

Tab 1	CS/SB 552 by CM, Hooper; (Similar to CS/H 01437) Public Records/Broadband Opportunity Program						
Tab 2	SB 946 by Grall; (Similar to CS/H 00911) Public Records/Department of State Electronically Filed Records						
338162	A	S	RCS	GO, Grall	Delete L.40 - 41:	03/29 01:30 PM	
Tab 3	SB 948 by Grall; (Similar to CS/H 00909) Records Electronically Filed with the Department of State						
Tab 4	SB 1094 by Martin; (Identical to H 00621) Death Benefits for Active Duty Servicemembers						
267962	A	S	RCS	GO, Martin	Delete L.72 - 76:	03/29 01:30 PM	
Tab 5	SB 1670 by Broxson (CO-INTRODUCERS) Calatayud, Albritton; Deferred Retirement Option Program						
Tab 6	SB 7000 by CF; (Identical to H 07037) OGSR/Current or Former Public Guardians						
Tab 7	SB 7004 by EN; (Identical to H 07003) OGSR/Written Valuations of Surplus Lands						
Tab 8	SB 7012 by CJ; (Identical to H 07031) OGSR/Victim of an Incident of Mass Violence						
Tab 9	SB 7020 by ED (CO-INTRODUCERS) Collins; (Similar to H 07033) Public Records/Mobile Suspicious Activity Reporting Tool						
683188	D	S	RCS	GO, Simon	Delete everything after	03/29 01:31 PM	
Tab 10	SB 7022 by ED (CO-INTRODUCERS) Collins; (Identical to H 07029) OGSR/Marjory Stoneman Douglas High School Public Safety Commission/Safe-school Officers						
Tab 11	SB 1708 by DiCeglie; (Similar to CS/H 01511) Cybersecurity						
793268	D	S	RCS	GO, DiCeglie	Delete everything after	03/29 01:31 PM	
Tab 12	CS/SB 346 by CA, DiCeglie; (Similar to CS/H 00383) Public Construction						
570730	D	S	RCS	GO, DiCeglie	Delete everything after	03/29 01:31 PM	
782452	AA	S	RCS	GO, DiCeglie	Delete L.79:	03/29 01:31 PM	

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Senator Avila, Chair
Senator Polsky, Vice Chair

MEETING DATE: Wednesday, March 29, 2023

TIME: 8:30—10:30 a.m.

PLACE: Mallory Horne Committee Room, 37 Senate Building

MEMBERS: Senator Avila, Chair; Senator Polsky, Vice Chair; Senators Albritton, Davis, Hooper, Rodriguez, Rouson, and Wright

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	CS/SB 552 Commerce and Tourism / Hooper (Similar CS/H 1437)	Public Records/Broadband Opportunity Program; Providing an exemption from public records requirements for certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under the Broadband Opportunity Program or pursuant to a federal broadband access grant program implemented by the department; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. CM 03/13/2023 Fav/CS GO 03/29/2023 Favorable RC	Favorable Yeas 8 Nays 0
2	SB 946 Grall (Similar CS/H 911)	Public Records/Department of State Electronically Filed Records; Providing an exemption from public records requirements for e-mail addresses and secure login credentials held by the Department of State relating to electronically filed records; defining the term "secure login credentials"; providing retroactive applicability; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity, etc. CM 03/13/2023 Favorable GO 03/29/2023 Fav/CS RC	Fav/CS Yeas 8 Nays 0
3	SB 948 Grall (Similar CS/H 909, Compare CS/H 911)	Records Electronically Filed with the Department of State; Authorizing the department to implement certain systems relating to electronically filed records; providing requirements and authorizations for the department relating to such systems, etc. CM 03/13/2023 Favorable GO 03/29/2023 Favorable RC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 29, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1094 Martin (Identical H 621)	Death Benefits for Active Duty Servicemembers; Revising the amount and conditions of payment of death benefits; requiring that payment be made to the beneficiary through the process set out by the Department of Military Affairs; requiring the department to request the Chief Financial Officer to draw a warrant for payment of benefits from the General Revenue Fund; removing provisions relating to an appropriation to the Department of Financial Services for payment of death benefits, etc. GO 03/29/2023 Fav/CS ATD AP	Fav/CS Yeas 8 Nays 0
5	SB 1670 Broxson	Deferred Retirement Option Program; Increasing the period of time for which specified instructional and administrative personnel may extend their participation in the Deferred Retirement Option Program, if such personnel enter the program before a specified date; providing a statement of important state interest, etc. GO 03/29/2023 Favorable AP	Favorable Yeas 8 Nays 0
6	SB 7000 Children, Families, and Elder Affairs (Identical H 7037)	OGSR/Current or Former Public Guardians; Amending a provision which provides an exemption from public records requirements for certain identifying and location information of current or former public guardians, employees with fiduciary responsibility, and the spouses and children thereof; defining terms; narrowing the scope of the public records exemption for current public guardians and employees with fiduciary responsibility and former public guardians and employees with fiduciary responsibility, respectively; removing the scheduled repeal date of the exemption, etc. GO 03/29/2023 Favorable RC	Favorable Yeas 8 Nays 0
7	SB 7004 Environment and Natural Resources (Identical H 7003)	OGSR/Written Valuations of Surplus Lands; Amending a provision which provides an exemption from public records requirements for written valuations of surplus lands, documents used to form or pertaining to such a valuation, and written offers to purchase surplus land held by a water management district; removing the scheduled repeal of the exemption, etc. GO 03/29/2023 Favorable RC	Favorable Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 29, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	SB 7012 Criminal Justice (Identical H 7031)	OGSR/Victim of an Incident of Mass Violence; Amending a provision which provides an exemption from public records requirements for the address of a victim of an incident of mass violence; removing the scheduled repeal of the exemption, etc. GO 03/29/2023 Favorable RC	Favorable Yeas 8 Nays 0
9	SB 7020 Education Pre-K -12 (Similar H 7033)	Public Records/Mobile Suspicious Activity Reporting Tool; Expanding exemptions from public records requirements for the identity of a reporting party and any information received through the mobile suspicious activity reporting tool to include such information held by the Department of Education; providing for future legislative review and repeal; providing statements of public necessity, etc. GO 03/29/2023 Fav/CS RC	Fav/CS Yeas 8 Nays 0
10	SB 7022 Education Pre-K -12 (Identical H 7029)	OGSR/Marjory Stoneman Douglas High School Public Safety Commission/Safe-school Officers; Amending a provision which provides an exemption from public meetings requirements for any portion of a meeting of the Marjory Stoneman Douglas High School Safety Commission at which exempt or confidential and exempt information is discussed; removing the scheduled repeal of the exemption; amending a provision relating to an exemption from public records requirements for information held by specified entities which could identify a safe-school officer; removing the scheduled repeal of the exemption, etc. GO 03/29/2023 Favorable RC	Favorable Yeas 8 Nays 0
11	SB 1708 DiCeglie (Similar CS/H 1511)	Cybersecurity; Citing this act as the "Florida Cyber Protection Act"; clarifying the powers, duties, and functions of the Florida Digital Service; revising the cost threshold of state agency information technology projects for which the Florida Digital Service must perform project oversight; requiring the Florida Digital Service to oversee the state data center; requiring a local government to report ransomware and cybersecurity incidents within a certain time period; providing a presumption against liability in connection with a cybersecurity incident for a county, municipality, or commercial entity that complies with certain requirements, etc. GO 03/29/2023 Fav/CS AEG AP RC	Fav/CS Yeas 8 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Governmental Oversight and Accountability

Wednesday, March 29, 2023, 8:30—10:30 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
12	CS/SB 346 Community Affairs / DiCeglie (Similar CS/H 383)	Public Construction; Requiring that a certain list include a dollar valuation, as reasonably determined by the contractor as a portion of the contract value, of the estimated cost to complete each item on the list; revising the timeframe within which proceedings must commence to resolve disputes between vendors and local governmental entities; requiring that undisputed portions of payment requests be paid within a specified timeframe; revising the conditions that require a public entity to pay or release amounts subject to certain disputes or claims, etc. CA 03/15/2023 Fav/CS GO 03/29/2023 Fav/CS RC	Fav/CS Yeas 7 Nays 1

TAB	OFFICE and APPOINTMENT (HOME CITY)	FOR TERM ENDING	COMMITTEE ACTION
Senate Confirmation Hearing: A public hearing will be held for consideration of the below-named executive appointments to the offices indicated.			
Secretary of State			
13	Byrd, Cord (Neptune Beach)	Pleasure of Governor	Recommend Confirm Yeas 8 Nays 0
Secretary of Management Services			
14	Allende, Pedro M. ()	Pleasure of Governor	Recommend Confirm Yeas 7 Nays 1
Director and Chief Judge, Division of Administrative Hearings			
15	Newman, Brian ()	Pleasure of Admin Commission	Recommend Confirm Yeas 8 Nays 0

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 552

INTRODUCER: Commerce and Tourism Committee and Senator Hooper

SUBJECT: Public Records/Broadband Opportunity Program

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Renner</u>	<u>McKay</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Limonos-Borja</u>	<u>McVane</u>	<u>GO</u>	<u>Favorable</u>
3.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 552 makes confidential and exempt from public record inspection and copying requirements certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity (department) under the Broadband Opportunity Program, or pursuant to a federal broadband access grant program implemented by the department.

The bill provides that that the exemption does not apply to the department's requirement to publish a description of proposed unserved areas to be served and proposed broadband Internet speeds of the areas to be served on the department's website.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill may have a minimal fiscal impact on the department for incurring costs related to the redaction of records in responding to public records requests.

The bill takes effect July 1, 2023.

II. Present Situation:

Access to Public Records - Generally

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

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

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

[a]ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

³ See Rule 1.48, *Rules and Manual of the Florida Senate*, (2022-2024) and Rule 14.1, *Rules of the Florida House of Representatives*, Edition 1, (2022-2024)

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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

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.⁹ 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.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

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

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. 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).

¹¹ *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).

¹² *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).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

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

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

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

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

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

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

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

Broadband Internet Deployment

High-speed broadband can be essential to innovation, economic opportunity, healthcare, and civic engagement.²⁷ Access to a sufficient internet connection has only grown more important during the COVID-19 pandemic, which required many Americans to connect to their family and friends, schooling, work, and even medical appointments over the internet.²⁸

Broadband internet is a high speed internet that is faster than dial-up access and is always on; in 2015, the Federal Communications Commission (FCC) defined broadband as 25/3 megabits per second (Mbps), i.e., 25 Mbps (download rate) and 3 Mbps (upload rate).²⁹ Consumers can receive Broadband internet through several different technologies, including a digital subscriber line (DSL), a cable modem, fiber, wireless, satellite, and broadband over power lines.³⁰

While Florida's urban areas are served at a fixed broadband coverage rate of 96 percent, its rural areas are served at a rate of 78.6 percent.³¹ This disparity is caused primarily by high per-unit construction costs required to build broadband infrastructure across larger swaths of rural geographic areas.³²

Florida's Office of Broadband

In 2020 the Legislature created the Florida Office of Broadband (Office) within the department.³³ The Office is tasked with developing, marketing, and promoting broadband Internet service in the state.³⁴

Specifically, the Office must:³⁵

- Create a strategic plan for increasing the availability and use of broadband Internet service in Florida which must incorporate federal broadband initiatives and also include a process to review and verify public input regarding transmission speeds and availability of broadband Internet service throughout the state;

²⁷ U.S. Federal Communications Commission (FCC), *2020 Broadband Deployment Report*, at 1 (April 24, 2020), <https://www.fcc.gov/reports-research/reports/broadband-progress-reports/2020-broadband-deployment-report> (last visited Mar. 23, 2023).

²⁸ FCC, *Emergency Broadband Benefit Report and Order*, at 2-3 (Feb. 26, 2021), <https://docs.fcc.gov/public/attachments/FCC-21-29A1.pdf> (last visited Mar. 23, 2023).

²⁹ Congressional Research Service (CRS), *State Broadband Initiatives: Selected State and Local Approaches as Potential Models for Federal Initiatives to Address the Digital Divide*, at 2-3 (Apr. 6, 2020), <https://crsreports.congress.gov/product/pdf/R/R46307> (last visited Mar. 23, 2023).

³⁰ CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 1 (Oct. 25, 2019), <https://fas.org/sgp/crs/misc/RL30719.pdf> (last visited Mar. 23, 2023).

³¹ FCC, *2021 Broadband Deployment Report*, at 58 (Jan. 19, 2021), <https://www.fcc.gov/document/fcc-annual-broadband-report-shows-digital-divide-rapidly-closing> (last visited March 10, 2023). For purposes of this data, "fixed broadband services" are measured at 25 megabits per second downstream and 3 megabits per second upstream.

³² National Telecommunications and Information Administration, American Broadband Initiative, *Milestones Report*, at 11 (Feb. 13, 2019), <https://www.ntia.doc.gov/report/2019/american-broadband-initiative-milestones-report> (last visited Mar. 23, 2023). See also CRS, *Broadband Internet Access and the Digital Divide: Federal Assistance Programs*, at 7.

³³ Chapter 2020-26, Laws of Fla.

³⁴ Section 288.9961(4), F.S. See also, Florida Department of Economic Opportunity, Office of Broadband, *About Us*, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited Mar. 23, 2023).

³⁵ Section 288.9961(4), F.S.

- Build local technology planning teams representing, among others, libraries, schools, colleges and universities, local health care providers, private businesses, community organizations, economic development organizations, local governments, tourism, parks and recreation, and agriculture in order to identify needs and resources to reduce barriers to the deployment of broadband Internet services;
- Encourage the use of broadband Internet service, especially in rural, unserved, and underserved areas of the state through grant programs;³⁶
- Monitor, participate in, and provide input in proceedings of the FCC and other federal agencies related to the geographic availability and deployment of broadband Internet service as necessary to ensure that Florida’s rural, unserved, and underserved areas are best positioned to benefit from federal and state broadband deployment programs; and
- Administer Florida’s Broadband Opportunity Program.

The department may apply for and accept federal grant funds, enter into necessary or useful contracts, and establish any committee or workgroup to further the above goals. Additionally, the department has rulemaking authority to implement sections 288.9961-288.9963, F.S., relating to the Office.³⁷

In November 2022, the Office received \$247.8 million from the U.S. Treasury for the Capital Projects Fund Broadband Infrastructure Program. The Office was also awarded \$2.4 million for their Digital Equity Planning Grant, and \$5 million for the BEAD 5-year action plan.³⁸

Broadband Opportunity Program

The Office administers the Broadband Opportunity Program to award grants in order to expand broadband Internet service to unserved areas of Florida.³⁹ Grant funds may not be used to provide broadband Internet service to a geographic area where broadband Internet is already deployed by at least one provider.⁴⁰ Applicants eligible for grant awards include corporations, limited liability companies, general partnerships, limited partnerships, political subdivisions, and Indian tribes.⁴¹ To operate the program, the Florida Legislature appropriated \$400 million in federally funded State and Local Fiscal Recovery Funds (SLERF) to increase Floridians’ access to reliable, affordable, and high-speed internet service.⁴²

An eligible applicant may submit a grant application to the Office which must include the following:

- A description of the project area;

³⁶ Section 288.9961(2)(f), F.S., defines the term “underserved” to mean a geographic area of this state in which there is no provider of broadband Internet service that offers a connection to the Internet with a capacity for transmission at a consistent speed of at least 100 Mbps downstream and at least 10 Mbps upstream. Section 288.9961(2)(g), F.S., defines the term “unserved” as a geographic area in which there is no broadband Internet service provider.

³⁷ Section 288.9961(5), F.S.

³⁸ Florida Department of Economic Opportunity, Office of Broadband, *About Us*, <https://floridajobs.org/community-planning-and-development/broadband/office-of-broadband> (last visited Mar. 23, 2023).

³⁹ Section 288.9962(1), F.S.

⁴⁰ Section 288.9962(2), F.S.

⁴¹ Section 288.9962(3), F.S.

⁴² Florida Department of Economic Opportunity, *Broadband Opportunity Program*, <https://www.floridajobs.org/community-planning-and-development/broadband/broadband-opportunity-program> (last visited March 10, 2023).

- A description of the kind and amount of broadband Internet service infrastructure that is proposed to be deployed;
- Evidence demonstrating the unserved nature of the project area;
- The number of households and businesses that would have access to broadband Internet service as a result of the grant;
- A list of significant community institutions that would benefit from the grant;
- The total cost of the project and the timeframe in which it would be completed;
- A list identifying sources of funding or in-kind contributions that would supplement any awarded grant; and
- Any other information required by the Office.⁴³

The Office must annually publish on its website the specific criteria and quantitative scoring system it will use to evaluate or rank grant applications.⁴⁴ Within 3 business days after the close of the grant application process, the Office must publish on its website, from each grant application submitted, the proposed unserved areas to be served as well as the proposed broadband Internet speeds of the areas to be served, and a service map of the proposed project areas.⁴⁵ For the 2023 grant cycle, the application window closed on December 9, 2022. The Office receive 110 applications⁴⁶ and made 58 awards⁴⁷ pursuant to the Program.

