors on public projects will be liable for interest at a rate of two percent per month on the unpaid amounts. For private sector construction projects, current law specifies that late payments bear interest at the rate specified in s. 55.03, F.S., which provides the general rate of interest on judgments.<sup>1</sup> The bill increases the late payment interest for the private sector to the rate specified in s. 55.03, F.S., *plus* twelve percent per annum.

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<sup>1</sup> Under s. 55.03, F.S., the Chief Financial Officer sets rates of interest that apply to judgments or decrees for the calendar quarter beginning January 1 and adjusted quarterly on April 1, July 1, and October 1 by averaging the discount rate of the Federal Reserve Bank of New York for the preceding 12 months, then adding 400 basis points to the averaged federal discount rate. As of January 1, 2021, the current judgment interest rate per annum is 4.81%. Jimmy Patronis Florida's Chief Financial Officer Website, *Current Judgement Interest Rates*, available at: <https://www.myfloridacfo.com/division/aa/localgovernments/current.htm> (last visited Jan. 25, 2021).

Furthermore, the bill clarifies that parties who contract with a public or private entity for construction services and knowingly and intentionally fail to pay the undisputed contract obligations for construction labor, services, or materials, commit misapplication of construction funds, as provided in s. 713.345, F.S. The Construction Industry Licensing Board must take disciplinary against a construction industry licensee found guilty of committing misapplication of construction funds and suspend the licensee's license for a minimum of one year.

The state and local governments and contractors may incur additional costs associated with the increased interest rates applied to the late payment of constructions services.

The provisions of the bill apply only to contracts executed on or after July 1, 2021.

## II. Present Situation:

Florida law has several Prompt Payment Acts regulating various aspects of payments connected to construction projects and services. Part VII of ch. 218, F.S., addresses payment for local government construction projects. Chapter 255, F.S., governs payments connected to state agency construction projects, and payments for private construction projects are regulated in chs. 713 and 715, F.S.

### **Prompt Payment Act for Local Governments**

Part VII of ch. 218, F.S., is known as the "Local Government Prompt Payment Act" and requires "payment for all purchases by local governmental entities be made in a timely manner."<sup>2</sup> Moreover, the stated purpose of this act is to provide for prompt payments by local governments to parties for construction services, apply interest on late payments made by local governments, and establish a dispute resolution process for contested payments.<sup>3</sup>

The act applies to a county or municipal government, school board, school district, authority, special taxing district, other political subdivision, or any office, board, bureau, commission, department, branch, division, or institution thereof.<sup>4</sup> The act defines construction services as all labor, services, and materials provided in connection with the construction, alteration, repair, demolition, reconstruction, or other improvements to real property.<sup>5</sup>

### ***Payment Deadlines for Prime Contractors***

According to s. 218.735, F.S., when a local governmental entity enters into a contract for construction services with a contractor,<sup>6</sup> the local government must identify the representative who is to receive contractor invoices. The payment process begins when a contractor submits an invoice. This action starts the local government entity's timeframe to remit payment or reject the invoice.

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<sup>2</sup> Section 218.71, F.S.

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

<sup>4</sup> Section 218.72(5), F.S.

<sup>5</sup> Section 218.72(2), F.S.

<sup>6</sup> Section 218.72(3), F.S.: "Contractor or provider of construction services means the person who contracts directly with a local governmental entity to provide construction services."

The payment due date depends on whether an agent must approve the invoice. If a local government representative must approve the invoice before it is submitted to the entity for payment, the payment is due 25 business days after the date on which the invoice is stamped as received. If the invoice does not require approval by an entity representative, payment is due 20 days after the date on which the invoice is stamped as received.<sup>7</sup>

If payment is not received by the due date, the contractor can send an overdue notice to the local government entity. After four business days of delivering the overdue notice, if the invoice is not rejected, the invoice will be considered undisputed, except for any amounts that are fraudulent or misleading.<sup>8</sup>

If the invoice does not meet contract requirements, the local government entity must provide the contractor with a written rejection specifying the deficiency and action needed to rectify within 20 business days of receipt. Once the invoice is corrected, payment or notice of rejection of the invoice is due within ten business days of receipt or the first business day after the local government entity's next held meeting.<sup>9</sup>

### ***Payment Deadlines for Subcontractors, Sub-Subcontractors, & Suppliers***

When payment is received by a contractor for labor, services, or materials furnished by subcontractors and suppliers, payment is due to those subcontractors and suppliers within 10 days of receipt of payment from the local government entity.<sup>10</sup>

If a subcontractor utilizes sub-subcontractors and suppliers, payment to those parties is due within 7 days of the subcontractor receiving payment.<sup>11</sup> Under s. 218.735(6), F.S., contractors and subcontractors are entitled to dispute invoices so long as the payment rejection is in writing. The actions required to rectify the dispute must be included in the rejection. However, any undisputed amounts are required to be paid within the outlined time limits.

### ***Penalties for Late Payment***

Under the Local Government Prompt Payment Act, if payment for construction services is late or wrongfully withheld, statutorily imposed interest will accrue at a rate of 1 percent per month, or a greater rate specified by contract, until the debt is paid. Attorney fees and court costs are only available to disputes between contractors, subcontractors, and suppliers. They will only be awarded if payments were withheld without any reasonable basis in law or fact.<sup>12</sup>

### **Prompt Payment Act for State Construction Projects**

Sections 255.0705 - 255.078, F.S., are known as the Florida Prompt Payment Act. This act governs the timely payment for construction services by the state or any agency thereof (public

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<sup>7</sup> Section 218.72(1), F.S.

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

<sup>9</sup> Section 218.735(3), F.S.

<sup>10</sup> Section 218.735(6), F.S.

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

<sup>12</sup> Section 218.735(6), F.S.

entity).<sup>13</sup> This act also governs payments made by contractors to subcontractors and suppliers when the construction services are in connection with a public entity construction project.

#### ***Payment Deadline for Public Entity to Contractor***

For public entities contracting with a prime contractor, the payment process starts when a contractor submits a pay application to the public entity. The public entity must submit the contractor's request to the Chief Financial Officer within 20 days of receiving the payment application. Upon receipt, the payment officer performs an inspection of the construction services claimed by the payment application. The payment officer must approve or deny the payment application within 10 days. Under these provisions, payment to a contractor who properly performs construction services is due within 30 days after the payment application is submitted.<sup>14</sup>

#### ***Payment Deadline for Contractor to Subcontractors and Suppliers***

Prime contractors typically do not have to pay other parties involved in a public construction project until the public entity has paid the prime contractor.<sup>15</sup> Subcontractors and suppliers are entitled to receive payment from a prime contractor once all the necessary lien waivers and payment applications have been submitted to the prime contractor. After these prerequisites are fulfilled, the prime contractor must release undisputed payments within 30 days after the labor or materials were provided, or 10 days from receipt of payment from the public entity, whichever is later.<sup>16</sup>

#### ***Penalties for Late Payment***

All payments due for the purchase of construction services under the Florida Prompt Payment Act and wrongfully withheld by a public entity or prime contractor bear statutorily imposed interest at the rate of 1 percent per month.<sup>17</sup>

#### **Prompt Payment Law for Private Construction Projects**

The payment procedures for private construction projects in Florida are described in chs. 713 and 715, F.S. Section 713.346, F.S., describes how persons are required to pay contract obligations for labor, services, or materials provided on account for constructing or altering permanent improvements to real property. Section 715.12, F.S., titled "Construction Contract Prompt Payment Law," specifically applies to written contracts to improve a real property for which a construction lien is authorized under Part I of ch. 713, F.S.

#### ***Payment Deadlines and Remedies***

Under s. 713.346, F.S., failure to pay any undisputed obligations for labor, services, or materials used in a private construction project within 30 days after payment became due or is received,

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<sup>13</sup> Section 255.073, F.S., defines "public entity" to mean the state, or any office, board, bureau, commission, department, branch, division, or institution thereof.

<sup>14</sup> Section 255.073-74, F.S.

<sup>15</sup> See *International Engineering Services Inc. v. Scherer Const. & Engineering of Cent. Florida, LLC*, 74 So.3d 531 (Fla. 5th DCA 2011); see also *Everett Painting Co., Inc. v. Padula & Wadsworth Const., Inc.*, 856 So.2d 1059 (Fla. DCA 4th 2003).

<sup>16</sup> Section 255.073(3), F.S.

<sup>17</sup> Section 255.073(4), F.S.

whichever last occurs, entitles the person providing such construction services to bring a verified complaint. Based on this complaint and an evidentiary hearing, the court may award either party an accounting of the payment, an injunction, prejudgment attachment, and any other appropriate legal and equitable remedy.

Under s. 715.12, F.S., an obligee<sup>18</sup> is entitled to payment for construction services as described by the terms of a contract, and when all the following events have occurred:

- The obligee has furnished the obligor<sup>19</sup> with a written request for payment.
- The obligor, except the owner of the real property, immediately above the obligee in the chain of contracts has been paid for the obligee's labor, services, or materials.
- The obligee has furnished the obligor with all affidavits or waivers required for the owner to make proper payments under s. 713.06, F.S.<sup>20</sup>

### ***Penalties for Late Payment***

Any payment due under the provisions of s. 715.12, F.S., excluding any amounts withheld pursuant to a good faith dispute, bears interest at the rate specified in s. 55.03 F.S., computed beginning on the fourteenth day after payment is due.