A broadband Internet service provider that provides existing service in or adjacent to a proposed project area may submit to the Office, within 45 days after publication of the information, a written challenge to an application.⁴⁸ The Office must evaluate each challenge and if the Office determines that the provider currently provides, has begun construction to provide, or commits to provide broadband Internet service in the proposed project area, the Office may not fund the challenged project.⁴⁹

III. Effect of Proposed Changes:

The bill creates a public record exemption for certain information relating to communications services locations, project proposals, and challenges submitted to the department under the Broadband Opportunity Program, or pursuant to a federal broadband access grant program implemented by the department.

Section 1 provides certain information is confidential and exempt if such information is not otherwise publicly available and the release of such information would reveal:

- The location or capacity of communications network facilities;

⁴³ Section 288.9962(5), F.S.

⁴⁴ Section 299.9962(6)(a), F.S.

⁴⁵ Section 288.9962(6)(b), F.S. *See also* Rule 73C-50.004(1), F.A.C.

⁴⁶ Florida DEO, *2022 Submitted Applications*, available at <https://www.floridajobs.org/community-planning-and-development/broadband/broadband-opportunity-program/2022-submitted-applications> (last visited Mar. 23, 2023).

⁴⁷ Florida DEO, *Broadband Opportunity Awards* (Feb. 3, 2023), available at https://www.floridajobs.org/docs/default-source/community-planning-development-and-services/broadband/bop-awards-2-2-2023.pdf?sfvrsn=a0ed56b0_2 (last visited Mar. 23, 2023).

⁴⁸ Section 288.9962(6)(c), F.S.

⁴⁹ Section 288.9962(6)(e), F.S.

- Communications network areas, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;
- The features, functions, and capabilities of communications network infrastructures and facilities;
- Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;
- Specific customer locations; or
- Sources of funding or in-kind contributions for a project.

Section 1 provides that that the exemption does not apply to the department's requirement to publish a description of proposed unserved areas to be served and proposed broadband Internet speeds of the areas to be served on the department's website.

The exemption is subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2028, unless the Legislature reenacts the exemption.

Section 2 provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that the disclosure of sensitive information relating to the location, capacity, features, functions, and security of communications services providers could result in the identification of vulnerabilities in such networks and allow a security breach that could damage the networks or disrupt the networks' safe and reliable operation, adversely impacting the public health and safety of the state.

Section 3 provides the bill takes effect July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill creates a new record exemption; 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. The bill creates a new public records exemption. Thus, the bill includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for information relating to communications services locations, project proposals, and challenges submitted to the department under the Broadband Opportunity Program. 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 will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on the department for incurring 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 substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

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

CS by Commerce and Tourism on March 13, 2023:

The amendment provides that information submitted to the department pursuant to a federal broadband access grant program is exempt from public records. The amendment further provides that the exemption does not apply to the department's requirement to publish a description of proposed unserved areas to be served and proposed broadband Internet speeds of the areas to be served on the department's website.

- B. **Amendments:**

None.

By the Committee on Commerce and Tourism; and Senator Hooper

577-02495-23

2023552c1

A bill to be entitled

An act relating to public records; amending s.

119.071, F.S.; providing an exemption from public records requirements for certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under the Broadband Opportunity Program or pursuant to a federal broadband access grant program implemented by the department; providing applicability; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

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

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

(1) AGENCY ADMINISTRATION.—

(h)1. Information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under s. 288.9962 or pursuant to a federal broadband access grant program implemented by the Department of Economic Opportunity is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution if such information is not otherwise publicly available and the release of such information would reveal:

Page 1 of 3

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

577-02495-23

2023552c1

a. The location or capacity of communications network facilities;

b. Communications network areas, including geographical maps indicating actual or proposed locations of network infrastructure or facilities;

c. The features, functions, and capabilities of communications network infrastructure and facilities;

d. Security, including cybersecurity, of the design, construction, and operation of the communications network and associated services and products;

e. Specific customer locations; or

f. Sources of funding or in-kind contributions for a project.

2. This exemption does not apply to any required functions of the department under s. 288.9962 relating to publishing a description of the proposed unserved areas to be served and the proposed broadband Internet speeds of the areas to be served as provided by the applicant and approved by the department.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that certain information relating to communications services locations, project proposals, and challenges submitted to the Department of Economic Opportunity under the Broadband Opportunity Program or pursuant to a federal broadband access grant program implemented by the department be made confidential and exempt from public records requirements. Such information

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577-02495-23

2023552c1

59 contains security information and proprietary business
60 information of communications services providers. The disclosure
61 of sensitive information relating to the location, capacity,
62 features, functions, and security of these networks could result
63 in the identification of vulnerabilities in such networks and
64 allow a security breach that could damage the networks or
65 disrupt the networks' safe and reliable operation, adversely
66 impacting the public health and safety of this state. Further,
67 the disclosure of such information would adversely affect the
68 business interests and compromise the network security of the
69 communications services providers and their networks. Therefore,
70 the Legislature finds that it is a public necessity that certain
71 information relating to communications services locations,
72 project proposals, and challenges submitted to the Department of
73 Economic Opportunity under the Broadband Opportunity Program or
74 pursuant to a federal broadband access grant program implemented
75 by the department be held confidential and exempt from
76 disclosure under s. 119.07(1), Florida Statutes, and s. 24(a),
77 Article I of the State Constitution.

78 Section 3. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 20, 2023

I respectfully request that **Senate Bill # 552**, relating to Public Records/Broadband Opportunity Program, 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", is written over a horizontal line.

Senator Ed Hooper
Florida Senate, District 21

The Florida Senate

APPEARANCE RECORD

SB 552

3/29/23

Meeting Date

Bill Number or Topic

S. Gov. Oversight +

Deliver both copies of this form to
Senate professional staff conducting the meeting

Committee Accountability

Amendment Barcode (if applicable)

Name Charlie Dudley

Phone 850 508 9091

Address 108 S. Monroe St.
Street

Email cdudley@flapartners.com

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Internet + Television

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 946

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Grall

SUBJECT: Public Records/Department of State Electronically Filed Records

DATE: March 30, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Baird</u>	<u>McKay</u>	<u>CM</u>	Favorable
2.	<u>Limonas-Borja</u>	<u>McVane</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 946 exempts from public record inspection and copying requirements email addresses collected by the Department of State (DOS) for the purposes of its electronic filing system. This exemption applies to email addresses collected before, on, and after the effective date on the bill.

The bill also exempts from public record inspection and copying requirements secure login credentials held by the DOS for the purposes of its electronic filing system. This exemption applies to login credentials held by the DOS before, on, and after the effective date of the bill.

The public record exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution.

The bill creates a new public records exemption and, therefore, requires a two-thirds vote of the members present and voting for final passage.

The bill may have a minimal fiscal impact on DOS relating to the workload necessary for the redaction of records in responding to public records requests.

The bill takes effect upon becoming law.

II. Present Situation:

Access to Public Records - Generally

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

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

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

[a]ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

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

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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

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.⁹ 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.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

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

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. 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).

¹¹ *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).

¹² *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).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

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

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

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

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

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

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

Documents Filed with the Department of State

The Department of State (DOS) is the state's central location responsible for receiving and maintaining a number of documents as required by statute, such as service of process for legal

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

proceedings,²⁷ articles of incorporation,²⁸ and registration of fictitious names.²⁹ The DOS may require electronic submission of records³⁰ that it receives and files pursuant to 15 different statutory chapters.³¹

Public Access to the Department of State Filing Data

All files maintained electronically by the Division of Corporations (Division) may be accessed through its website.³² Records available through this website are easily accessible and searchable, including filed records of business entities, trademarks, fictitious names, federal liens, substitute service of process, notaries, and cable franchises. The public may access and search specific records filed and maintained as required by various statutes listed in s. 15.16(3), F.S.

III. Effect of Proposed Changes:

Section 1 provides that email addresses collected by the DOS pursuant to s. 15.16, F.S., are exempt from public disclosure. This exemption applies to email addresses held by the DOS before, on, or after the effective date of the exemption.

The section further provides that secure login credentials held by the DOS for the purpose of allowing a person to electronically file records under s. 15.16, F.S., are exempt from public disclosure. The exemption applies to secure login credentials held by the DOS before, on, or after the effective date of the exemption. The term “secure login credentials” means information held by the DOS for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

The bill is subject to the Open Government Sunset Review Act and will be automatically repealed on October 2, 2028, unless the Legislature reenacts the exemption.

Section 2 provides a public necessity statement as required by article I, section 24(c) of the Florida Constitution. The public necessity statement provides that the unintentional publication of e-mail addresses or secure login credentials held by the DOS may subject the filer to identity theft, financial harm, or other adverse impacts. Without the public records exemption, the effective and efficient administration of the electronic filing system, which is otherwise designed to increase the ease of filing records, would be hindered.

Section 3 provides the bill takes effect upon becoming law.

²⁷ See, e.g., ss. 48.061, 48.062, 48.181, F.S.

²⁸ Section 607.0203, F.S.

²⁹ Section 865.09, F.S.

³⁰ Section 15.16(3), F.S.

³¹ Chs. 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, 713, 865, F.S.

³² Department of State, *Division of Corporations*, available at <https://www.dos.myflorida.com/sunbiz> (last visited March 29, 2023).

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

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

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

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The bill creates a public record exemption for email addresses and secure login credentials held by the DOS for purposes of the electronic filing system. 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 will be subject to the cost, to the extent imposed, associated with making the redactions in response to a public record request.

C. Government Sector Impact:

The bill may have a minimal fiscal impact on the DOS for workload 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 substantially section 15.16 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 29, 2023:

The committee substitute provides that the exemption for e-mail addresses held by the DOS applies before, on, or after the effective date.

B. Amendments:

None.



338162

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2023	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 40 - 41
and insert:
24(a), Art. I of the State Constitution. This exemption applies
to e-mail addresses held by the Department of State before, on,
or after the effective date of this act.

By Senator Grall

29-01981-23

2023946__

A bill to be entitled

An act relating to public records; amending s. 15.16, F.S.; providing an exemption from public records requirements for e-mail addresses and secure login credentials held by the Department of State relating to electronically filed records; defining the term "secure login credentials"; providing retroactive applicability; providing for future legislative review and repeal of the exemptions; providing a statement of public necessity; providing an effective date.

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

Section 1. Subsection (3) of section 15.16, Florida Statutes, as amended by chapter 2022-190, Laws of Florida, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) (a) The Department of State may cause to be received electronically any records that are required or authorized to be filed with it pursuant to chapter 48, chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5) (b). The receipt of such electronic transfer constitutes delivery to the

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29-01981-23

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department as required by law. The department may use electronic transmissions for purposes of notice in the administration of chapters 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

(b)1. E-mail addresses collected by the Department of State pursuant to this subsection are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies retroactively.

2. Secure login credentials held by the Department of State for the purpose of allowing a person to electronically file records under this subsection are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption applies to secure login credentials held by the Department of State before, on, or after the effective date of the exemption. For purposes of this subparagraph, the term "secure login credentials" means information held by the department for purposes of authenticating a user logging into a user account on a computer, a computer system, a computer network, or an electronic device; an online user account accessible over the Internet, whether through a mobile device, a website, or any other electronic means; or information used for authentication or password recovery.

3. This paragraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028, unless reviewed and saved from repeal

Page 2 of 3

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29-01981-23

2023946__

59 through reenactment by the Legislature.

60 Section 2. The Legislature finds that it is a public
61 necessity that all e-mail addresses and secure login credentials
62 held by the Department of State relating to electronically filed
63 records be exempt from public records requirements. The
64 Legislature finds that the unintentional publication of such
65 information may subject the filer to identity theft, financial
66 harm, or other adverse impacts. Without the public records
67 exemption, the effective and efficient administration of the
68 electronic filing system, which is otherwise designed to
69 increase the ease of filing records, would be hindered. For
70 these reasons, the Legislature finds that it is a public
71 necessity to exempt such information from public records
72 requirements.

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



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 16, 2023

I respectfully request that **Senate Bill #946**, relating to Public Records/Department of State Electronically Filed Records, be placed on the:

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

A handwritten signature in blue ink that reads "Erin K. Grall".

Senator Erin Grall
Florida Senate, District 29

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 948

INTRODUCER: Senator Grall

SUBJECT: Records Electronically Filed with the Department of State

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Baird	McKay	CM	Favorable
2.	Limonas-Borja	McVane	GO	Favorable
3.			RC	

I. Summary:

SB 948 authorizes the Department of State (DOS) to implement a password protected system for the electronic filing of certain records. The bill also authorizes the DOS to require filers to produce supplemental materials to use such system. If the DOS implements such system, the bill requires DOS to send each e-mail address on file with the Division of Corporations on January 1, 2024, a code to participate in the system.

This bill takes effect July 1, 2023.

II. Present Situation:

Documents Filed with the Department of State

The DOS is the state's central location responsible for receiving and maintaining a number of documents as required by statute, such as service of process for legal proceedings,¹ articles of incorporation,² and registration of fictitious names.³ In receiving and filing required records under 15 different statutory chapters, the DOS may provide that such documents be submitted electronically.⁴ The following are brief, non-exhaustive descriptions of the 15 chapters and examples of documents required to be filed with the DOS:

- Chapter 48, Process and service of process: substitute service of process on general partnerships, limited liability companies, and non-residents doing business in Florida;⁵

¹ See, e.g., ss. 48.061, 48.062, 48.181, F.S.

² Section 607.0203, F.S.

³ Section 865.09, F.S.

⁴ Section 15.16(3), F.S.

⁵ Sections 48.061(2), 48.062(3), 48.081(1), and 48.181, F.S.

- Chapter 55, Judgments: judgement lien certificates necessary to perfect a lien in a judgment debtor's interest in personal property;⁶
- Chapters 117 and 118: requires that DOS maintain applications, proof of identity, and registrations for Notaries Public and international notaries;⁷
- Chapter 495, Registration and protection of trademarks: registration of marks, which include any trademarks, service mark, certification mark, or collective mark;⁸
- Chapter 605, Florida revised limited liability company act: limited liability companies (LLC) file with DOS a registration with their name, registered agent, and registered office location;⁹
- Chapter 606, Business coordination: DOS creates a master business index and directory of business activity;¹⁰
- Chapter 607, Florida business corporation act: corporations file their articles of incorporation, changes to their registered office or registered agent, and must file an annual report, among other documents;¹¹
- Chapter 610, Cable and video services: applicants file a "certificate of franchise authority" containing an official name, a principal place of business, and the federal employer identification number;¹²
- Chapter 617, Corporations not for profit: requires not for profit corporations to file with DOS their articles of incorporation, changes to their registered office or registered agent, and must file an annual report, among other documents;¹³
- Chapter 620, Partnership laws: limited partnerships must file a certificate of limited partnership with DOS containing the name of the limited partnership, the address, and the business address of each general partner¹⁴ as well as an annual report, among other documents.¹⁵ General partnerships must file a partnership registration statement and an annual report, among other documents;¹⁶
- Chapter 621, Professional services corporations and limited liability corporations: in addition to filing documents as may be required under ch. 605 or ch. 607, F.S., a professional corporation or limited liability company may change the purpose of rendering a professional service by filing an amendment of its certificate of organization;¹⁷
- Chapter 679, Uniform commercial code: secured transactions: requires filing of certain financing statements with DOS in order to perfect a lien in different types of personal property and for DOS to retain authority and approve forms required to be filed under the "Florida Secured Transaction Registry;"¹⁸

⁶ Section 55.202(2)(a), F.S.

⁷ Sections 117.01(2), 117.05(1), 117.225(4), F.S. *See also* s. 118.10, F.S.

⁸ Section 495.031(2), F.S.

⁹ Sections 605.0112(5), 605.113(4), and 605.113(5), F.S. *See* s. 605.0206, F.S.

¹⁰ Section 606.04(1)(a) and 606.04(1)(c), F.S.

¹¹ Sections 607.0203, F.S., 607.0502, 607.1622, F.S. *See* 607.0120(9), F.S.

¹² Sections 610.102, 610.104(2), F.S.

¹³ Sections 617.0203, 617.0502, 617.1622, F.S.

¹⁴ Sections 620.1109, 620.1201(1)(a)–(e), F.S.

¹⁵ Section 620.1210, F.S.

¹⁶ Sections 620.8105, 620.9003, F.S.

¹⁷ Section 621.13(3), F.S.

¹⁸ Sections 679.5011, 679.527(3), F. S.

- Chapter 713, Liens, generally: the Secretary of State or the Secretary's designee is the filing officer of the state for purposes of receiving, indexing, and maintaining a record of federal liens filed in this state;¹⁹ and
- Chapter 865, Violations of commercial restrictions: fictitious names for business purposes must be registered with the Division of Corporations within the DOS (Division).²⁰

Public Access to Department of State Filing Data

All files maintained electronically by the Division may be accessed through its website.²¹ Records available through this website are easily accessible and searchable, including filed records of business entities, trademarks, fictitious names, federal liens, substitute service of process, notaries, and cable franchises. The public may access and search specific records filed and maintained as required by the various chapters listed in the statute. Uniform commercial code financing statements are filed and maintained through a separate portal operated and maintained by FloridaUCC, LLC, the contract vendor for DOS.²² Access to this website is limited to registered users and certain uses may require a fee. Using the website of the Division, corporations use a specific link to file or update their records and pay fees.²³ All information filed electronically with DOS may be readily changed. Provided the document submitted meets the statutory requirements and is accompanied by the correct processing or filing fee, the document is accepted by DOS.²⁴

III. Effect of Proposed Changes:

Section 1 authorizes the DOS to implement a password protected system for the filing of records. The DOS may request that those using the password protected system verify their identity and credentials. If the DOS implements such system, the bill requires DOS to send each e-mail address on file with the Division of Corporations on January 1, 2024, a code to participate in the system. The DOS is authorized to verify the identity of an authorized account holder, prior to authorizing the account holder to electronically filing a record with DOS.