A party can withhold payment for reasons specified in s. 713.346 and s. 715.12, F.S. If none of the exceptions apply, any late or wrongfully withheld payments will be subject to interest accruing at the current judgment rate or a rate specified in the contract, whichever is greater.<sup>21</sup> If the dispute goes to court, the prevailing party will be awarded attorney fees.<sup>22</sup>

### **Construction Industry Licensing Board**

Florida regulates construction contracting under Part I of ch. 489, F.S. Florida establishes the Construction Industry Licensing Board ("CILB") under s. 489.107, F.S., to oversee the licensing and various regulations for the Florida construction industry. When applying for a construction license, the CILB will meet to consider the application. The CILB also reviews disciplinary cases and conducts informal hearings regarding licensure.<sup>23</sup>

### ***Disciplinary Action***

The CILB is authorized to take disciplinary actions upon finding that a licensee has violated Florida construction industry regulations. The CILB may suspend the license holder from all operations as a contractor, revoke a license, or place the license holder on probation. Furthermore, the CILB may attach conditions to any disciplinary action taken, which in the sound discretion of the CILB are deemed appropriate disciplinary measures based on the factual circumstances.<sup>24</sup>

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<sup>18</sup> Section 715.12(3)(b), F.S., defines "obligee" to mean a contractor, subcontractor, sub-subcontractor, or materialman who is entitled to receive payments under a contract that is subject to the Prompt Payment Law.

<sup>19</sup> Section 715.12(3)(a), F.S., defines "obligor" to mean an owner, contractor, subcontractor, or sub-subcontractor who has an obligation to make payments under a contract that is subject to the Prompt Payment Law.

<sup>20</sup> Section 715.12(4), F.S.

<sup>21</sup> Section 715.12(5)(a), F.S.

<sup>22</sup> Section 713.346(7), F.S.

<sup>23</sup> Section 489.129, F.S.

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

During Fiscal Year 2019-2020, the CILB received 8,128 complaints of which 1,950 received a finding of probable cause by the CILB or the Department of Business and Professional Regulation (Department) in instances delegated by the CILB).<sup>25</sup> Also, during this time frame, the CILB received \$139,512 in unlicensed activity fees, \$111,520 in administrative fines, and \$17,163 in citations.<sup>26</sup>

### **Misapplication of Construction Funds**

Section 713.345, F.S., provides that the misapplication of construction funds is a crime in Florida. This statute only imposes criminal liability on those who misuse construction project funds and does not impose any fiduciary relationship between parties in contractual relationships for construction, and is not a civil cause of action.

The statute provides that “any person who receives payments for the improvement of real property must apply such portion of any payments to the payment of all amounts then due and owing for services and labor performed.” However, this provision “does not prevent any person from withholding any payment, or any part of a payment, in accordance with the terms of a contract for services, labor, or materials, or pursuant to a bona fide dispute regarding the amount due, if any, for such services, labor, or materials.”

Section 713.345, F.S., continues to state that “any person who knowingly and intentionally fails to comply with paragraph (a) [the proper payment of accounts due and owing] is guilty of misapplication of construction funds[.]” Thus, to be criminally convicted for misapplication of construction funds, there are two relevant elements:

- The party must complete a “wrongful application of funds” in violation of a contract and not regarding a bona fide dispute about the amount due; and
- The party must act “knowingly and intentionally.”<sup>27</sup>

Acting “knowingly and intentionally” will be presumed when there is a valid lien recorded against the property, the defendant who contracted with the claimant (injured party) received enough funds to pay the claimant, and the defendant failed to pay the claimant for at least 45 days from receipt of the funds. Notwithstanding, a party may still be found guilty if there is sufficient evidence to prove that the misapplication of funds was intentional.

Section 713.345(1)(d), F.S., requires a state attorney or the statewide prosecutor, upon filing an indictment or information against a contractor, subcontractor, or sub-subcontractor which charges such person with misapplication of construction funds to provide a copy of the indictment or information to the Department. The Department must promptly open an investigation to the matter and, if probable cause is found, shall furnish a copy of any investigative report to the state attorney or statewide prosecutor who furnished a copy of the indictment or information and to the owner of the property which is the subject of the investigation.

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<sup>25</sup> Florida Department of Business and Professional Regulation 2019-2020 Annual Report, p. 89, available at: <http://www.myfloridalicense.com/dbpr/reg/documents/ULA%20Report%20FY19-20.pdf> (last visited February 8, 2021).

<sup>26</sup> *Id.* at p. 55.

<sup>27</sup> See *Weber v. State*, 649 So.2d 253 (Fla. 2nd DCA 1994).

### *Criminal Penalties*

Persons convicted for misapplication of construction funds may be subject to different criminal penalties depending on the amount of money that was misapplied. If the amount of payments misapplied total \$100,000 or more, the individual is guilty of a first-degree felony, which is punishable by up to 30 years in state prison, and could be fined as much as \$10,000. If the total amount of misapplied payments are less than \$100,000, but greater than \$1,000, the crime is a second-degree felony, which is punishable by up to 15 years in prison and \$10,000 in fines. Lastly, if the amount of payments misapplied are less than \$1,000, it is a third-degree felony, which is punishable by up to 5 years in prison and a maximum fine of \$5,000.

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

**Section 1** amends s. 218.735 F.S., to increase the interest rate from one percent per month to two percent per month that applies to all payments due and not made within the specified time periods by a local governmental entity, its agent, or a contractor for construction services on a local government project.

**Section 2** amends s. 255.071 F.S., to specify that a party who receives payment from the state or any agency thereof for a construction project and knowingly and intentionally fails to pay the undisputed contract obligations to another party for labor, services, or material commits misapplication of construction funds as provided in s. 713.345, F.S.

**Section 3** amends s. 255.073 F.S., to increase the interest rate from one percent per month to two percent per month that applies to all payments due and not made within the specified time periods by a public entity, its agent or a contractor for construction services on a state government project

**Section 4** amends s. 489.129 F.S., to provide that the Construction Industry Licensing Board (“CILB”) may take disciplinary actions against a licensee for committing misapplication of construction funds in violation of s. 713.345. Under the bill, the board must also suspend all licenses of persons convicted of misapplication of construction funds for a minimum of 1 year from the date of conviction.

**Section 5** amends s. 713.345 F.S., to provide that persons convicted of misapplication of construction funds are subject to discipline by the Construction Industry Licensing Board.

**Section 6** amends s. 713.346 F.S., to specify that a party who knowingly and intentionally fails to pay the undisputed contract obligations to another party for construction labor, services, or material commits misapplication of construction funds as provided in s. 713.345, F.S.

**Section 7** amends s. 715.12 F.S., to increase the interest rate specified in s. 55.03, F.S., by twelve percent per annum, which will apply to late payment amounts for construction labor, services, or material for private sector construction projects.

**Section 8** reenacts s. 218.76 F.S., to incorporate the amendment made to s. 218.735, F.S.

**Section 9** reenacts s. 255.075 F.S., to incorporate the amendment made to s. 255.073, F.S.

**Section 10** provides that the bill applies to contracts executed on or after July 1, 2021.

**Section 11** provides that the bill takes effect July 1, 2021.

**IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides, in relevant part, that: “No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: the law requiring such expenditure is approved by two-thirds vote of the membership of each house of the legislature; [or] . . . the expenditure is required to comply with a law that applies to all persons similarly situated, including the state and local governments....”

If the increase in the interest rate due on late payments by counties and municipalities is deemed to be “requiring” an expenditure under the mandates provision, the legislature may want to consider adding a legislative finding that the bill fulfills an important state interest to ensure the increased interest rate on late payments is binding upon counties and municipalities. As drafted, the bill applies to all persons similarly situated (governmental entities contracting for construction services), including state agencies, school boards, community colleges, 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:

None.



**B. Private Sector Impact:**

The increased interest rates applied to unpaid contractual obligations for construction labor, services, and materials may have a negative fiscal impact for prime contractors and a positive fiscal impact for subcontractors and parties lower in the chain of contracts.

**C. Government Sector Impact:**

The increased interest rate proposed by the bill may cause state and local governmental entities to incur additional costs associated with unpaid contractual obligations for construction services.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 218.735, 255.071, 255.073, 489.129, 713.345, 713.346, 715.12, 218.76, and 255.075.

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

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

**CS by Governmental Oversight and Accountability on February 17, 2021:**

The CS increases the percentage to be added to the interest rate specified in s. 55.03, F.S., from “plus 1 percent” to “plus 12 percent per annum” under the private construction prompt payment provisions. This change matches the increase in interest in the governmental prompt payment provision in the bill and the per annum basis is consistent with how the interest rate in s. 55.03, F.S., is calculated.

**B. Amendments:**

None.



619058

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/17/2021	.	
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	.	
	.	

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

**Senate Amendment**

Delete lines 155 - 171  
and insert:

(5) (a) Any payment due under the provisions of subsection  
(4), excluding any amounts withheld pursuant to subsection (7),  
shall bear interest at the rate specified in s. 55.03 plus an  
additional 12 percent per annum computed beginning on the 14th  
day after payment is due pursuant to subsection (4).

(6) (a) The right to receive interest on a payment under



619058

11 this section is not an exclusive remedy. This section does not  
12 modify the remedies available to any person under the terms of a  
13 contract or under any other statute. This section does not  
14 modify the rights of any person to recover prejudgment interest  
15 awarded to the prevailing party in any civil action or  
16 arbitration case. During the period that interest accrues under  
17 this section, the interest rate shall be the rate specified in  
18 s. 55.03 plus an additional 12 percent per annum or the rate  
19 specified in the contract, whichever is greater. A person shall  
20 not be entitled to receive both the contract interest and the  
21 statutory interest specified in this section.

By Senator Bradley

5-00387D-21

2021378\_\_

1 A bill to be entitled  
 2 An act relating to payment for construction services;  
 3 amending s. 218.735, F.S.; increasing the interest  
 4 rate for certain payments for purchases of  
 5 construction services; amending s. 255.071, F.S.;  
 6 specifying that a person, firm, or corporation who  
 7 fails to make certain payments relating to public  
 8 projects commits a misapplication of constructions  
 9 funds and is subject to criminal penalties; amending  
 10 s. 255.073, F.S.; increasing the interest rate for  
 11 overdue payments for the purchase of construction  
 12 services; amending s. 489.129, F.S.; expanding the  
 13 list of actions for which a licensee may be  
 14 disciplined by the Construction Industry Licensing  
 15 Board; requiring the board to suspend certain licenses  
 16 for a minimum period of time under certain  
 17 circumstances; providing construction; amending s.  
 18 713.345, F.S.; specifying that a contractor,  
 19 subcontractor, sub-subcontractor, or other person  
 20 licensed under ch. 489, F.S., is subject to certain  
 21 discipline if convicted of misapplication of  
 22 construction funds; amending s. 713.346, F.S.;  
 23 specifying that a person, firm, or corporation who  
 24 fails to make certain payments relating to  
 25 construction contracts commits a misapplication of  
 26 constructions funds and is subject to criminal  
 27 penalties; amending s. 715.12, F.S.; increasing the  
 28 interest rate for certain payments due under the  
 29 Construction Contract Prompt Payment Law; conforming a