Section 2 provides that the bill take effect July 1, 2023.

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.

¹⁹ See 713.901(5), F.S.

²⁰ Section 865.09, F.S.

²¹ Available at: www.dos.myflorida.com/sunbiz (last visited Mar. 24, 2023).

²² Available at: <https://www.floridaucc.com/uccweb/> (last visited Mar. 24, 2023).

²³ Available at: www.dos.myflorida.com/sunbiz/forms/corporations/#flcorpforms (last visited Mar. 10, 2023).

²⁴ Derek Gilliam, *Sarasota Rep. McFarland files bill to secure Sunbiz.org, prevent hijacking of businesses*, Herald-Tribune (Feb. 22, 2023), www.heraldtribune.com (last visited March 10, 2023).

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:

The DOS may incur additional workload associated with emailing each e-mail address on file and verifying credentials, but costs should be insignificant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 15.16 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By Senator Grall

29-01373-23

2023948__

A bill to be entitled

An act relating to records electronically filed with the Department of State; amending s. 15.16, F.S.; authorizing the department to implement certain systems relating to electronically filed records; providing requirements and authorizations for the department relating to such systems; providing an effective date.

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

Section 1. Subsection (3) of section 15.16, Florida Statutes, as amended by chapter 2022-190, Laws of Florida, is amended to read:

15.16 Reproduction of records; admissibility in evidence; electronic receipt and transmission of records; certification; acknowledgment.—

(3) (a) The Department of State may cause to be received electronically any records that are required or authorized to be filed with it pursuant to chapter 48, chapter 55, chapter 117, chapter 118, chapter 495, chapter 605, chapter 606, chapter 607, chapter 610, chapter 617, chapter 620, chapter 621, chapter 679, chapter 713, or chapter 865, through facsimile or other electronic transfers, for the purpose of filing such records. The originals of all such electronically transmitted records must be executed in the manner provided in paragraph (5) (b). The receipt of such electronic transfer constitutes delivery to the department as required by law. The department may use electronic transmissions for purposes of notice in the administration of

Page 1 of 2

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

29-01373-23

2023948__

chapters 48, 55, 117, 118, 495, 605, 606, 607, 610, 617, 620, 621, 679, and 713 and s. 865.09. The Department of State may collect e-mail addresses for purposes of notice and communication in the performance of its duties and may require filers and registrants to furnish such e-mail addresses when presenting documents for filing.

(b) The department may implement a password-protected system for any record electronically received pursuant to paragraph (a) and may require filers to produce supplemental materials to use such system, including, but not limited to, an original signature of the filer and verification of credentials. The department may also implement a password-protected system that allows entities organized under the chapters specified in paragraph (a) to identify authorized account holders for the purpose of electronically filing records related to the entity. If the department implements such a system, it must send to each e-mail address on file with the Division of Corporations on January 1, 2024, a code to participate in a password-protected system. The department may require verification of the identity of an authorized account holder before the account holder is authorized to electronically file a record with the department.

Section 2. This act shall take effect July 1, 2023.

Page 2 of 2

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



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 16, 2023

I respectfully request that **Senate Bill #948**, relating to Records Electronically Filed with the Department of State, be placed on the:

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

A handwritten signature in blue ink that reads "Erin K. Grall".

Senator Erin Grall
Florida Senate, District 29

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1094

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Martin

SUBJECT: Death Benefits for Active Duty Servicemembers

DATE: March 30, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	McVaney	McVaney	GO	Fav/CS
2.			ATD	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1094 increases the death benefit paid by the state for a member of the U.S. Armed Forces member *who is not killed while engaged in official duties*. The death benefit is increased from \$25,000 to \$75,000 (identical to the members on active duty and killed while engaged in official duties). The bill maintains the current law exclusion that a servicemember *is not eligible* for the benefit in event of suicide or otherwise intentionally self-inflicted injury.

The bill provides that a servicemember may designate a beneficiary in a process set out by DMA. The bill requires that proof of residency or duty post of the deceased servicemember at the time of the member's death must be provided to DMA, in a manner prescribed by the department, in order to qualify for benefits.

The bill clarifies the payment process for the benefit by requiring DMA to request that the Chief Financial Officer (CFO)¹ draw warrants from the General Revenue Fund for the payment of benefits. The bill grants DMA and the Department of Financial Services rulemaking authority to adopt rules and procedures appropriate and necessary to implement the regulation and distribution of death benefits of active duty servicemembers.

The bill is expected to increase state expenditures by an indeterminate amount.

¹ Art. IV, s. 4(c) of the Florida Constitution provides that a CFO shall serve, within the cabinet, as the chief fiscal officer of the state. The CFO settles and approves accounts against the state and keeps all state funds and securities.

The bill takes effect July 1, 2023.

II. Present Situation:

Constitutional Requirements for Death Benefits for Active Duty Servicemembers

Article X, sec. 31(b) of the Florida Constitution requires a death benefit to be paid to the survivors of active duty servicemembers of the United State Armed Forces. The payments are made from the General Revenue Fund. The state is also required to waive certain education expenses for a child or spouse of the deceased servicemember.

To be eligible for the benefits under the Florida Constitution, a member of the military must have been a resident of the state or his or her duty post must have been within the state, at the time of death.

The constitutional provision took effect July 1, 2019.

Statutory Requirements for Death Benefits for Active Duty Servicemembers

Current law provides that a servicemember of the United States Armed Forces who is killed or receives a bodily injury that results in the loss of member's life while on active duty:

- *And engaged in performance of his or her official duties* is eligible for death benefit of \$75,000 paid by the state.²
- *But not in performance of his or her official duties* is eligible for death benefit of \$25,000 paid by the state.³

A servicemember is not eligible for these benefits if the killing or bodily injury is the result of suicide or was otherwise intentionally self-inflicted.

The death benefit is paid to the beneficiary designated by the servicemember in writing and delivered to the Department of Military Affairs (DMA) during the servicemember's lifetime.⁴ If no designation is made, then the payments are made to the servicemember's surviving child or children and to the servicemember's surviving spouse in equal portions.⁵ If the servicemember does not have a surviving child or spouse, the payment is made to the servicemember's parent or parents. If no designation is made and the servicemember has no surviving child, spouse, or parent, then the sum must be paid to the servicemember's estate.

The spouse or child of an active duty service is also eligible for the waiver of certain educational expenses incurred while obtaining a career certificate, an undergraduate education, or a postgraduate education.⁶ The waiver amount is equal to the cost of 120 credit hours of tuition and registration fees. The benefit must be used by a child before turning 25 years of age, while

² Section 295.061(2), F.S.

³ Section 295.061(3), F.S.

⁴ Section 295.061(4), F.S.

⁵ *Id.*

⁶ Section 295.061(8), F.S.

the spousal benefit must be commenced within five years of the death and completed within ten years of the death. These benefits may only be received by students in good standing.

III. Effect of Proposed Changes:

Section 1 amends s. 295.061, F.S., to increase death benefits paid by the state for a member of the U.S. Armed Forces member *who is not killed while engaged in official duties*. The death benefit is increased from \$25,000 to \$75,000 (identical to the members on active duty and killed while engaged in official duties). The bill maintains the current law exclusion that a servicemember *is not eligible* for the benefit in event of suicide or otherwise intentionally self-inflicted injury.

The bill provides that a servicemember may designate a beneficiary in a process set out by DMA. The bill requires that proof of residency or duty post of the deceased servicemember at the time of the member's death must be provided to DMA, in a manner prescribed by the department, in order to qualify for benefits.

The bill clarifies the payment process for the benefit by requiring DMA to request that the Chief Financial Officer (CFO)⁷ draw warrants from the General Revenue Fund for the payment of benefits. The bill grants DMA and the Department of Financial Services rulemaking authority to adopt rules and procedures appropriate and necessary to implement the regulation and distribution of death benefits of active duty servicemembers.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

⁷ Art. IV, s. 4(c) of the Florida Constitution provides that a CFO shall serve, within the cabinet, as the chief fiscal officer of the state. The CFO settles and approves accounts against the state and keeps all state funds and securities.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The state will incur additional costs for the increased monetary death benefits granted to the surviving family members of a member of the U.S. Armed Forces killed while on active duty. These benefits are paid from the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Law enforcement officers, correctional officers, firefighters, emergency medical technicians, and paramedics (first responders) are granted death benefits under the Florida Constitution similar to servicemembers. However, the benefits are payable only if a first responder is killed “while engaged in the performance of his or her official duties.” The current law relating to death benefits for a servicemember makes a similar distinction, with a \$75,000 benefit if the servicemember is on active duty and is killed while in the performance of official duties and a \$25,000 benefit if the servicemember is on active duty and is killed otherwise (not related to official duties, i.e., vacation, off-duty).

VIII. Statutes Affected:

This bill substantially amends section 295.061 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Governmental Oversight and Accountability on March 29, 2023:

The committee substitute reinstates the current law provision creating a continuing appropriation from the General Revenue Fund to pay the benefits to survivors of deceased servicemembers.

B. Amendments:

None.

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



267962

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2023	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 72 - 76
and insert:
appropriate and necessary to implement subsections (1)-(6).
Beginning in the 2019-2020 fiscal year and continuing each
fiscal year thereafter, a sum sufficient to pay such benefits is
appropriated from the General Revenue Fund to the Department of
Financial Services for the purposes of paying such benefits.

By Senator Martin

33-01363A-23

20231094__

A bill to be entitled

An act relating to death benefits for active duty servicemembers; amending s. 295.061, F.S.; revising the amount and conditions of payment of death benefits; requiring that payment be made to the beneficiary through the process set out by the Department of Military Affairs; removing provisions relating to payment when a beneficiary is not designated; requiring that proof of residency or duty post be provided to the department; requiring the department to request the Chief Financial Officer to draw a warrant for payment of benefits from the General Revenue Fund; requiring the Department of Military Affairs and the Department of Financial Services to adopt certain rules and procedures; removing provisions relating to an appropriation to the Department of Financial Services for payment of death benefits; providing an effective date.

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

Section 1. Section 295.061, Florida Statutes, is amended to read:

295.061 Active duty servicemembers; death benefits.—

(1) As used in this section, the term:

(a) "Active duty" has the same meaning as provided in s. 250.01.

(b) "United States Armed Forces" means the United States Army, Navy, Air Force, Marine Corps, Space Force, and Coast

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Guard.

(2) The sum of \$75,000 must be paid by the state if a member of the United States Armed Forces, while on active duty ~~and engaged in the performance of his or her official duties~~, is killed or sustains ~~receives~~ a bodily injury that results in the loss of the member's life, provided that such killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted.

~~(3) The sum of \$25,000 must be paid by the state if a member of the United States Armed Forces, while on active duty, is killed other than as specified in subsection (2), provided that the killing is not the result of suicide and that such bodily injury is not intentionally self-inflicted.~~

(3)(4) Payment of benefits made under subsection (2) ~~or subsection (3)~~ must be made paid to the beneficiary designated by such member through the process set out by in writing and delivered to the Department of Military Affairs ~~during the member's lifetime. If no such designation is made, then the payments must be paid to the member's surviving child or children and to his or her surviving spouse in equal portions, or if there is no surviving child or spouse, must be made to the member's parent or parents. If a beneficiary is not designated and there is no surviving child, spouse, or parent, then the sum must be paid to the member's estate.~~

(4)(5) To qualify for the benefits provided in this section, the deceased military member must have been a resident of this state, or his or her duty post must have been within this state, at the time of death. Proof of residency or duty post must be provided to the Department of Military Affairs in

33-01363A-23

20231094__

the manner prescribed by the department.

~~(5)(6)~~ Any benefits provided pursuant to this section are in addition to any other benefits provided under the Servicemembers' Group Life Insurance program or any other federal program. Benefits granted pursuant to this section are exempt from the claims and demands of creditors of such member.

~~(6)(7)~~ Benefits provided under subsection (2) ~~or subsection (3)~~ shall be paid from the General Revenue Fund. The department shall request the Chief Financial Officer to draw a warrant from the General Revenue Fund for the payment of the benefit in the amount specified in this section.

(7) The Department of Military Affairs and the Department of Financial Services shall adopt rules and procedures as appropriate and necessary to implement subsections (1)-(6) Beginning in the 2019-2020 fiscal year and continuing each fiscal year thereafter, a sum sufficient to pay such benefits is appropriated from the General Revenue Fund to the Department of Financial Services for the purposes of paying such benefits.

(8) (a) If an active duty member is killed as specified in subsection (2) ~~or subsection (3)~~, the state must waive certain educational expenses that the child or the spouse of the deceased member incurs while obtaining a career certificate, an undergraduate education, or a postgraduate education. The amount waived by the state must be in an amount equal to the cost of tuition and matriculation and registration fees for a total of 120 credit hours. The child or the spouse may attend a state career center, a Florida College System institution, or a state university on either a full-time or part-time basis. The benefits provided to a child under this subsection must continue

33-01363A-23

20231094__

until the child's 25th birthday. The benefits provided to a spouse under this subsection must commence within 5 years after the death occurs and may continue until the 10th anniversary of that death.

(b) Upon failure of any child or spouse who receives a waiver in accordance with this subsection to comply with the ordinary and minimum requirements regarding discipline and scholarship of the institution attended, such benefits to the child or the spouse must be withdrawn and no further moneys may be expended for the child's or spouse's benefits so long as such failure or delinquency continues.

(c) Only a student in good standing in his or her respective institution may receive the benefits provided in this subsection.

(d) A child or spouse who is receiving benefits under this subsection shall be enrolled according to the customary rules and requirements of the institution attended.

(e) A child or spouse of a member may receive benefits under either this subsection or s. 295.01.

(f) The State Board of Education shall adopt rules and procedures, and the Board of Governors shall adopt regulations and procedures, as are appropriate and necessary to implement this subsection.

Section 2. This act shall take effect July 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Health and Human Services
Community Affairs
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR JONATHAN MARTIN

33rd District

March 6, 2023

The Honorable Bryan Avila
Senate Governmental Oversight and Accountability Committee, Chair
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 1094 - An act relating to Death Benefits for Active Duty Servicemembers

Dear Chair Avila:

Please allow this letter to serve as my respectful request to place SB 1094, relating to Death Benefits for Active Duty Servicemembers, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Martin".

Jonathan Martin
Senate District 33

Cc: Joe McVaney, Staff Director
Tamra Redig, Administrative Assistant

REPLY TO:

- ☐ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- ☐ 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate

APPEARANCE RECORD

SB 1094

3/29/23

Meeting Date

Bill Number or Topic

Gov Oversight + Account

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Amendment Barcode (if applicable)

Name

Mark Oglesby, Dept of Mil Aff

Phone

850-414-9048

Address

400 S Monroe St

Email

Mark.T.Oglesby.mfg@amy.mil

Street

Tallahassee

City

FL

State

32399

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Dept of Military Affairs

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 1670

INTRODUCER: Senator Broxson

SUBJECT: Deferred Retirement Option Program

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harmsen	McVaney	GO	Favorable
2.			AP	

I. Summary:

The bill increases the extended participation period in the Deferred Option Retirement Program (DROP) available to K-12 instructional and administrative personnel from 36 additional to 60 additional months after the initial 60-month DROP period. Such personnel must be participating in DROP after July 1, 2023, and on or before June 30, 2029, to be eligible for this 60-month DROP extension. Eligibility for the 60-month DROP extension period is subject to approval by an authorized supervisor.

State and local governments that participate in the Florida Retirement System will incur increased costs associated with funding the benefits granted by this bill. At this time, the bill does not include the requisite contributions to fund these benefits. An actuarial study of the impact of this legislation has been requested but has not yet been completed.

The bill finds that the act fulfills an important state interest. It provides that a proper and legitimate state interest is served by the act, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

The bill takes effect July 1, 2023.

II. Present Situation:

The Florida Retirement System (FRS)

The Florida Retirement System (FRS) was established in 1970 when the Legislature consolidated the Teachers' Retirement System, the State and County Officers and Employees' Retirement System, and the Highway Patrol Pension Fund. In 1972, the Judicial Retirement System was consolidated into the FRS, and in 2007, the Institute of Food and Agricultural Sciences Supplemental Retirement Program was consolidated under the Regular Class of the FRS as a

closed group.¹ The FRS is a contributory system, with active members contributing 3 percent of their salaries.²

The FRS is a multi-employer plan, governed by ch. 121, F.S., the “Florida Retirement System Act.” As of June 30, 2022, the FRS had 629,073 active non-retired members, 448,846 annuitants, 14,858 disabled retirees, and 28,827 active participants of the Deferred Retirement Option Program (DROP).³ As of September 2022, the FRS consisted of 990 total employers; it is the primary retirement plan for employees of state and county government agencies, district school boards, Florida College institutions, and state universities, and includes the 180 cities and 153 special districts that have elected to join the system.⁴

The membership of the FRS is divided into five membership classes:

- The Regular Class⁵ consists of 537,128 active members and 7,806 in renewed membership;
- The Special Risk Class⁶ includes 72,925 active members and 1,100 in renewed membership;
- The Special Risk Administrative Support Class⁷ has 104 active members and one in renewed membership;
- The Elected Officers’ Class⁸ has 2,075 active members and 109 in renewed membership; and
- The Senior Management Service Class⁹ has 7,610 active members and 210 in renewed membership.¹⁰

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

¹ Florida Department of Management Services (DMS), Division of Retirement, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, 35, available at https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf. (last visited Mar. 27, 2023).