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30 provision to changes made by the act; reenacting s.  
 31 218.76(2)(b), F.S., relating to improper payment  
 32 requests or invoices, to incorporate the amendment  
 33 made by this act to s. 218.735, F.S., in a reference  
 34 thereto; reenacting s. 255.075, F.S., relating to  
 35 mandatory interest, to incorporate the amendment made  
 36 by this act to s. 255.073, F.S., in a reference  
 37 thereto; providing applicability; providing an  
 38 effective date.  
 39  
 40 Be It Enacted by the Legislature of the State of Florida:  
 41  
 42 Section 1. Subsection (9) of section 218.735, Florida  
 43 Statutes, is amended to read:  
 44 218.735 Timely payment for purchases of construction  
 45 services.—  
 46 (9) All payments due under this section and not made within  
 47 the time periods specified by this section shall bear interest  
 48 at the rate of 2 ~~1~~ percent per month, or the rate specified by  
 49 contract, whichever is greater.  
 50 Section 2. Subsection (1) of section 255.071, Florida  
 51 Statutes, is amended to read:  
 52 255.071 Payment of subcontractors, sub-subcontractors,  
 53 materialmen, and suppliers on construction contracts for public  
 54 projects.—  
 55 (1) Any person, firm, or corporation who receives a payment  
 56 from the state or any county, city, or political subdivision of  
 57 the state, or other public authority, for the construction of a  
 58 public building, for the prosecution and completion of a public

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59 work, or for repairs upon a public building or public work shall  
60 pay, in accordance with the contract terms, the undisputed  
61 contract obligations for labor, services, or materials provided  
62 on account of such improvements. A person, firm, or corporation  
63 who knowingly and intentionally fails to make the payment  
64 required under this subsection commits a misapplication of  
65 construction funds, punishable as provided in s. 713.345.

66 Section 3. Subsection (4) of section 255.073, Florida  
67 Statutes, is amended to read:

68 255.073 Timely payment for purchases of construction  
69 services.—

70 (4) All payments due for the purchase of construction  
71 services and not made within the applicable time limits shall  
72 bear interest at the rate of 2 ~~specified in s. 215.422. After~~  
73 ~~July 1, 2006, such payments shall bear interest at the rate of 1~~  
74 ~~percent per month, to the extent that the Chief Financial~~  
75 ~~Officer's replacement project for the state's accounting and~~  
76 ~~cash management systems is operational for the particular~~  
77 ~~affected public entity. After January 1, 2007, all such payments~~  
78 ~~due from public entity shall bear interest at the rate of 1~~  
79 ~~percent per month.~~

80 Section 4. Paragraph (r) is added to subsection (1) of  
81 section 489.129, Florida Statutes, to read:

82 489.129 Disciplinary proceedings.—

83 (1) The board may take any of the following actions against  
84 any certificateholder or registrant: place on probation or  
85 reprimand the licensee, revoke, suspend, or deny the issuance or  
86 renewal of the certificate or registration, require financial  
87 restitution to a consumer for financial harm directly related to

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88 a violation of a provision of this part, impose an  
89 administrative fine not to exceed \$10,000 per violation, require  
90 continuing education, or assess costs associated with  
91 investigation and prosecution, if the contractor, financially  
92 responsible officer, or business organization for which the  
93 contractor is a primary qualifying agent, a financially  
94 responsible officer, or a secondary qualifying agent responsible  
95 under s. 489.1195 is found guilty of any of the following acts:

96 (r) Committing misapplication of construction funds in  
97 violation of s. 713.345. If a contractor, subcontractor, sub-  
98 subcontractor, or other person licensed by the board under this  
99 chapter is convicted of misapplication of construction funds,  
100 the board must suspend all licenses issued to such licensee  
101 under this chapter for a minimum of 1 year from the date of  
102 conviction. The suspension required under this paragraph is not  
103 exclusive, and the board may impose any additional penalties set  
104 forth in this subsection.

105  
106 For the purposes of this subsection, construction is considered  
107 to be commenced when the contract is executed and the contractor  
108 has accepted funds from the customer or lender. A contractor  
109 does not commit a violation of this subsection when the  
110 contractor relies on a building code interpretation rendered by  
111 a building official or person authorized by s. 553.80 to enforce  
112 the building code, absent a finding of fraud or deceit in the  
113 practice of contracting, or gross negligence, repeated  
114 negligence, or negligence resulting in a significant danger to  
115 life or property on the part of the building official, in a  
116 proceeding under chapter 120.

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117 Section 5. Paragraph (e) is added to subsection (1) of  
118 section 713.345, Florida Statutes, to read:

119 713.345 Moneys received for real property improvements;  
120 penalty for misapplication.—

121 (1)

122 (e) If a contractor, subcontractor, sub-subcontractor, or  
123 other person who is licensed under chapter 489 is convicted of  
124 misapplication of construction funds under this section, the  
125 licensee is subject to discipline under s. 489.129(1)(r).

126 Section 6. Subsection (1) of section 713.346, Florida  
127 Statutes, is amended to read:

128 713.346 Payment on construction contracts.—

129 (1) Any person who receives a payment for constructing or  
130 altering permanent improvements to real property shall pay, in  
131 accordance with the contract terms, the undisputed contract  
132 obligations for labor, services, or materials provided on  
133 account of such improvements. A person, firm, or corporation who  
134 knowingly and intentionally fails to make the payment required  
135 under this subsection commits a misapplication of construction  
136 funds, punishable as provided in s. 713.345.

137 Section 7. Paragraph (a) of subsection (5) and paragraph  
138 (a) of subsection (6) of section 715.12, Florida Statutes, are  
139 amended, and subsections (4) and (7) of that section are  
140 republished, to read:

141 715.12 Construction Contract Prompt Payment Law.—

142 (4) An obligor must pay an obligee with whom the obligor  
143 has a contract when all of the following events have occurred:

144 (a) The obligee is entitled to a payment at the time and  
145 under the terms specified in the contract between the obligor

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146 and the obligee, and the obligee has furnished the obligor with  
147 a written request for payment; and

148 (b) The obligor, except an owner, has been paid for the  
149 obligee's labor, services, or materials described in the  
150 obligee's request for payment by the person immediately above  
151 the obligor in the chain of contracts; and

152 (c) The obligee has furnished the obligor with all  
153 affidavits or waivers required for the owner to make proper  
154 payments under s. 713.06.

155 (5) (a) Any payment due under the provisions of subsection  
156 (4), excluding any amounts withheld pursuant to subsection (7),  
157 shall bear interest at the rate specified in s. 55.03 plus 1  
158 percent, computed beginning on the 14th day after payment is due  
159 pursuant to subsection (4).

160 (6) (a) The right to receive interest on a payment under  
161 this section is not an exclusive remedy. This section does not  
162 modify the remedies available to any person under the terms of a  
163 contract or under any other statute. This section does not  
164 modify the rights of any person to recover prejudgment interest  
165 awarded to the prevailing party in any civil action or  
166 arbitration case. During the period that interest accrues under  
167 this section, the interest rate shall be the rate specified in  
168 s. 55.03 plus 1 percent or the rate specified in the contract,  
169 whichever is greater. A person shall not be entitled to receive  
170 both the contract interest and the statutory interest specified  
171 in this section.

172 (7) (a) An owner and a contractor may agree to a provision  
173 that allows the owner to withhold a portion of each progress  
174 payment until substantial completion of the entire project. The

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175 owner shall pay the contractor the balance of the contract  
176 price, including the amounts withheld from the progress  
177 payments, within 14 days after any of the following events  
178 occur.

179 1. Pursuant to the terms of the contract, an architect or  
180 engineer certifies that the project is substantially complete  
181 and, within the time provided in the contract between the owner  
182 and the contractor, the owner submits a written punchlist to the  
183 contractor and the contractor substantially completes all of the  
184 items on the punchlist.

185 2. The issuance of a certificate of occupancy for the  
186 project, and within the time provided in the contract between  
187 the owner and the contractor, the owner submits a written  
188 punchlist to the contractor and the contractor substantially  
189 completes all of the items on the punchlist.

190 3. The owner or a tenant of the owner takes possession of  
191 the construction project and, within the time provided in the  
192 contract between the owner and the contractor, the owner submits  
193 a written punchlist to the contractor and the contractor  
194 substantially completes all of the items on the punchlist.

195  
196 Any funds retained by the owner beyond the time period specified  
197 in this subsection shall accrue interest at the rate specified  
198 in subsection (5), computed from the date the payment is due to  
199 the date the payment is received by the contractor. If the  
200 contract between the owner and the contractor does not provide a  
201 time period for the owner to submit a written punchlist to the  
202 contractor, the time period shall be 15 days from the issuance  
203 of the certificate of substantial completion, the issuance of

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204 the certificate of occupancy, or the date the owner or the  
205 owner's tenant takes possession of the project, whichever first  
206 occurs. If no written punchlist is given to the contractor  
207 within the time provided in this subsection, interest begins to  
208 accrue 14 days after the issuance of the certificate of  
209 substantial completion, the issuance of the certificate of  
210 occupancy, or the date the owner or the owner's tenant takes  
211 possession of the project, whichever first occurs. For  
212 construction projects that are to be built in phases, this  
213 subsection applies to each phase of the total project. The  
214 contract between the owner and the contractor may specify a  
215 shorter time period for disbursing all or any portion of the  
216 final payment and the retainage.