² Prior to 1975, members of the FRS were required to make employee contributions of either 4 percent for Regular Class employees or 6 percent for Special Risk Class members. Employees were again required to contribute to the system after July 1, 2011. *See*, ch. 2011-68, s. 33, Laws of Fla. Members in the Deferred Retirement Option Program do not contribute to the system.

³ DMS, Division of Retirement, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 260, available at https://employer.frs.fl.gov/forms/2020-21_ACFR.pdf. (last visited Mar. 20, 2023).

⁴ DMS, Division of Retirement, *Participating Employers for Fiscal Year 2022-2023* (Sept. 2022), available at <https://employer.frs.fl.gov/forms/part-emp.pdf> (last visited Mar. 27, 2023).

⁵ The Regular Class is for all members who are not assigned to another class. Section 121.021(12), F.S.

⁶ The Special Risk Class is for members employed as law enforcement officers, firefighters, correctional officers, probation officers, paramedics and emergency technicians, among others. Section 121.0515, F.S.

⁷ The Special Risk Administrative Support Class is for a special risk member who moved or was reassigned to a nonspecial risk law enforcement, firefighting, correctional, or emergency medical care administrative support position with the same agency, or who is subsequently employed in such a position under the Florida Retirement System. Section 121.0515(8), F.S.

⁸ The Elected Officers’ Class includes elected state and county officers, and those elected municipal or special district officers whose governing body has chosen Elected Officers’ Class participation for its elected officers. Section 121.052, F.S.

⁹ The Senior Management Service Class is for members who fill senior management level positions assigned by law to the Senior Management Service Class or authorized by law as eligible for Senior Management Service designation. Section 121.055, F.S.

¹⁰ All figures are from *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, at 263.

Members of the FRS have two primary plan options available for participation:¹¹

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

Investment Plan

In 2000, the Public Employee Optional Retirement Program (investment plan) was created as a defined contribution plan offered to eligible employees as an alternative to the FRS Pension Plan.¹²

Benefits under the investment plan accrue in individual member accounts funded by both employee and employer contributions and earnings. Benefits are provided through employee-directed investments offered by approved investment providers.¹³

A member vests immediately in all employee contributions paid to the investment plan.¹⁴ With respect to the employer contributions, a member vests after completing one work year of employment with an FRS employer.¹⁵ Vested benefits are payable upon termination or death as a lump-sum distribution, direct rollover distribution, or periodic distribution.¹⁶ The investment plan also provides disability coverage for both in-line-of-duty and regular disability retirement benefits.¹⁷ An FRS member who qualifies for disability while enrolled in the investment plan may apply for benefits as if the employee were a member of the pension plan. If approved for retirement disability benefits, the member is transferred to the pension plan.¹⁸

The State Board of Administration (SBA) is primarily responsible for administering the investment plan.¹⁹ The Board of Trustees of the SBA is comprised of the Governor as chair, the Chief Financial Officer, and the Attorney General.²⁰

¹¹ Florida State Board of Administration (SBA), *Plan Comparison Chart* (Jul. 2020), available at <https://www.myfrs.com/pdf/forms/plancomparison.pdf> (last visited Mar. 27, 2023).

¹² See, ch. 2000-169, Laws of Fla.

¹³ Section 121.4501(1), F.S.

¹⁴ Section 121.4501(6)(a), F.S.

¹⁵ If a member terminates employment before vesting in the investment plan, the nonvested money is transferred from the member's account to the SBA for deposit and investment by the SBA in its suspense account for up to five years. If the member is not reemployed as an eligible employee within five years, any nonvested accumulations transferred from a member's account to the SBA's suspense account are forfeited. Section 121.4501(6)(b)-(d), F.S.

¹⁶ Section 121.591, F.S.

¹⁷ See s. 121.4501(16), F.S.

¹⁸ Pension plan disability retirement benefits, which apply for investment plan members who qualify for disability, compensate a line-of-duty disabled member up to 65 percent of the average monthly compensation as of the disability retirement date for special risk class members. Other members may receive up to 42 percent of the member's average monthly compensation for disability retirement benefits. If the disability occurs other than in the line-of-duty, the monthly benefit may not be less than 25 percent of the average monthly compensation as of the disability retirement date.

Section 121.091(4)(f), F.S.

¹⁹ Section 121.4501(8), F.S.

²⁰ FLA. CONST. art. IV, s. 4.

Pension Plan

The pension plan is administered by the Secretary of Management Services (DMS) through the Division of Retirement.²¹ The SBA manages the pension fund's assets.²²

Any member initially enrolled in the pension plan before July 1, 2011, vests in the pension plan after completing six years of service with an FRS employer.²³ For members initially enrolled on or after July 1, 2011, the member vests in the pension plan after eight years of creditable service.²⁴ Benefits payable under the pension plan are calculated based on the member's years of creditable service multiplied by the service accrual rate multiplied by the member's average final compensation.²⁵

For most current members of the pension plan, normal retirement (when first eligible for unreduced benefits) occurs at the earliest attainment of 30 years of service or age 62.²⁶ For public safety employees in the Special Risk and Special Risk Administrative Support Classes, normal retirement is the earliest of 25 years of service or age 55.²⁷ Members initially enrolled in the pension plan on or after July 1, 2011, have longer service requirements. For members initially enrolled after that date, the member must complete 33 years of service or attain age 65; members in the Special Risk classes must complete 30 years of service or attain age 60.²⁸

Deferred Retirement Option Program (DROP)

Members who retire from the FRS pension plan are eligible to enroll in the DROP, which allows a member to continue employment with an FRS employer for up to 60 additional months.²⁹ While in the DROP, the member's retirement benefits accumulate in the FRS Trust Fund increased by a cost-of-living adjustment (COLA) each July and earn monthly interest equivalent to an annual rate of 1.30 percent on the preceding month's DROP accumulation until termination of participation in the DROP.³⁰

Generally, eligible FRS pension plan members must elect to participate in the DROP within 12 months of their normal retirement date.³¹ However, a member initially enrolled in the FRS before July 1, 2011, who reaches normal retirement date based on years of service before he or she reaches age 62 (or age 55 for special risk class members) may defer his or her entry into DROP until 12 months immediately following their 57th birthday, or 52nd birthday for special risk class members. A member who enrolled in the FRS pension plan on or after July 1, 2011, and who

²¹ Section 121.025, F.S.

²² Florida SBA, *Summary Overview of the State Board of Administration of Florida*, 4, available at https://www.sbafla.com/fsb/Portals/FSB/Content/Topics/SBAOverview_20211025.pdf?ver=2021-10-28-120954-217 (last visited Mar. 27, 2023).

²³ Section 121.021(45)(a), F.S.

²⁴ Section 121.021(45)(b), F.S.

²⁵ Section 121.091, F.S. See also, *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, 35-37, *supra* at 1.

²⁶ Section 121.021(29)(a)1., F.S.

²⁷ Section 121.021(29)(b)1., F.S.

²⁸ Sections 121.021(29)(a)2. and (b)2., F.S.

²⁹ Section 121.091(13), F.S.

³⁰ *Florida Retirement System Pension Plan and Other State Administered Retirement Systems FY 2021-22 Annual Comprehensive Financial Report*, *supra* note 1 at pp. 38-39.

³¹ Section 121.091(13)(a), F.S.

reaches normal retirement date based on service before age 65, (or 60 for special risk class) may defer DROP participation until the 12 months immediately following his or her 60th birthday, or 55th birthday for special risk class.³²

K-12 instructional personnel employed with an FRS employer may extend their DROP participation for up to an additional 36 months, for a total of 8 years of DROP participation. Administrative personnel who are employed with a K-12 FRS employer may extend their DROP participation through the end of the current school year.³³

Similarly, law enforcement officers who are in the special risk class,³⁴ who elect to participate in DROP on or after July 1, 2022, may participate in DROP for an additional 36 calendar months beyond the 60-month DROP period, for a total of 8 years enrollment in the DROP. To qualify, the participant must enter DROP on or before June 30, 2028.³⁵

Regular School Year

Each district school board in Florida is responsible for setting the dates for the opening and closing of schools.³⁶ Schools that are governed by a district school board may not have an opening date earlier than August 10 each year,³⁷ and their school year must run for at least 180 days.³⁸ For the 2022-2023 school year, school district calendars began the traditional school year with students reporting for classes between August 10 and August 23.³⁹ Dates for the close of the school year were between May 19 and June 8.⁴⁰

Instructional Personnel and School Administrators

Instructional personnel include classroom teachers, staff who provide student personnel services, librarians and media specialists, other instructional staff, and education paraprofessionals under the direct supervision of instructional personnel in K-12 schools.⁴¹ School administrators include school principals, school or career center directors, and assistant principals in K-12 schools.⁴²

³² Section 121.091(13)(a)2., F.S.

³³ Section 121.091(13)(b)1., F.S.

³⁴ *See*, s. 121.0515(3)(a), F.S. This is a narrow permission that excludes sheriffs and elected police chiefs and does not encompass the special risk class as a whole.

³⁵ Section 121.091(13)(c), F.S.

³⁶ Section 1001.42(4)(f), F.S.

³⁷ Section 1001.42(4)(f), F.S.

³⁸ Section 1001.42(12)(a), F.S.

³⁹ Florida Department of Education, *2022-2023 School District Calendars*, <https://www.fldoe.org/core/fileparse.php/7584/urlt/school-district-calendars.xlsx> (last visited March 27, 2023).

⁴⁰ *Id.*

⁴¹ Section 1012.01(2), F.S.

⁴² Section 1012.01(3), F.S.

Contracts for Instructional Personnel

Four types of contracts are used to employ instructional personnel in Florida— continuing contracts, professional service contracts, annual contracts, and probationary contracts. Holding a continuing contract or professional service contract is often referred to as having tenured status.⁴³

A continuing contract entitles the employee to continue employment without the necessity of annual renewal until discontinuation of the position, resignation, dismissal, or removal from continuing contract status.⁴⁴

Instructional personnel hired on or after July 1, 1984, and up to July 1, 2011, were awarded professional service contracts after 3 years of probationary service on annual contracts if certified, recommended for a professional service contract by the superintendent, and reappointed by the school board.⁴⁵ Professional service contracts automatically renew each year, unless the employee is charged with unsatisfactory performance based upon his or her annual performance evaluation or the employee's performance evaluations indicate chronically ineffective performance.⁴⁶

As of July 1, 2011, instructional personnel are hired under a probationary contract for 1 year, and thereafter, are hired on an annual contract basis.⁴⁷ An annual contract is an employment contract for a period of no longer than 1 school year that a district school board may choose to award or not award without cause.⁴⁸

Contracts for School Administrators

School administrators hired before July 1, 1984, entered into continuing contracts upon meeting eligibility requirements.⁴⁹ After completing 3 years of probationary service on annual contracts, an administrator was eligible for a continuing contract if her or she was fully certified, recommended for a continuing contract by the superintendent, and reappointed by the school board.⁵⁰

School administrators hired on or after July 1, 1984, must receive a written contract. Such contract may be for an initial period not to exceed 3 years and is subject to annual review and renewal.⁵¹

⁴³ See s. 1012.33(1), F.S. Tenure is an employment policy which limits a public school district's ability to terminate the employment of instructional personnel. See 67B Am. Jur. 2d Schools s. 195. Tenure usually takes the form of a continuous or automatically renewing employment contract. Tenured instructional personnel may only be dismissed for specified reasons after statutorily required hearings. See *Board of Regents v. Roth*, 408 U.S. 564 (1972); 67B Am. Jur. 2d Schools s.211.

⁴⁴ Section 231.36(3)(e), F.S. (1981). A continuing contract employee may be dismissed or returned to annual contract status for a period of three years based upon the recommendation of the district school superintendent, school principal, or a majority of the school board. Section 1012.33(4)(b), F.S.; see also s. 231.36(4), F.S. (1981).

⁴⁵ Section 1012.33(3), F.S.

⁴⁶ *Id.* A professional service contract is not required to be renewed if the employee has two consecutive annual performance evaluation ratings of unsatisfactory, two annual ratings of unsatisfactory within a 3-year period, or 3 consecutive annual ratings of needs improvement or a combination of needs improvement and unsatisfactory. Section 1012.33(3)(b), F.S.

⁴⁷ Section 1012.335(2), F.S.

⁴⁸ Section 1012.335(1)(a), F.S.

⁴⁹ See *supra* note 44.

⁵⁰ Section 231.36(1) and (3)(a)1.-4., F.S. (1981).

⁵¹ Section 1012.33(1)(b), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 121.091, F.S., to allow K-12 instructional personnel⁵² who enter DROP before June 30, 2029, to extend their participation for up to 60 calendar months beyond the initial 60-month DROP period. K-12 instructional personnel must be approved to participate in the extended 60-month DROP period by an appropriate supervisor.

If a K-12 instructional personnel is currently in his or her 36-month extended DROP period, and that extended DROP period does not end before July 1, 2023, then he or she will be able to take advantage of the increased extended DROP period provided for in the bill.

The bill also allows K-12 administrative personnel, who are authorized by their district school superintendent, to participate in DROP for up to 60 additional months beyond their initial 60-month DROP period. This replaces the 36-month extended DROP period currently in statute; therefore, any K-12 administrative personnel who is in an extended DROP period as of July 1, 2023, will be authorized to extend up to a total of 60 additional months beyond the initial 60-month DROP period.

However, administrative personnel who participate in extended DROP must have a termination date that is the last day of the last calendar month of the school year within their granted DROP extension. Should the administrative personnel's DROP extension end before that date, the member's DROP participation may be extended to the last day of the last calendar month of that school year.

Section 2 makes a legislative finding that the act fulfills an important state interest. It provides that a proper and legitimate state purpose is served by the bill, which includes providing benefits that are managed, administered, and funded in an actuarially sound manner.

Section 3 provides that the bill takes effect on July 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, s. 18(a) of the State Constitution provides that: "No county or municipality shall be bound by any general law requiring such county or municipality to spend funds...unless the legislature has determined that such law fulfills an important state interest and unless: ...the expenditure is required to comply with a law that applies to all persons similarly situated...."

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

⁵² K-12 instructional personnel are those who operate in an instructional position and are employed by either the Florida School for the Deaf and the Blind, a public K-12 educational institution, or a developmental research school.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Actuarial requirements: Article X, s. 14 of the State Constitution requires that benefit improvements under public pension plans in the State of Florida be concurrently funded on a sound actuarial basis, as set forth below:

SECTION 14. State retirement systems benefit changes.--A governmental unit responsible for any retirement or pension system supported in whole or in part by public funds shall not after January 1, 1977, provide any increase in the benefits to the members or beneficiaries of such system unless such unit has made or concurrently makes provision for the funding of the increase in benefits on a sound actuarial basis.

Article X, s. 14 of the State Constitution is implemented by statute under part VII of ch. 112, F.S., the “Florida Protection of Public Employee Retirement Benefits Act” (Act). The Act establishes minimum standards for the operation and funding of public employee retirement systems and plans in the State of Florida. It prohibits the use of any procedure, methodology, or assumptions the effect of which is to transfer to future taxpayers any portion of the costs which may reasonably have been expected to be paid by the current taxpayers.

The bill does not provide actuarially sound funding concurrent with the increase of the benefits (effective July 1, 2023).

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

None.

B. Private Sector Impact:

Certain K-12 instructional and administrative personnel will be able to continue employment with a public K-12 educational institution for up to 2 additional years, with additional retirement benefits accruing in their DROP account during that time.

C. Government Sector Impact:

The increase in retirement benefits will increase the liabilities of the Florida Retirement System by an amount that has not yet been determined. The bill does not provide funding for this increase in benefits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 121.091 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Broxson

1-01748A-23

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1 A bill to be entitled
 2 An act relating to the Deferred Retirement Option
 3 Program; amending s. 121.091, F.S.; increasing the
 4 period of time for which specified instructional and
 5 administrative personnel may extend their
 6 participation in the Deferred Retirement Option
 7 Program, if such personnel enter the program before a
 8 specified date; providing a statement of important
 9 state interest; providing an effective date.
 10
 11 Be It Enacted by the Legislature of the State of Florida:
 12
 13 Section 1. Paragraph (b) of subsection (13) of section
 14 121.091, Florida Statutes, is amended to read:
 15 121.091 Benefits payable under the system.—Benefits may not
 16 be paid under this section unless the member has terminated
 17 employment as provided in s. 121.021(39)(a) or begun
 18 participation in the Deferred Retirement Option Program as
 19 provided in subsection (13), and a proper application has been
 20 filed in the manner prescribed by the department. The department
 21 may cancel an application for retirement benefits when the
 22 member or beneficiary fails to timely provide the information
 23 and documents required by this chapter and the department's
 24 rules. The department shall adopt rules establishing procedures
 25 for application for retirement benefits and for the cancellation
 26 of such application when the required information or documents
 27 are not received.
 28 (13) DEFERRED RETIREMENT OPTION PROGRAM.—In general, and
 29 subject to this section, the Deferred Retirement Option Program,

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

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30 hereinafter referred to as DROP, is a program under which an
 31 eligible member of the Florida Retirement System may elect to
 32 participate, deferring receipt of retirement benefits while
 33 continuing employment with his or her Florida Retirement System
 34 employer. The deferred monthly benefits shall accrue in the
 35 Florida Retirement System on behalf of the member, plus interest
 36 compounded monthly, for the specified period of the DROP
 37 participation, as provided in paragraph (c). Upon termination of
 38 employment, the member shall receive the total DROP benefits and
 39 begin to receive the previously determined normal retirement
 40 benefits. Participation in the DROP does not guarantee
 41 employment for the specified period of DROP. Participation in
 42 DROP by an eligible member beyond the initial 60-month period as
 43 authorized in this subsection shall be on an annual contractual
 44 basis for all participants.
 45 (b) *Participation in DROP.*—Except as provided in this
 46 paragraph, an eligible member may elect to participate in DROP
 47 for a period not to exceed a maximum of 60 calendar months.
 48 1.a. Members who are instructional personnel employed by
 49 the Florida School for the Deaf and the Blind and authorized by
 50 the Board of Trustees of the Florida School for the Deaf and the
 51 Blind, who are instructional personnel as defined in s.
 52 1012.01(2)(a)-(d) in grades K-12 and authorized by the district
 53 school superintendent, or who are instructional personnel as
 54 defined in s. 1012.01(2)(a) employed by a developmental research
 55 school and authorized by the school's director, or if the school
 56 has no director, by the school's principal, may participate in
 57 DROP for:
 58 (I) Up to 36 calendar months beyond the initial 60-month

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59 period; or

60 (II) Effective July 1, 2023, up to 60 calendar months
 61 beyond the initial 60-month period if he or she enters DROP on
 62 or before June 30, 2029.

63
 64 ~~Effective July 1, 2018,~~ Instructional personnel who are
 65 authorized to extend DROP participation beyond the initial 60-
 66 month period must have a termination date that is the last day
 67 of the last calendar month of the school year within the DROP
 68 extension granted by the employer. If, ~~on July 1, 2018,~~ the
 69 member's DROP participation has already been extended for the
 70 maximum period of time ~~36 calendar months~~ and the extension
 71 period concludes before the end of the school year, the member's
 72 DROP participation may be extended through the last day of the
 73 last calendar month of that school year. The employer shall
 74 notify the division of the change in termination date and the
 75 additional period of DROP participation for the affected
 76 instructional personnel.

77 b. Effective July 1, 2023, if authorized by the district
 78 school superintendent, members who are K-12 administrative
 79 personnel as described in s. 1012.01(3) may participate in DROP
 80 for up to 60 calendar months beyond the initial 60-month period
 81 if he or she enters DROP on or before June 30, 2029.
 82 Administrative personnel who are authorized to extend DROP
 83 participation beyond the initial 60-month period must have a
 84 termination date that is the last day of the last calendar month
 85 of the school year within the DROP extension granted by the
 86 employer. If the member's DROP participation has already been
 87 extended for the maximum period of time and the extension period

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88 concludes before the end of the school year, the member's DROP
 89 participation may be extended through the last day of the last
 90 calendar month of that school year ~~Administrative personnel in~~
 91 ~~grades K-12, as defined in s. 1012.01(3), who have a DROP~~
 92 ~~termination date on or after July 1, 2018, may be authorized to~~
 93 ~~extend DROP participation beyond the initial 60 calendar month~~
 94 ~~period if the administrative personnel's termination date is~~
 95 ~~before the end of the school year. Such administrative personnel~~
 96 ~~may have DROP participation extended until the last day of the~~
 97 ~~last calendar month of the school year in which their original~~
 98 ~~DROP termination date occurred if a date other than the last day~~
 99 ~~of the last calendar month of the school year is designated. The~~
 100 employer shall notify the division of the change in termination
 101 date and the additional period of DROP participation for the
 102 affected administrative personnel.

103 c. Effective July 1, 2022, a member of the Special Risk
 104 Class who is a law enforcement officer who meets the criteria in
 105 s. 121.0515(3) (a) and who is a DROP participant on or after July
 106 1, 2022, may participate in DROP for up to 36 calendar months
 107 beyond the 60-month period if he or she enters DROP on or before
 108 June 30, 2028.

109 2. Upon deciding to participate in DROP, the member shall
 110 submit, on forms required by the division:

111 a. A written election to participate in DROP;

112 b. Selection of DROP participation and termination dates
 113 that satisfy the limitations stated in paragraph (a) and
 114 subparagraph 1. The termination date must be in a binding letter
 115 of resignation to the employer establishing a deferred
 116 termination date. The member may change the termination date

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within the limitations of subparagraph 1., but only with the written approval of the employer;

c. A properly completed DROP application for service retirement as provided in this section; and

d. Any other information required by the division.

3. The DROP participant is a retiree under the Florida Retirement System for all purposes, except for paragraph (5)(f) and subsection (9) and ss. 112.3173, 112.363, 121.053, and 121.122. DROP participation is final and may not be canceled by the participant after the first payment is credited during the DROP participation period. However, participation in DROP does not alter the participant's employment status, and the member is not deemed retired from employment until his or her deferred resignation is effective and termination occurs as defined in s. 121.021.

4. Elected officers are eligible to participate in DROP subject to the following:

a. An elected officer who reaches normal retirement date during a term of office may defer the election to participate until the next succeeding term in that office. An elected officer who exercises this option may participate in DROP for up to 60 calendar months or no longer than the succeeding term of office, whichever is less.

b. An elected or a nonelected participant may run for a term of office while participating in DROP and, if elected, extend the DROP termination date accordingly; however, if such additional term of office exceeds the 60-month limitation established in subparagraph 1., and the officer does not resign from office within such 60-month limitation, the retirement and

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the participant's DROP is null and void as provided in subparagraph (c)5.d.

c. An elected officer who is dually employed and elects to participate in DROP must terminate all employment relationships as provided in s. 121.021(39) for the nonelected position within the original 60-month period or maximum participation period as provided in subparagraph 1. For DROP participation ending:

(I) Before July 1, 2010, the officer may continue employment as an elected officer as provided in s. 121.053. The elected officer shall be enrolled as a renewed member in the Elected Officers' Class or the Regular Class, as provided in ss. 121.053 and 121.122, on the first day of the month after termination of employment in the nonelected position and termination of DROP. Distribution of the DROP benefits shall be made as provided in paragraph (c).

(II) On or after July 1, 2010, the officer may continue employment as an elected officer but must defer termination as provided in s. 121.053.

Section 2. The Legislature finds that a proper and legitimate state purpose is served when employees and retirees of the state and its political subdivisions, and the dependents, survivors, and beneficiaries of such employees and retirees, are extended the basic protections afforded by governmental retirement systems. These persons must be provided benefits that are fair and adequate and that are managed, administered, and funded in an actuarially sound manner, as required by s. 14, Article X of the State Constitution and part VII of chapter 112, Florida Statutes. Therefore, the Legislature determines and declares that this act fulfills an important state interest.

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Section 3. This act shall take effect July 1, 2023.

3/29/2023

Meeting Date

GOVERNMENTAL OVERSIGHT AND ACCOUNTABILITY

Committee

The Florida Senate

APPEARANCE RECORD

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SB 1670

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Jessica Janasiewicz (Jan-ah-see-witz)**

Phone **850-681-6788**

Address **119 South Monroe Street**

Email **jessica@rutledge-ecenia.com**

Street

Tallahassee

FL

32301

City

State

Zip

Speaking: ☐ For ☐ Against ☐ Information

OR

Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Santa Rosa County Schools

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

3/29/23

Meeting Date

Gov. Oversight and Accountability

Committee

Name **Stephanie Kunkel**

Address **213 S Adams Street**

Street

Tallahassee

City

FL

State

32301

Zip

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

SB 1670

Bill Number or Topic

Amendment Barcode (if applicable)

Phone **850-320-4208**

Email **Stephanie.Kunkel@floridaea.org**

Speaking: ☐ For ☐ Against ☐ Information **OR** Waive Speaking: ☒ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

Florida Education Association

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7000

INTRODUCER: Children, Families, and Elder Affairs Committee

SUBJECT: OGSR/Current or Former Public Guardians

DATE: March 28, 2023

REVISED: _____

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

I. Summary:

SB 7000 saves from repeal the current public records exemption in s. 744.21031, F.S., by maintaining certain provisions of the exemption as in current law and narrowing the exemption by allowing certain information that is currently exempt to become available for public disclosure. Specifically, the bill continues the exemptions from public disclosure for certain identifying and location information held by an agency pertaining to:

- Current and former public guardians;
- Employees with fiduciary responsibility; and
- Spouses and children of current and former public guardians and employees with fiduciary responsibility.

The bill expands public access to information by removing the exempt status of photographs of current public guardians. The bill also removes the exempt status of places of employment of current or former public guardians, current or former employees with fiduciary duty, and the spouses and children of such persons.

The public records exemption stands repealed on October 2, 2023, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the scheduled repeal of the exemption to continue exempt status of the information.

The bill is effective October 1, 2023.

II. Present Situation:

Public Records Law

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

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes that relate to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a] ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity which justifies the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill that enacts an exemption may not contain other substantive provisions¹¹ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ An exemption serves an identifiable purpose if the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption *and* it meets one of the following purposes:

⁷ Section 119.07(1)(a), F.S.

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

⁹ FLA CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- The release of sensitive personal information would be defamatory or jeopardize an individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Guardianship

A guardian is someone who is appointed by the court to act on behalf of a ward (an individual who has been adjudicated incapacitated) regarding his or her person or property or both.²⁶ The process to determine an individual's incapacity and the subsequent appointment of a guardian begins with a verified petition detailing the factual information supporting the reasons the petitioner believes the individual to be incapacitated, including the rights the alleged incapacitated person is incapable of exercising.²⁷ Once a person has been adjudicated incapacitated (termed a "ward"), the court appoints a guardian, and the letters of guardianship are issued.²⁸ The order appointing a guardian must be consistent with the ward's welfare and safety, must be the least restrictive appropriate alternative, and must reserve to the ward the right to make decisions in all matters commensurate with his or her ability to do so.²⁹

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

²³ Section 119.15(6)(a), F.S. The specific 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 744.102(9), F.S.

²⁷ Section 744.3201(2), F.S.

²⁸ Sections 744.3371-744.345, F.S.

²⁹ Section 744.2005, F.S.

Office of Public and Professional Guardians

In 1999, the Legislature created the “Public Guardianship Act” and established the Statewide Public Guardianship Office (SPGO) within the Department Of Elder Affairs (DOEA).³⁰ In 2016, the Legislature renamed the Statewide Public Guardianship Office within the DOEA as the Office of Public and Professional Guardians (OPPG), required OPPG to regulate professional guardians and investigate complaints. Additionally, the OPPG was provided an additional six full-time equivalent positions, including an attorney and investigators.³¹ The OPPG appoints local public guardian offices to provide guardianship services to people who have neither adequate income nor assets to afford a private guardian, nor any willing family or friend to serve.³²

There are 17 public guardian offices that serve all 67 counties.³³ Since 2016, approximately 550 professional guardians have registered with the OPPG.³⁴

Confidentiality of Information Regarding Public Guardians

In 2018, the Legislature enacted s. 744.21031, F.S.,³⁵ to exempt from public records copying and inspection requirements the following information as it pertains to current or former public guardians and employees with fiduciary responsibility³⁶:

- Home addresses;
- Telephone numbers;³⁷
- Dates of birth;
- Places of employment; and
- Photographs.³⁸

The statute also exempts the same information for spouses and children of such persons, as well as the names of the spouses and children of a public guardian or employee with fiduciary responsibility, and the names and locations of schools and day care facilities attended by the children of a public guardian or employee with fiduciary responsibility.³⁹

³⁰ Chapter 99-277, L.O.F.

³¹ Chapter 2016-40, L.O.F.

³² The DOEA, *Office of Public and Professional Guardians*, available at <https://elderaffairs.org/programs-services/office-of-public-professional-guardians-oppg/> (last visited February 7, 2023).

³³ *Id.*

³⁴ *Id.*

³⁵ Chapter 2018-16, s. 1, L.O.F.

³⁶ Section 744.21031, F.S., defines “employees with fiduciary responsibility” to mean “an employee of a public guardian who has the ability to direct any transactions of a ward’s funds, assets, or property; who under the supervision of the guardian, manages the care of the ward; or who makes any health care decision, as defined in s. 765.101, on behalf of the ward.”

³⁷ Section 119.071(4)(d)1.b., defines “telephone numbers” includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

³⁸ Section 744.21031, F.S.

³⁹ *Id.*

The exemption applies to information held by an agency⁴⁰ before, on, or after July 1, 2018.⁴¹ An agency that is the custodian of such information is required to maintain the exempt status of that information only if the current or former public guardians and employees with fiduciary responsibility submit to the custodial agency a written request for maintenance of the exemption.⁴²

Open Government Sunset Review Findings

According to the public necessity statement included in the original public records exemption, it is a public necessity to protect identifying and location information of current and former public guardians and employees with fiduciary responsibility and their family members because the release of such information might place such individuals in danger of physical and emotional harm from disgruntled individuals who react inappropriately to actions taken by the public guardians and employees with fiduciary responsibility.⁴³

Additionally, the public necessity statement provided that despite the value of the services provided by public guardians, some wards and their family members have harassed their public guardians with threats of incarceration, violence, and death through voicemail messages and social media.⁴⁴ The public necessity statement also provides that after a public guardian or an employee with fiduciary responsibility concludes his or her service, the risk continues because a disgruntled individual may wait until then to commit an act of revenge.⁴⁵ The harm that may result from the release of a public guardian's or an employee with fiduciary responsibility's personal identifying and location information outweighs any public benefit that may be derived from the disclosure of the information.⁴⁶

On August 4, 2022, the Senate Committee on Children, Families, and Elder Affairs staff and the House of Representatives Government Operations Subcommittee staff jointly met with the executive director of the OPPG regarding the need to maintain the public records exemption.⁴⁷ The executive director stated that the exemption has only been utilized by one of the Offices of the Public Guardian since its inception. The Executive Director and DOEA staff expressed the need to maintain the exemption and also expressed support for narrowing the exemption.⁴⁸

⁴⁰ Section 119.011(2), F.S., defines "agency" to mean any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.

⁴¹ Section 744.21031, F.S.

⁴² *Id.*

⁴³ Chapter 2018-16, s. 2, L.O.F.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Meeting with staff of the DOEA (August 4, 2022).

⁴⁸ *Id.*

III. Effect of Proposed Changes:

The bill clarifies the application of the exemption by including definitions for terms that are commonly used in other public records laws, including defining “agency”⁴⁹ to have the same meaning as provided in s. 119.011, F.S., and “telephone numbers”⁵⁰ to have the same meaning as provided in s. 119.071(4)(d)1.b., F.S. The bill maintains the current definition of “employee with fiduciary responsibility” provided in s. 744.21031, F.S.

The bill saves from repeal the public records exemption in s. 744.21031, F.S., by maintaining certain provisions of the exemption as in current law and also narrows the exemption by allowing certain information that is currently exempt to become available for public disclosure. Specifically, the bill maintains the exemptions as in current law for the following identifying and location information held by an agency:

- The home addresses, telephone numbers, and dates of birth of current and former public guardians and employees with fiduciary duty.
- Photographs of former public guardians and employees with fiduciary responsibility.
- The names, home addresses, telephone numbers, and dates of birth of spouses and children of current and former public guardians and employees with fiduciary responsibility who are not themselves current or former public guardians or employees with fiduciary responsibility.
- The names and locations of schools and day care facilities attended by the children of such persons.

The bill removes the exempt status of the following information, thereby making this information available to the public:

- Places of employment of current or former public guardians, current or former employees with fiduciary duty, and the spouses and children of such persons. This was removed as a result of the report from the DOEA that their records do not include such information.
- The home addresses, telephone numbers, and dates of birth of spouses and children of current or former public guardians and employees with fiduciary responsibility who are or who have been a current or former public guardian or employee with fiduciary responsibility.
- Photographs of current public guardians and employees with fiduciary responsibility.

The current public records exemption stands repealed on October 2, 2023, unless reviewed and reenacted by the Legislature under the Open Government Sunset Review Act. The bill removes the scheduled repeal date of October 2, 2023, to allow the exemption to continue the exempt status of the information.

The bill is effective October 1, 2023.

⁴⁹ Section 119.011, F.S. defines “agency” to mean “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁵⁰ Section 119.071(4)(d)1.b. defines “telephone numbers” to mean “home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.”