217 (b) Except as provided in paragraph (a), an obligor and  
218 obligee may agree to a provision that allows the obligor to  
219 withhold a portion of each progress payment until completion of  
220 the entire project. The amounts withheld shall bear interest 14  
221 days after payment of such amounts are due under the terms of  
222 the contract between the obligor and obligee and the other  
223 requirements of subsection (4) have been satisfied.

224 (c) An obligee may, from time to time, withdraw all or any  
225 portion of the amount retained from progress payments upon  
226 depositing with the obligor:

227 1. United States Treasury bonds, United States Treasury  
228 notes, United States Treasury certificates of indebtedness, or  
229 United States Treasury bills;

230 2. Bonds or notes of the State of Florida; or

231 3. Certificates of deposit, within the insured limits, from  
232 a state or national bank or state or federal savings and loan

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233 association authorized to do business in this state.  
 234

235 Amounts may not be withdrawn in excess of the market value of  
 236 the securities listed in subparagraphs 1., 2., and 3. at the  
 237 time of such withdrawal or in excess of the par value of such  
 238 securities, whichever is less. The obligee shall execute and  
 239 deliver all documents reasonably required to allow the obligor  
 240 to document the transfer and the obligee shall pay any recording  
 241 or registration costs incurred by the obligor in connection with  
 242 the transfer. The obligor shall pay the obligee any interest or  
 243 income earned on the securities so deposited within 30 days  
 244 after the date such interest or income is received by the  
 245 obligor. If the deposit is in the form of coupon bonds, the  
 246 obligor shall deliver each coupon to the obligee within 30 days  
 247 after the date the coupon matures. An obligee may withdraw funds  
 248 retained from progress payments only to the extent the obligor  
 249 has withdrawn such funds for the obligee's labor, services, or  
 250 materials from the person immediately above the obligor in the  
 251 chain of contracts.

252 Section 8. For the purpose of incorporating the amendment  
 253 made by this act to section 218.735, Florida Statutes, in a  
 254 reference thereto, paragraph (b) of subsection (2) of section  
 255 218.76, Florida Statutes, is reenacted to read:

256 218.76 Improper payment request or invoice; resolution of  
 257 disputes.—

258 (2)

259 (b) If the local governmental entity does not commence the  
 260 dispute resolution procedure within the time required, a  
 261 contractor may give written notice to the local governmental

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262 entity of the failure to timely commence its dispute resolution  
 263 procedure. If the local governmental entity fails to commence  
 264 the dispute resolution procedure within 4 business days after  
 265 such notice, any amounts resolved in the contractor's favor  
 266 shall bear mandatory interest, as set forth in s. 218.735(9),  
 267 from the date the payment request or invoice containing the  
 268 disputed amounts was submitted to the local governmental entity.  
 269 If the dispute resolution procedure is not commenced within 4  
 270 business days after the notice, the objection to the payment  
 271 request or invoice shall be deemed waived. The waiver of an  
 272 objection pursuant to this paragraph does not relieve a  
 273 contractor of its contractual obligations.

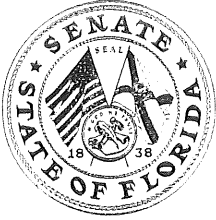
274 Section 9. For the purpose of incorporating the amendment  
 275 made by this act to section 255.073, Florida Statutes, in a  
 276 reference thereto, section 255.075, Florida Statutes, is  
 277 reenacted to read:

278 255.075 Mandatory interest.—A contract between a public  
 279 entity and a contractor may not prohibit the collection of late  
 280 payment interest charges authorized under s. 255.073(4).

281 Section 10. This act applies to contracts executed on or  
 282 after July 1, 2021.

283 Section 11. This act shall take effect July 1, 2021.





## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**SENATOR JENNIFER BRADLEY**  
5th District

**COMMITTEES:**  
Community Affairs, *Chair*  
Agriculture, *Vice Chair*  
Appropriations Subcommittee on Agriculture,  
Environment, and General Government  
Education  
Ethics and Elections  
Judiciary

**SELECT COMMITTEE:**  
Select Committee on Pandemic  
Preparedness and Response

**JOINT COMMITTEES:**  
Joint Legislative Auditing Committee  
Joint Select Committee on Collective Bargaining

January 27, 2021

Senator Senator Ray Wesley Rodrigues, Chairman  
Committee on Governmental Oversight and Accountability  
330 Knott Building  
404 South Monroe Street  
Tallahassee, FL 32399-1100

Dear Mr. Chairman:

I respectfully request that Senate Bill 378 be placed on the agenda of the Committee on Governmental Oversight and Accountability at your earliest convenience. The bill enhances the penalties associated with withholding payment for construction services.

Thank you for your consideration and please let me know if I can be of any assistance.