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 bill creating or expanding an exemption to the public records requirements. If an exemption is reenacted without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are not required. This bill narrows a current public records exemption; thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill narrows a current public records exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect identifying and location information of current and former public guardians, employees with fiduciary responsibility, and the family members of those individuals. This bill exempts only certain identifying and location information. The bill provides that releasing such information could jeopardize the safety of such individuals. 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 will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur workload related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 744.21031 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

By the Committee on Children, Families, and Elder Affairs

586-02084-23

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A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 744.21031, F.S., which provides an exemption from public records requirements for certain identifying and location information of current or former public guardians, employees with fiduciary responsibility, and the spouses and children thereof; defining terms; narrowing the scope of the public records exemption for current public guardians and employees with fiduciary responsibility and former public guardians and employees with fiduciary responsibility, respectively; removing the scheduled repeal date of the exemption; providing an effective date.

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

Section 1. Section 744.21031, Florida Statutes, is amended to read:

744.21031 Public records exemption.—

(1) For purposes of this section, the term:

(a) "Agency" has the same meaning as provided in s. 119.011.

(b) "Employee with fiduciary responsibility" means an employee of a public guardian who has the ability to direct any transactions of a ward's funds, assets, or property; who, under the supervision of a guardian, manages the care of a ward; or who makes any health care decision as defined in s. 765.101 on behalf of a ward.

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(c) "Telephone numbers" has the same meaning as provided in s. 119.071(4)(d)1.b.

(2) The home addresses, telephone numbers, and dates of birth, ~~places of employment, and photographs~~ of current or former public guardians and employees with fiduciary responsibility; ~~photographs of former public guardians and employees with fiduciary responsibility;~~ the names, home addresses, telephone numbers, and dates of birth, ~~and places of employment~~ of the spouses and children of current or former public guardians and employees with fiduciary responsibility who are not themselves current or former public guardians or employees with fiduciary responsibility ~~such persons;~~ and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~As used in this section, the term "employee with fiduciary responsibility" means an employee of a public guardian who has the ability to direct any transactions of a ward's funds, assets, or property; who under the supervision of the guardian, manages the care of the ward; or who makes any health care decision, as defined in s. 765.101, on behalf of the ward.~~ This exemption applies to information held by an agency before, on, or after July 1, 2018. An agency that is the custodian of the information specified in this section shall maintain the exempt status of that information only if the current or former public guardians and employees with fiduciary responsibility submit to the custodial agency a written request for maintenance of the exemption. ~~This section is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2,~~

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59 ~~2023, unless reviewed and saved from repeal through reenactment~~
60 ~~by the Legislature.~~

61 Section 2. This act shall take effect October 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7004

INTRODUCER: Environment and Natural Resources Committee

SUBJECT: OGSR/Written Valuations of Surplus Lands

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Barriero</u>	<u>Rogers</u>		EN Submitted as Committee Bill
1.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u> </u>	<u> </u>	<u>RC</u>	<u> </u>

I. Summary:

SB 7004 saves from repeal the current exemption codified in s. 373.089(1), F.S., which makes written valuations of land determined by a governing board of a water management district to be surplus; related documents used to form, or which pertain to, such valuations; and written offers to purchase such surplus land confidential and exempt from public inspection and copying requirements. The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption in s. 373.089, F.S., is scheduled to repeal on October 2, 2023. This bill removes the scheduled repeal to continue the confidential and exempt status of the information.

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

The bill takes effect October 1, 2023.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act provides:

It is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions are often located in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a] ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with certain exceptions.¹⁷ The Act requires the repeal of such exemptions on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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 necessary.¹⁹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

In reviewing an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption. The Act also requires the Legislature to consider specific questions during the review process.²³

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Water Management District Surplus Land

Water management districts (WMDs) are responsible for the administration of water resources at a regional level. There are five WMDs established within the state: Northwest Florida, South Florida, Southwest Florida, St. Johns River, and Suwannee River. The WMDs may acquire real property for flood control; water storage; water management; conservation and protection of water resources; aquifer recharge; water resource and water supply development; and preservation of wetlands, streams, and lakes.²⁶

A WMD's governing board can sell land, or interests or rights in land that the board determines to be surplus.²⁷ For lands that were acquired for conservation purposes, the governing board must make a determination that the lands are no longer needed for conservation purposes and may dispose of them by a two-thirds vote.²⁸ For all other lands, the governing board must make a determination that such lands are no longer needed and may dispose of them by majority vote.²⁹

Surplus lands must be sold at the highest price obtainable, but not be less than the appraised value of the lands, as determined by a certified appraisal obtained within 360 days before the effective date of the contract for sale.³⁰ Sales must be for cash or upon terms and security approved by the governing board, but a deed cannot be executed and delivered until full payment is made.³¹ Before selling any surplus land, the WMD must publish a notice of intention to sell on its website and in a newspaper published in the county where the land is situated once each week

²³ Section 119.15(6)(a), F.S. The questions are:

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

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 373.139(2), F.S.

²⁷ Section 373.089(1)(a), F.S.

²⁸ Section 373.089(6)(a), F.S. and FLA. CONST. art. X, s. 18.

²⁹ Section 373.089(6)(b), F.S.

³⁰ *Id.*

³¹ Section 373.089(2), F.S.

for three successive weeks.³² The first publication must occur at least 30 days, but not more than 360 days, before any sale is approved by the WMD.³³

For lands acquired with Florida Forever funds and no longer needed for conservation purposes, the governing board must first offer title to the Board of Trustees of the Internal Improvement Trust Fund unless the disposition of those lands is for the following purposes:

- Linear facilities, including electric transmission and distribution facilities, telecommunication transmission and distribution facilities, pipeline transmission and distribution facilities, public transportation corridors, and related appurtenances.
- The disposition of the fee interest in the land where a conservation easement is retained by the district to fulfill the conservation objectives for which the land was acquired.
- An exchange of the land for other lands that meet or exceed the conservation objectives for which the original land was acquired.
- To be used by a governmental entity for a public purpose.
- The portion of an overall purchase deemed surplus at the time of the acquisition.³⁴

Open Government Sunset Review Findings and Recommendations

Section 373.089(1)(b), F.S., provides that the following documents are confidential and exempt from public records requirements: written valuations of land determined by a governing board of a WMD to be surplus; related documents used to form, or which pertain to, the valuation; and written offers to purchase such surplus land. Finding that the public availability of this information can negatively impact a WMD's ability to negotiate with potential purchasers and maximize the return on the sale of surplus land, the Legislature created this exemption to facilitate the successful and/or expedited closure of the sale of such land.³⁵

The exemption expires two weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.³⁶ WMDs may also disclose these otherwise confidential documents to potential purchasers in the following circumstances:

- During negotiations for the sale or exchange of the land;
- During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;
- When the passage of time has made the conclusions of value invalid; or
- When negotiations or marketing efforts concerning the land are concluded.³⁷

This public records exemption stands repealed on October 2, 2023, unless reenacted or saved from repeal by the Legislature.

³² Section 373.089(3), F.S.

³³ Section 373.089(3), F.S.

³⁴ Section 373.089(7), F.S.

³⁵ Chapter 2018-156, Laws of Fla.

³⁶ Section 373.089(1)(b), F.S.

³⁷ Section 373.089(1)(c), F.S.

A questionnaire was sent to each WMD asking whether the exemption in s. 373.089(1)(b) and (c), F.S., should be repealed or reenacted. All five WMDs recommend the exemption's reenactment without any changes. WMD representatives explained that having the option to withhold or disclose the information covered by this exemption has assisted them in negotiating with potential purchasers and maximizing the return on the sale of surplus land.

With the exception of Suwannee River WMD, which did not sell any surplus land since the exemption's creation,³⁸ the WMDs have disclosed the valuation of surplus land for sale and related documentation with varying degrees of transparency. For example, St. Johns River WMD (SJRWMD) uses a sealed bid procurement process and discloses the appraised value of the property—but not the exempt record itself—as part of its minimum bid calculation, which is included in invitations to offer.³⁹ South Florida WMD (SFWMD) provides more extensive information to the public during the bidding process, including appraisals, environmental data, and title research. SFWMD's representatives explained this transparency allows potential bidders to have access to a significant amount of information about the property, helping them make an informed decision before placing a bid.⁴⁰ SFWMD nevertheless recommends reenacting the exemption, recognizing that the exemption may assist other agencies in negotiations and that its own sealed bid procedure could change in the future and the exemption would assist SFWMD at that time.⁴¹

III. Effect of Proposed Changes:

Section 1 repeals the October 2, 2023, sunset date for the current public records exemption codified in s. 373.089(1)(b) and (c), F.S., for the following documents relating to the sale of surplus lands by a water management district:

- Written valuations of surplus land;
- Documents pertaining to such valuations; and
- Written offers to purchase surplus land.

These records will maintain the current confidential and exempt status after October 1, 2023.

Section 2 provides an effective date of October 1, 2023.

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.

³⁸ Suwannee River WMD, *Open Government Sunset Review Questionnaire*, at 2.

³⁹ St. Johns River WMD, *Open Government Sunset Review Questionnaire*, at 4.

⁴⁰ Email from Phil Flood, Legislative Liaison, South Florida Water Management District to Senate Committee on Environment and Natural Resources (Oct. 27, 2022).

⁴¹ See generally South Florida WMD, *Open Government Sunset Review Questionnaire*, at 3-5.

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 private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to experience workload related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 373.089 of the Florida Statutes.

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

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

None.

B. Amendments:

None.

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

By the Committee on Environment and Natural Resources

592-02147-23

20237004__

A bill to be entitled

An act relating to a review under the Open Government Sunset Review Act; amending s. 373.089, F.S., which provides an exemption from public records requirements for written valuations of surplus lands, documents used to form or pertaining to such a valuation, and written offers to purchase surplus land held by a water management district; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (1) of section 373.089, Florida Statutes, is amended to read:

373.089 Sale or exchange of lands, or interests or rights in lands.—The governing board of the district may sell lands, or interests or rights in lands, to which the district has acquired title or to which it may hereafter acquire title in the following manner:

(1) (a) Any lands, or interests or rights in lands, determined by the governing board to be surplus may be sold by the district, at any time, for the highest price obtainable; however, the selling price may not be less than the appraised value of the lands, or interests or rights in lands, as determined by a certified appraisal obtained within 360 days before the effective date of a contract for sale.

(b) A written valuation of land determined to be surplus pursuant to this section; related documents used to form, or which pertain to, the valuation; and written offers to purchase

592-02147-23

20237004__

such surplus land are confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This exemption expires 2 weeks before the contract or agreement regarding the purchase, exchange, or disposal of the surplus land is first considered for approval by the district.

(c) Before expiration of the exemption established in paragraph (b), and in order to facilitate successful or expedited closure of the sale of surplus land, the district may disclose confidential and exempt valuations and valuation information which are related to surplus land, or written offers to purchase such surplus land, to potential purchasers:

1. During negotiations for the sale or exchange of the land;

2. During the marketing effort or bidding process associated with the sale, disposal, or exchange of the land;

3. When the passage of time has made the conclusions of value invalid; or

4. When negotiations or marketing efforts concerning the land are concluded.

~~(d) Paragraphs (b) and (c) are subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.~~

If the Board of Trustees of the Internal Improvement Trust Fund declines to accept title to the lands offered under this section, the land may be disposed of by the district under the provisions of this section.

Section 2. This act shall take effect October 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 15, 2023

I respectfully request that **SB 7004**, relating to OGSR/Written Valuations of Surplus Lands, be placed on the:

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

A handwritten signature in black ink, appearing to read "Ana Maria Rodriguez".

Senator Ana Maria Rodriguez
Florida Senate, District 40

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7012

INTRODUCER: Criminal Justice Committee

SUBJECT: OGSR/Victim of an Incident of Mass Violence

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Cellon	Stokes		CJ Submitted as Committee Bill
1.	McVaney	McVaney	GO	Favorable
2.			RC	

I. Summary:

SB 7012 saves from repeal the public records exemption for the address of a victim of an incident of mass violence. The exemption makes the records exempt from public records inspection and copying requirements.

The Open Government Sunset Review Act requires the Legislature to review each public record and each public meeting exemption five years after enactment. The exemption contained in s. 119.071(2)(o), F.S., is scheduled to repeal on October 2, 2023. This bill removes the scheduled repeal to continue the exempt status of the information.

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

The bill takes effect October 1, 2023.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that:

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a] ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); *see also Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

¹² FLA. CONST., art. I, s. 24(c).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Public Records Exemption Under Review

In 2018, the Legislature created s. 119.071(2)(o), F.S., which made the address of a victim of an incident of mass violence exempt from public records laws.²⁶ The exemption in s. 119.071(2)(o), F.S., will stand repealed on October 2, 2023, unless reviewed under the Act²⁷ and saved from repeal through reenactment by the Legislature.

As defined in s. 119.071(2)(o), F.S., the term “incident of mass violence” means an incident in which four or more people, not including the perpetrator, are severely injured or killed by an intentional and indiscriminate act of violence of another. The term “victim” means a person killed or injured during an incident of mass violence, not including the perpetrator.²⁸

In creating the exemption, the Legislature provided a public necessity statement articulating the reasons for the exemption.²⁹ Specifically, the Legislature found:

- After an incident of mass violence has occurred, victims of such an incident are in a vulnerable state as they assist law enforcement with the investigation of the incident and try to recover from the events that occurred.
- In some instances, the victim may have been killed or injured leaving their families to deal with the aftermath of the crime.
- The public availability of such victim’s address may be used to locate the victim or the victim’s family.

²³ 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 119.07(1), F.S., and FLA. CONST. art. I, s. 24(a).

²⁷ Section 119.15, F.S.

²⁸ Section 119.071(2)(o), F.S.

²⁹ Chapter 2018-2, L.O.F.

- The availability of such information has allowed people to take advantage of the victims or their families by subjecting the victims or their families to media intrusions at their homes and other unwelcome intrusions into their privacy.
- Therefore, it is necessary that the address of victims of incidents of mass violence be protected to ensure that persons affected by such incidents are not harassed, taken advantage of, or otherwise subjected to additional pain and suffering.³⁰

In order to determine whether and to what degree the public records exemption under review is being utilized by criminal justice agencies, legislative staff surveyed law enforcement agencies. Additionally, Senate and House of Representatives staff participated in a meeting with the Florida Department of Law Enforcement to discuss the exemption. In the fall of 2022, staff sent questionnaires to a total of 666 agencies.³¹ Forty agencies returned answered questionnaires.³²

Of the 40 responding agencies, only one agency reported an incident of mass violence as defined in the public records exemption, in the approximately five years since the exemption became law.³³ The agency reported a drive-by shooting in 2020 in which one person was killed and seven were wounded.³⁴ The agency further reports that it uses Marsy's Law³⁵ to protect victim information and suggests that the exemption could be repealed.^{36, 37}

Although only one responding law enforcement agency has been in a position to utilize the public records exemption in s. 119.071(2)(o), F.S., 37 agencies responded to the survey question about whether the exemption should be reenacted.³⁸ Of those 37 agencies, a majority of 23 agencies said that the public records exemption should be reenacted; five agencies said the

³⁰ *Id.*

³¹ Staff had the assistance of the Florida Police Chiefs Association and the Florida Sheriff's Association in sending out the survey questionnaires.

³² Open Government Sunset Review Questionnaires, Address of a Victim of an Incident of Mass Violence; responses are on file with the Senate Criminal Justice Committee.

³³ *Id.*

³⁴ *Id.*

³⁵ In 2018, Florida voters passed Marsy's Law, an amendment to the Florida Constitution, to expand victim's rights. FLA. CONST. Art. 1, s. 16(b).

³⁶ Other agencies reported that they would use Marsy's Law or would depend upon both the exemption *and* Marsy's Law under appropriate circumstances. Open Government Sunset Review Questionnaires, Address of a Victim of an Incident of Mass Violence; responses are on file with the Senate Criminal Justice Committee.

³⁷ It appears that there is inconsistency in how different law enforcement agencies have interpreted the requirements of Marsy's Law. While some agencies invoke Marsy's Law and automatically redact victim information, others require the victim to request it. *See The Problem with Marsy's Law in Florida*, Tampa Bay Times, June 7, 2022, available at <https://www.tampabay.com/opinion/2022/06/07/the-problem-with-marsys-law-in-florida-editorial/> (last visited February 24, 2023). There is pending litigation on Marsy's Law in the Florida Supreme Court, but it is unclear whether the court will address the automatic applicability of a victim's right to prevent the disclosure of information or records as provided in FLA. CONST. Art 1, s. 16(b). *See, City of Tallahassee v. Florida Police Benevolent Association, Inc.*, 314 So. 3d 796 (Fla. 1st DCA 2021)(Review granted December 21, 2021).

³⁸ Open Government Sunset Review Questionnaires, Address of a Victim of an Incident of Mass Violence; responses are on file with the Senate Criminal Justice Committee.

exemption should be reenacted with changes;³⁹ and nine agencies thought the exemption should be repealed.⁴⁰

The exemption stands repealed on October 2, 2023, unless it is reviewed and saved from repeal by the Legislature.⁴¹

III. Effect of Proposed Changes:

The bill amends s. 119.071(2)(o), F.S., to save from repeal the current exemption for the address of a victim of mass violence.

The bill deletes the scheduled repeal date of October 2, 2023, thereby maintaining the exempt status of the information.

The bill takes effect October 1, 2023.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

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

B. Public Records/Open Meetings Issues:

Vote Requirement

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

Public Necessity Statement

Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill continues a current public records exemption without expansion.

³⁹ One agency suggests there needs to be more “guidance” in this exemption. Two agencies suggested replacing the term “address” with broader language such as “all information that may be used to identify a victim of mass violence.” An additional agency suggested the exemption is “too narrow” and that it should be changed to “two or more” killed or injured. The fifth agency suggested that the exemption could be merged with language from Marsy’s Law.

⁴⁰ Open Government Sunset Review Questionnaires, Address of a Victim of an Incident of Mass Violence; responses are on file with the Senate Criminal Justice Committee.

⁴¹ Section 119.15(7), F.S.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the address of a victim of mass violence. This bill exempts only the address of a victim of mass violence from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to incur costs related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 119.071 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Criminal Justice

591-02325-23

20237012__

A bill to be entitled

An act relating to a review under the Open Government
Sunset Review Act; amending s. 119.071, F.S., which
provides an exemption from public records requirements
for the address of a victim of an incident of mass
violence; removing the scheduled repeal of the
exemption; providing an effective date.

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

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

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

(2) AGENCY INVESTIGATIONS.—

(o) The address of a victim of an incident of mass violence
is exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution. For purposes of this paragraph, the term "incident
of mass violence" means an incident in which four or more
people, not including the perpetrator, are severely injured or
killed by an intentional and indiscriminate act of violence of
another. For purposes of this paragraph, the term "victim" means
a person killed or injured during an incident of mass violence,
not including the perpetrator. ~~This paragraph is subject to the
Open Government Sunset Review Act in accordance with s. 119.15
and shall stand repealed on October 2, 2023, unless reviewed and
saved from repeal through reenactment by the Legislature.~~

Section 2. This act shall take effect October 1, 2023.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Chair*
Appropriations
Appropriations Committee on Criminal and Civil Justice
Appropriations Committee on Health and Human Services
Community Affairs
Environment and Natural Resources
Ethics and Elections

SELECT COMMITTEE:

Select Committee on Resiliency

SENATOR JONATHAN MARTIN

33rd District

March 21, 2023

The Honorable Bryan Avila
Senate Governmental Oversight and Accountability Committee, Chair
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 7012 – OGSR/Victim of an Incident of Mass Violence

Dear Chair Avila:

Please allow this letter to serve as my respectful request to place SB 7012 OGSR/Victim of an Incident of Mass Violence on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Martin", with a stylized flourish at the end.

Jonathan Martin
Senate District 33

Cc: Joe McVaney, Staff Director
Tamra Redig, Administrative Assistant

REPLY TO:

- 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
- 311 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5033

Senate's Website: www.flsenate.gov

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 7020

INTRODUCER: Governmental Oversight and Accountability Committee and Education Pre-K -12 Committee

SUBJECT: Public Records/Mobile Suspicious Activity Reporting Tool

DATE: March 30, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Brick	Bouck		ED Submitted as Committee Bill
1.	McVaney	McVaney	GO	Fav/CS
2.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 7020 saves from repeal the current exemption from public records disclosure requirements relating to the identity of the reporting party and any other information received through the mobile suspicious activity reporting tool and held by the Florida Department of Law Enforcement, law enforcement agencies, or school officials.

The bill expands the exemption to make confidential and exempt from public records disclosure requirements the identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Florida Department of Education (DOE), and to make exempt from public records disclosure requirements any other information received through the mobile suspicious activity reporting tool and held by the Florida DOE.

The exemptions apply to records held by the agency before, on, or after the effective date of the bill.

The exemptions from public records inspection and copying requirements stands repealed on October 2, 2028, unless reviewed and reenacted by the Legislature.

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

The bill takes effect upon becoming law.

II. Present Situation:

Access to Public Records - Generally

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

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

Executive Agency Records – The Public Records Act

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

Section 119.011(12), F.S., defines “public records” to include:

[a] ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business that are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

¹ FLA. CONST. art. I, s. 24(a).

² *Id.*

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

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

⁵ Section 119.01(1), F.S. Section 119.011(2), F.S., defines “agency” as “any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency.”

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

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

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.⁹ 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.¹⁰

General exemptions from the public records requirements are contained in the Public Records Act.¹¹ Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.¹²

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as "confidential and exempt" are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as "exempt" may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act¹⁶ (the Act), prescribe a legislative review process for newly created or substantially amended¹⁷ public records or open meetings exemptions, with specified exceptions.¹⁸ The Act requires the repeal of

⁷ Section 119.07(1)(a), F.S.

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

⁹ FLA. CONST. art. I, s. 24(c).

¹⁰ *Id. 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).

¹¹ *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).

¹² *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).

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S.

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

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

such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁹

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.²⁰ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

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

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

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

Mobile Suspicious Activity Reporting Tool

The mobile suspicious activity reporting tool (FortifyFL) that allows students and the community to relay information anonymously concerning unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, to appropriate public safety agencies and

¹⁹ Section 119.15(3), F.S.

²⁰ Section 119.15(6)(b), F.S.

²¹ Section 119.15(6)(b)1., F.S.

²² Section 119.15(6)(b)2., F.S.

²³ Section 119.15(6)(b)3., F.S.

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

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

²⁵ See generally s. 119.15, F.S.

²⁶ Section 119.15(7), F.S.

school officials.²⁷ FortifyFL is a computer and mobile phone application free to all public and private schools in Florida. District and school-level administrators receive and must respond to tips from FortifyFL. Any tips submitted via FortifyFL are sent to local school district and law enforcement officials until action is taken.²⁸

The reporting party may provide his or her report anonymously. If the reporting party chooses to disclose his or her identity, it remains confidential and exempt from public records disclosure requirements. Information received through the mobile suspicious activity reporting tool is also exempt.²⁹

If, following an investigation, it is determined that a person knowingly submitted a false tip through FortifyFL, the Internet protocol (IP) address of the device on which the tip was submitted will be provided to law enforcement agencies for further investigation and the reporting party may be subject to criminal penalties. In all other circumstances, unless the reporting party has chosen to disclose his or her identity, the report will remain anonymous.³⁰

The identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Florida Department of Law Enforcement (FDLE), law enforcement agencies, or school officials is confidential and exempt from public records disclosure requirements. Any other information received through the mobile suspicious activity reporting tool and held by the FDLE, law enforcement agencies, or school officials is also exempt from public records disclosure requirements. The exemptions from public records requirements are subject to the requirements of the Act and will be repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.³¹

The bill includes a public necessity statement that provides a rationale for the exemption. This rationale recognizes that the public records exemption for the identity of those individuals reporting potentially harmful or threatening activities encourages individuals to act and not be fearful that their identity will be revealed. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear. Ensuring their identity is protected will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs.

The public necessity statement also provides that the public records exemption for any other information received through the mobile suspicious activity reporting tool protects information of a sensitive personal nature that, if disclosed, could be embarrassing. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear and concern for their safety. The public records exemption will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence

²⁷ Section 943.082(1), F.S.

²⁸ Florida Department of Education, *FortifyFL School Safety Awareness Program*, at 1-2 (Oct. 26, 2018) available at <https://info.fldoe.org/docushare/dsweb/Get/Document-8397/dps-2018-157.pdf> (last visited Mar. 29, 2023).

²⁹ Section 943.082, F.S.

³⁰ Section 943.082(1)(c), F.S.

³¹ Section 943.687(8), F.S.

occurs. The public records exemption is also needed to protect the privacy of other individuals who are included in the report.

Open Government Sunset Review Findings and Recommendations

In September 2022, the Senate Committee on Education Pre-K – 12 and the House of Representatives Government Operations Subcommittee jointly sent an Open Government Sunset Review Questionnaire to the 67 county sheriffs and district school superintendents. The survey sought information regarding the need to maintain the exemption related to identities and other information received through the mobile suspicious activity reporting tool and held by the FDLE, law enforcement agencies, or school officials.

Responses to the questionnaire were submitted by 42 of the district school superintendents and 16 of the county sheriffs. No respondent recommended allowing the exemption to sunset.

Of the respondents, two superintendents recommended expanding the exemption to include all reporting tools utilized by the school district, and another recommended expanding the exemption to include all agencies involved in the prosecution of a false tip. The remaining 33 respondents to whom the exemption was applicable recommended reenacting the exemption as is. Several respondents identified some overlap with other exemptions provided in law, particularly more general exemptions from inspection or copying of public records³² and exemptions from public access or disclosure of security and firesafety systems;³³ however, none of the institutions that identified overlap recommended merging the exemptions, given the specific and heightened protection for information that would identify a person who reports through FortifyFL potentially harmful or threatening activities.

Staff of the Senate Committee on Education Pre-K – 12 and the House of Representatives Government Operations Subcommittee jointly met with staff from the Florida Department of Education (DOE), Office of Safe Schools, and the FDLE in August 2022 to discuss the exemption from public records disclosure requirements relating to identities and other information received through the mobile suspicious activity reporting tool and held by the FDLE, law enforcement agencies, or school officials. The FDLE recommended reenacting the exemption as is.³⁴

The staff of the Florida DOE, Office of Safe Schools recommended reenacting the exemption but also indicated that the Florida DOE receives and holds information through the mobile

³² Section 119.071, F.S., provides for general exemptions from inspection or copying of public records regarding agency administration, criminal intelligence and criminal investigation, and specified personal information. Additionally, the Family Educational Rights and Privacy Act, 20 U.S.C. s. 1232g (FERPA), protects the personal identifying information in educational records of students.

³³ Sections 119.071(3)(a), F.S., provides that security or firesafety system plans held by an agency are confidential and exempt. Section 281.301, F.S., provides that information relating to the security or firesafety systems for specified property is confidential and exempt. Section 286.0113, F.S., provides that a specified portion of a meeting that would reveal a security or firesafety system plan is exempt. Section 1004.055, F.S., provides that specified security data or information from technology systems owned, under contract, or maintained by a state university or a FCS institution is confidential and exempt.

³⁴ E-mail from Bobbie Smith, Director of Legislative Affairs, Florida Department of Law Enforcement, to Alexander Brick, Senior Attorney, Senate Committee on Education Pre-K – 12 (Feb. 3, 2023, 14:02 EST) (On file with Senate Governmental Oversight and Accountability Committee).

suspicious activity reporting tool. Therefore, it is recommended to expand the exemption to make confidential and exempt from public records disclosure requirements the identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Florida DOE, and to make exempt from public records disclosure requirements any other information received through the mobile suspicious activity reporting tool and held by the Florida DOE.

III. Effect of Proposed Changes:

SPB 7020 saves from repeal the current exemption relating to the identity of the reporting party and any other information received through the mobile suspicious activity reporting tool and held by the Florida Department of Law Enforcement, law enforcement agencies, or school officials.

The bill expands the exemption to make confidential and exempt from public records disclosure requirements the identity of the reporting party received through the mobile suspicious activity reporting tool and held by the Florida Department of Education (DOE), and to make exempt from public records disclosure requirements any other information received through the mobile suspicious activity reporting tool and held by the Florida DOE.

The exemptions apply to records held by the agency before, on, or after the effective date of the bill.

The bill provides that the public records exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2028, unless the Legislature reviews and reenacts the exemptions by that date.

The bill takes upon becoming a law.

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 bill creating or expanding an exemption to the public records requirements. This bill expands the exemption to include the identity of the reporting party and any other information received through the mobile suspicious activity reporting tool and held by the Florida Department of Education. 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 2 of the bill contains a statement of public necessity for the exemption.

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purpose of the law is to protect the identity of those individuals reporting potentially harmful or threatening activities to encourage those individuals to act and not be fearful that their identity will be revealed.

Additionally, the law is intended to protect information of a sensitive personal nature that, if disclosed, could be embarrassing. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear and concern for their safety.

This bill exempts only the identity of the reporting party and any other information received through the mobile suspicious activity reporting tool and held by the Florida Department of Education, the Florida Department of Law Enforcement, law enforcement agencies, or school officials from the public records requirements. The exemption does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to experience workload related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.082 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 29, 2023:

The committee substitute make the exemptions applicable to records held by the agencies before, on, or after the effective date of the bill.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2023	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (6) of section 943.082, Florida
Statutes, is amended to read:

943.082 School Safety Awareness Program.—

(6) The identity of the reporting party received through
the mobile suspicious activity reporting tool and held by the
department, the Department of Education, law enforcement



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agencies, or school officials is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any other information received through the mobile suspicious activity reporting tool and held by the department, the Department of Education, law enforcement agencies, or school officials is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. These exemptions apply to any such records held by these agencies before, on, or after the effective date of this act. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028 ~~2023~~, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. (1) The Legislature finds that it is a public necessity that the identity of a person reporting unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, received through the mobile suspicious activity reporting tool and held by the Department of Education be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, if the reporting person provides his or her identity. The public records exemption for the identity of those individuals reporting potentially harmful or threatening activities as part of the School Safety Awareness Program encourages individuals to act and not be fearful that their identity will be revealed. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear. Ensuring their identity is



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protected will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs.

(2) The Legislature also finds that it is a public necessity that any other information received through the mobile suspicious activity reporting tool through the School Safety Awareness Program and held by the Department of Education be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The public records exemption for any other information received through the mobile suspicious activity reporting tool protects information of a sensitive personal nature that, if disclosed, could be embarrassing. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear and concern for their safety. The public records exemption will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs. The public records exemption is also needed to protect the privacy of other individuals who are included in the report. After a report is made, law enforcement may find the report to be unfounded. For these reasons, the Legislature finds that it is a public necessity to protect any other information reported through the mobile suspicious activity reporting tool.

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

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:



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69 Delete everything before the enacting clause
70 and insert:

71 A bill to be entitled
72 An act relating to a review under the Open Government
73 Sunset Review Act; amending s. 943.082, F.S.;
74 expanding exemptions from public records requirements
75 for the identity of a reporting party and any
76 information received through the mobile suspicious
77 activity reporting tool to include such information
78 held by the Department of Education; providing for
79 retroactivity of the exemption; providing for future
80 legislative review and repeal; providing statements of
81 public necessity; providing an effective date.

By the Committee on Education Pre-K -12

581-02546-23

20237020__

A bill to be entitled

An act relating to public records; amending s. 943.082, F.S.; expanding exemptions from public records requirements for the identity of a reporting party and any information received through the mobile suspicious activity reporting tool to include such information held by the Department of Education; providing for future legislative review and repeal; providing statements of public necessity; providing an effective date.

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

Section 1. Subsection (6) of section 943.082, Florida Statutes, is amended to read:

943.082 School Safety Awareness Program.—

(6) The identity of the reporting party received through the mobile suspicious activity reporting tool and held by the department, the Department of Education, law enforcement agencies, or school officials is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Any other information received through the mobile suspicious activity reporting tool and held by the department, the Department of Education, law enforcement agencies, or school officials is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2028 ~~2023~~, unless reviewed and saved from repeal through reenactment by the Legislature.

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

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Section 2. (1) The Legislature finds that it is a public necessity that the identity of a person reporting unsafe, potentially harmful, dangerous, violent, or criminal activities, or the threat of these activities, through the mobile suspicious activity reporting tool and received by the Department of Education, be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution, if the reporting person provides his or her identity. The public records exemption for the identity of those individuals reporting potentially harmful or threatening activities as part of the School Safety Awareness Program encourages individuals to act and not be fearful that their identity will be revealed. Without the public records exemption, individuals reporting such activities might be less willing to report their knowledge of these possible activities to the appropriate authorities out of fear. Ensuring their identity is protected will encourage reporting, which could lead to law enforcement or other appropriate agencies intervening before an incident of mass violence occurs.

(2) The Legislature finds that it is a public necessity that any other information received through the mobile suspicious activity reporting tool through the School Safety Awareness Program and held by the Department of Education be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The public records exemption for any other information received through the mobile suspicious activity reporting tool protects information of a sensitive personal nature that, if disclosed, could be embarrassing. Without the public records exemption, individuals

Page 2 of 3

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

581-02546-23

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59 reporting such activities might be less willing to report their
60 knowledge of these possible activities to the appropriate
61 authorities out of fear and concern for their safety. The public
62 records exemption will encourage reporting, which could lead to
63 law enforcement or other appropriate agencies intervening before
64 an incident of mass violence occurs. The public records
65 exemption is also needed to protect the privacy of other
66 individuals who are included in the report. After a report is
67 made, law enforcement may find the report to be unfounded. For
68 these reasons, the Legislature finds that it is a public
69 necessity to protect any other information reported through the
70 mobile suspicious activity reporting tool.

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

From: [Limonas, Gabriela](#)
To: [Redig, Tamra](#)
Subject: FW: Open Meeting Exemption - MSD Commission
Date: Wednesday, March 29, 2023 3:13:47 PM

From: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Sent: Friday, February 3, 2023 2:02 PM
To: Brick, Alexander <Brick.Alexander@flsenate.gov>
Subject: RE: Open Meeting Exemption - MSD Commission

Yes, you are correct.

From: Brick, Alexander <Brick.Alexander@flsenate.gov>
Sent: Friday, February 3, 2023 12:52 PM
To: Smith, Bobbie <BobbieSmith@fdle.state.fl.us>
Cc: Skinner, Roberta <Roberta.Skinner@myfloridahouse.gov>
Subject: Open Meeting Exemption - MSD Commission

CAUTION: This email originated outside of FDLE. Please use caution when opening attachments, clicking links, or responding to this email.