Sincerely,



Jennifer Bradley

cc: John McVaney  
Tamra Redig

**REPLY TO:**

- 1279 Kingsley Avenue, Kingsley Center, Suite 117, Orange Park, Florida 32073 (904) 278-2085
- 324 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5005

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

**WILTON SIMPSON**  
President of the Senate

**AARON BEAN**  
President Pro Tempore

# CourtSmart Tag Report

Room: LL 37

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 2/17/2021 9:01:16 AM

Ends: 2/17/2021 9:50:04 AM

Length: 00:48:49

9:01:18 AM Meeting called to order by Chair Rodrigues  
9:01:29 AM Roll Call by the Committee Administrative Assistant (CAA)  
9:01:35 AM Quorum is present  
9:01:59 AM Chair comments  
9:02:26 AM TAB 3 - SB 222 relating to Abandoned Cemeteries by Sen Cruz  
9:02:35 AM Sen Cruz explains bill  
9:03:49 AM No questions on bill  
9:03:54 AM Amendment 552312  
9:04:03 AM Sen Cruz explains amendment  
9:04:32 AM No questions on amendment  
9:04:52 AM No appearance cards on amendment  
9:05:02 AM No debate on amendment  
9:05:09 AM With no objections, amendment 552312 is adopted  
9:05:14 AM Back on bill as amended  
9:05:43 AM Barbara DeVane, FL NOW, waives in support  
9:06:03 AM No debate on bill  
9:06:06 AM Sen Cruz closes on SB 222  
9:06:51 AM Roll Call on CS/SB 222  
9:07:10 AM TAB 2 - CS/SB 166 relating to Public Records/Nonjudicial Record of the Arrest of a Minor by Sen Perry  
9:07:23 AM Sen Perry explains bill  
9:07:43 AM No questions on bill  
9:08:14 AM Speaker Nancy Lawther, Florida PTA, in support of the bill  
9:09:55 AM Diego Echeverri, Americans for Prosperity, waives in support  
9:10:15 AM Christian Minor, Florida Juvenile Justice Association, waives in support  
9:10:37 AM Senator Torres in debate on the bill  
9:11:13 AM Senator Perry closes on the bill  
9:11:46 AM Roll call on CS/SB 166  
9:12:10 AM Chair Rodrigues announces that SB 844 (Tab #4) by Sen Hooper will not be considered  
9:12:32 AM TAB 5 - SB 378 relating to Payment for Construction Services by Sen Bradley  
9:12:43 AM Sen Bradley explains bill  
9:14:19 AM Sen Stewart with questions  
9:14:39 AM Sen Bradley responds  
9:15:08 AM Sen Stewart with questions  
9:15:20 AM Staff Director responds  
9:15:59 AM No appearance forms for amendment  
9:16:23 AM No debate on amendment  
9:16:29 AM With no objections, amendment 619058 is adopted  
9:16:48 AM Back on bill as amended  
9:16:58 AM No appearance forms  
9:17:01 AM No debate  
9:17:04 AM Roll call on CS/SB 378  
9:17:23 AM TAB 1 - SB 220 relating to Public Records and Public Meetings by Senator Brandes  
9:17:31 AM Sen Brandes explains bill  
9:18:07 AM No questions on the bill  
9:18:12 AM Amendment 402426  
9:18:20 AM Sen Brandes explains amendment  
9:18:34 AM No questions on amendment  
9:18:59 AM No appearance for amendment  
9:19:08 AM No debate  
9:19:13 AM With no objections, amendment 402426 is adopted  
9:19:18 AM Back on bill as amended  
9:19:28 AM Sen Torres with questions

**9:19:48 AM** Sen Brandes responds  
**9:21:03 AM** Sen Torres with questions  
**9:21:10 AM** Sen Brandes responds  
**9:22:01 AM** Sen Torres with questions  
**9:22:20 AM** Sen Brandes responds  
**9:23:45 AM** Sen Torres with questions  
**9:24:00 AM** Sen Brandes responds  
**9:25:51 AM** Sen Stewart with questions  
**9:26:19 AM** Sen Brandes responds  
**9:26:59 AM** Sen Stewart with questions  
**9:27:09 AM** Sen Brandes responds  
**9:28:00 AM** Speaker Pamela Marsh with the First Amendment Foundation, speaks against the bill  
**9:30:53 AM** Speaker Matthew Lata with United Faculty of Florida, speaks against the bill  
**9:33:51 AM** Speaker Dr. Karen Morian with the United Faculty of Florida, speaks against the bill  
**9:36:04 AM** Speaker Dr. Rich Templin with Florida AFL-CIO, speaks against the bill  
**9:38:36 AM** Yale Olenick with the FEA waiving in opposition  
**9:39:24 AM** Speaker David Serdar  
**9:41:23 AM** Sen Torres in debate  
**9:43:07 AM** Vice Chair Gruters in debate  
**9:44:56 AM** Chair Rodrigues in debate  
**9:46:53 AM** Sen Brandes closes on bill  
**9:49:02 AM** Roll call on CS/SB 220  
**9:49:41 AM** Sen Gruters moves to adjourn  
**9:49:49 AM** Meeting is adjourned