Hello Bobbie,

I recall when we met in August that the FDLE was recommending reenactment as is for the exemption from:

- Open meeting requirements related to the Marjory Stoneman Douglas High School Public Safety Commission.
- Public records disclosure requirements related to identities and other information received through FortifyFL.

Can you confirm for my record?

Thank you,
Alex

Alexander Brick
Attorney
The Florida Senate Committees on
Education Pre-K – 12 and Education Postsecondary
Board-certified attorney – State and Federal Government and
Administrative Practice

Phone: (850) 487-5225

E-mail: brick.alexander@flsenate.gov

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 7022

INTRODUCER: Education Pre-K -12 Committee

SUBJECT: OGSR/Marjory Stoneman Douglas High School Public Safety Commission/Safe-school Officers

DATE: March 28, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	Brick	Bouck		ED Submitted as Committee Bill
1.	McVaney	McVaney	GO	Favorable
2.			RC	

I. Summary:

SB 7022 saves from repeal two exemptions from public records and public meetings requirements. The bill saves from repeal the exemption from public meeting requirements relating to any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed.

The bill also saves from repeal the exemption from public records disclosure requirements relating to any information held by a law enforcement agency, school district, or charter school that would identify whether a particular individual has been appointed as a safe-school officer.

The exemptions from public records and public meetings requirements stand repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.

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

The bill takes effect October 1, 2023.

II. Present Situation:

Public Records Law

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

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

Chapter 119, F.S., known as the Public Records Act, constitutes the main body of public records laws.³ The Public Records Act states that

[i]t is the policy of this state that all state, county, and municipal records are open for personal inspection and copying by any person. Providing access to public records is a duty of each agency.⁴

The Public Records Act typically contains general exemptions that apply across agencies. Agency- or program-specific exemptions often are placed in the substantive statutes relating to that particular agency or program.

The Public Records Act does not apply to legislative or judicial records.⁵ Legislative records are public pursuant to s. 11.0431, F.S. Public records exemptions for the Legislature are codified primarily in s. 11.0431(2)-(3), F.S., and adopted in the rules of each house of the legislature.

Section 119.011(12), F.S., defines “public records” to include:

[a] ll 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 connections with the transaction of official business by any agency.

The Florida Supreme Court has interpreted this definition to encompass all materials made or received by an agency in connection with official business which are used to “perpetuate, communicate, or formalize knowledge of some type.”⁶

The Florida Statutes specify conditions under which public access to governmental records must be provided. The Public Records Act guarantees every person’s right to inspect and copy any state or local government public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁷ A violation of the Public Records Act may result in civil or criminal liability.⁸

Only the Legislature may create an exemption to public records requirements.⁹ An exemption must be created by general law and must specifically state the public necessity justifying the exemption.¹⁰ Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions¹¹

³ Public records laws are found throughout the Florida Statutes.

⁴ Section 119.01(1), F.S.

⁵ *Locke v. Hawkes*, 595 So. 2d 32, 34 (Fla. 1992); see also *Times Pub. Co. v. Ake*, 660 So. 2d 255 (Fla. 1995).

⁶ *Shevin v. Byron, Harless, Schaffer, Reid and Assoc. Inc.*, 379 So. 2d 633, 640 (Fla. 1980).

⁷ Section 119.07(1)(a), F.S.

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

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ *Id.*

¹¹ The bill may, however, contain multiple exemptions that relate to one subject.

and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

When creating a public records exemption, the Legislature may provide that a record is “exempt” or “confidential and exempt.” There is a difference between records the Legislature has determined to be exempt from the Public Records Act and those which the Legislature has determined to be exempt from the Public Records Act *and confidential*.¹³ Records designated as “confidential and exempt” are not subject to inspection by the public and may only be released under the circumstances defined by statute.¹⁴ Records designated as “exempt” may be released at the discretion of the records custodian under certain circumstances.¹⁵

Open Government Sunset Review Act

The provisions of s. 119.15, F.S., known as the Open Government Sunset Review Act (the Act), prescribe a legislative review process for newly created or substantially amended public records or open meetings exemptions,¹⁶ with specified exceptions.¹⁷ The Act requires the repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment; in order to save an exemption from repeal, the Legislature must reenact the exemption or repeal the sunset date.¹⁸ In practice, many exemptions are continued by repealing the sunset date, rather than reenacting the exemption.

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.¹⁹ An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivision to effectively and efficiently administer a program, and administration would be significantly impaired without the exemption;²⁰
- Releasing sensitive personal information would be defamatory or would jeopardize an individual’s safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;²¹ or
- It protects trade or business secrets.²²

¹² FLA. CONST., art. I, s. 24(c)

¹³ *WFTV, Inc. v. The Sch. Bd. of Seminole County*, 874 So. 2d 48, 53 (Fla. 5th DCA 2004).

¹⁴ *Id.*

¹⁵ *Williams v. City of Minneola*, 575 So. 2d 683 (Fla. 5th DCA 1991).

¹⁶ Section 119.15, F.S. Section 119.15(4)(b), F.S., provides that an exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings.

¹⁷ Section 119.15(2)(a) and (b), F.S., provides that exemptions required by federal law or applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

¹⁸ Section 119.15(3), F.S.

¹⁹ Section 119.15(6)(b), F.S.

²⁰ Section 119.15(6)(b)1., F.S.

²¹ Section 119.15(6)(b)2., F.S.

²² Section 119.15(6)(b)3., F.S.

The Act also requires specified questions to be considered during the review process.²³ In examining an exemption, the Act directs the Legislature to question the purpose and necessity of reenacting the exemption.

If, in reenacting an exemption or repealing the sunset date, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.²⁴ If the exemption is reenacted or saved from repeal without substantive changes or if the exemption is narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to expire, the previously exempt records will remain exempt unless otherwise provided by law.²⁵

Marjory Stoneman Douglas High School Public Safety Commission

The Marjory Stoneman Douglas High School Public Safety Commission (commission) was established in 2018 to investigate system failures in the Marjory Stoneman Douglas High School shooting and prior mass violence incidents, and to develop recommendations for system improvements.²⁶ The commission is housed within the Florida Department of Law Enforcement.²⁷ The commission submitted its initial report to the Governor and the Legislature on January 2, 2019,²⁸ and its second report on November 1, 2019.²⁹ The commission is scheduled to sunset on July 1, 2026.³⁰

Any portion of a meeting of the commission at which exempt or confidential and exempt information is discussed is exempt from public meeting requirements. The exemption from public meeting requirements is subject to the requirements of the Act and is repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.³¹

Chapter 2018-1, Laws of Florida, which established the exemption from public meeting requirements for any portion of a meeting of the commission at which exempt or confidential and exempt information is discussed, included a public necessity statement that provided a rationale for the exemption. This rationale recognized that the commission must be able to discuss exempt or confidential and exempt information that it receives as part of its investigation.

²³ 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?

²⁴ FLA. CONST. art. I, s. 24(c).

²⁵ Section 119.15(7), F.S.

²⁶ Section 943.687(3), F.S.

²⁷ Section 943.687(1), F.S.

²⁸ Commission, *Initial Report* (Jan. 2, 2019), available at <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf> (last visited Feb. 3, 2023).

²⁹ Commission, *Report Submitted to the Governor, Speaker of the House of Representatives and Senate President*, (Nov. 1, 2019), available at <http://www.fdle.state.fl.us/MSDHS/MSD-Report-2-Public-Version.pdf>.

³⁰ Section 943.687, F.S.

³¹ Section 943.687(8), F.S.

The public meetings exemption is intended to allow the commission to review and discuss exempt or confidential and exempt information that will be useful in forming meaningful recommendations for system improvements for prevention and response to mass violence incidents. As such, it is a necessity that those portions of meetings wherein exempt or confidential and exempt information is discussed be made exempt from public meetings requirements. If such portions of a meeting are not closed, then the public records exemptions would be negated.³²

Safe-School Officer Requirement

Florida law requires each district school board and school district superintendent to partner with law enforcement and security agencies to establish or assign one or more safe-school officers at each school facility within the district by implementing one or more safe-school officer options which best meet the needs of the school district and charter schools. These options include:

- Establishing a School Resource Officer (SRO) program through a cooperative agreement with law enforcement agencies. SROs are certified law enforcement officers.
- Commissioning one or more school safety officers. School safety officers are certified law enforcement officers with the power of arrest on district school property, who are employed by either a law enforcement agency or by the district school board.
- Participating in the Coach Aaron Feis Guardian Program to employ school personnel who are trained in responding to threats from active assailants but have no authority to act in any law enforcement capacity except to the extent necessary to prevent or abate an active assailant incident.
- Contracting with a security agency to employ as a school security guard an individual who holds a Class “D” and Class “G” license and completes the same training as a school guardian.

Any information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school is exempt from public records disclosure requirements. The exemption from public records requirements is subject to the requirements of the Act and is repealed on October 2, 2023, unless reviewed and reenacted by the Legislature.³³

Chapter 2018-1, Laws of Florida, which established the exemption from public records disclosure requirements for information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school, included a public necessity statement that provided a rationale for the exemption. This rationale recognized that, in light of the tragic events at Marjory Stoneman Douglas High School, in which 14 students and 3 adults were shot and killed on February 14, 2018, district school boards must be allowed to provide a supplemental security presence. To maximize the effectiveness of safe-school officers as a deterrent and responsive factor to situations threatening the lives of students and school staff, safe-school officers may perform their school-related duties while carrying a concealed weapon. Disclosure of the identity of a safe-school officer can affect his or her ability to adequately respond to an active assailant situation. Accordingly, it is

³² Ch. 2018-1, Laws of Fla.

³³ *Id.*

necessary to protect the identity of safe-school officers from public records requirements in order to effectively and efficiently implement the purpose and intent of the program.³⁴

Open Government Sunset Review Findings and Recommendations

Marjory Stoneman Douglas High School Public Safety Commission

Staff of the Senate Committee on Education and the House of Representatives Government Operations Subcommittee jointly met with staff from the Florida Department of Law Enforcement in August 2022 to discuss the exemption from public meeting requirements relating to any portion of a meeting of the commission at which exempt or confidential and exempt information is discussed. The Florida Department of Law Enforcement recommended reenacting the exemption as is.³⁵

Safe-School Officers

In September 2022, the Senate Committee on Education and the House of Representatives Government Operations Subcommittee jointly sent an Open Government Sunset Review Questionnaire to the 67 county sheriffs and district school superintendents. The survey sought information regarding the need to maintain the exemption related to information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school.

Responses to the questionnaire were submitted by 42 of the district school superintendents and 16 of the county sheriffs. No respondent recommended allowing the exemption to sunset. One superintendent recommended excluding sworn law enforcement officers from the exemption, and another recommended excluding sworn law enforcement officers and school security guards from the exemption. One county sheriff recommended expanding the exemption to protect information that would reveal the type or number of safe-school officers assigned to a school facility or within a school district. The remaining 43 respondents to whom the exemption was applicable recommended reenacting the exemption as is. Several respondents identified some overlap with other exemptions provided in law, particularly more general exemptions from inspection or copying of public records³⁶ and exemptions from public access or disclosure of security and firesafety systems;³⁷ however, none of the institutions that identified overlap recommended merging the exemptions, given the specific and heightened protection for information that would identify whether a particular individual has been appointed as a safe-school officer as provided in s. 1006.12, F.S.

³⁴ Ch. 2018-1, Laws of Fla.

³⁵ Email, Florida Department of Law Enforcement (Feb. 3, 2023).

³⁶ Section 119.071, F.S., provides for general exemptions from inspection or copying of public records regarding agency administration, criminal intelligence and criminal investigation, and specified personal information.

³⁷ Sections 119.071(3)(a), F.S., provides that security or firesafety system plans held by an agency are confidential and exempt. Section 281.301, F.S., provides that information relating to the security or firesafety systems for specified property is confidential and exempt. Section 286.0113, F.S., provides that a specified portion of a meeting that would reveal a security or firesafety system plan is exempt. Section 1004.055, F.S., provides that specified security data or information from technology systems owned, under contract, or maintained by a state university or a FCS institution is confidential and exempt.

III. Effect of Proposed Changes:

Section 1 amends s. 943.687, F.S., to save from repeal the current public meeting exemption relating to any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed.

Section 2 amends s. 1006.12, F.S., to save from repeal the public records exemption relating to any information that would identify whether a particular individual has been appointed as a safe-school officer held by a law enforcement agency, school district, or charter school.

The exemptions from open meetings and public records inspection and copying requirements stand repealed on October 2, 2023, unless reviewed and reenacted by the Legislature. With the enactment of this bill, the public meeting exemption and the public records exemption will be maintained after October 2, 2023.

The bill takes effect October 1, 2023.

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 bill creating or expanding an exemption to the public records requirements. This bill continues current open meeting exemption and a public records exemption beyond the current dates of repeal. The bill does not create or expand an exemption. Thus, the bill does not require an extraordinary vote for enactment.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The purposes of the law are to allow the commission to review and discuss exempt or

confidential and exempt information that will be useful in forming meaningful recommendations for system improvements for prevention and response to mass violence incidents and to protect the ability of a safe-school officer to adequately respond to an active assailant situation. The exemptions do not appear to be broader than necessary to accomplish the purposes of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will continue to be subject to the cost associated with an agency's review and redactions of exempt records in response to a public records request.

C. Government Sector Impact:

The government sector will continue to experience workload related to the review and redaction of exempt records associated with responding to public records requests.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the sections 943.687 and 1006.12 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By the Committee on Education Pre-K -12

581-02547-23

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A bill to be entitled

An act relating to the Open Government Sunset Review Act; amending s. 943.687, F.S., which provides an exemption from public meetings requirements for any portion of a meeting of the Marjory Stoneman Douglas High School Safety Commission at which exempt or confidential and exempt information is discussed; removing the scheduled repeal of the exemption; amending s. 1006.12, F.S., relating to an exemption from public records requirements for information held by specified entities which could identify a safe-school officer; removing the scheduled repeal of the exemption; providing an effective date.

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

Section 1. Subsection (8) of section 943.687, Florida Statutes, is amended to read:

943.687 Marjory Stoneman Douglas High School Public Safety Commission.—

(8) Any portion of a meeting of the Marjory Stoneman Douglas High School Public Safety Commission at which exempt or confidential and exempt information is discussed is exempt from s. 286.011 and s. 24(b), Art. I of the State Constitution. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.~~

Section 2. Subsection (8) of section 1006.12, Florida

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Statutes, is amended to read:

1006.12 Safe-school officers at each public school.—For the protection and safety of school personnel, property, students, and visitors, each district school board and school district superintendent shall partner with law enforcement agencies or security agencies to establish or assign one or more safe-school officers at each school facility within the district, including charter schools. A district school board must collaborate with charter school governing boards to facilitate charter school access to all safe-school officer options available under this section. The school district may implement any combination of the options in subsections (1)-(4) to best meet the needs of the school district and charter schools.

(8) EXEMPTION.—Any information that would identify whether a particular individual has been appointed as a safe-school officer pursuant to this section held by a law enforcement agency, school district, or charter school is exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. ~~This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.~~

If a district school board, through its adopted policies, procedures, or actions, denies a charter school access to any safe-school officer options pursuant to this section, the school district must assign a school resource officer or school safety officer to the charter school. Under such circumstances, the charter school's share of the costs of the school resource

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59 officer or school safety officer may not exceed the safe school
60 allocation funds provided to the charter school pursuant to s.
61 1011.62(12) and shall be retained by the school district.
62 Section 3. This act shall take effect October 1, 2023.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/SB 1708

INTRODUCER: Governmental Oversight and Accountability Committee and Senator DiCeglie

SUBJECT: Cybersecurity

DATE: March 30, 2023

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harmsen	McVaney	GO	Fav/CS
2. _____	_____	AEG	_____
3. _____	_____	AP	_____
4. _____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1708, which may be called the “Florida Cyber Protection Act,” makes several changes to laws regarding state information technology and cybersecurity governance. The bill:

- Requires the Department of Management Services (DMS), through the Florida Digital Service (FLDS), to ensure independent oversight of state agency IT procurements;
- Establishes an operations committee that will develop collaborative efforts between agencies and other governmental entities relating to cybersecurity issues;
- Creates the position of state chief technology officer, who will explore technology solutions, and support cybersecurity and interoperability initiatives, among other duties;
- Expands oversight and management duties of the state data center, and grants the FLDS full access to its infrastructure;
- Provides that the state data center, or its successor entity, must fully integrate with the Cybersecurity Operations Center;
- Requires agencies and local governments to notify the FLDS of any cybersecurity or ransomware incident;
- Grants the FLDS the ability to respond to any state agency cybersecurity incident; and
- Allows the FLDS to brief members of a legislative committee or subcommittee that is responsible for cybersecurity issues

The state chief information officer (CIO), who serves as head of the FLDS, will now be appointed by the Governor and subject to Senate confirmation.

The bill provides that local governments and private businesses cannot be liable for torts related to cybersecurity breaches if they adhere to specific cybersecurity protocol, and update their protocol according to provisions adopted in the bill.

The bill does not have a fiscal impact on state or local government revenues or local government expenditures. The bill may increase state expenditures.

The bill takes effect on July 1, 2023.

II. Present Situation:

State Information Technology Management

The Department of Management Services (DMS) oversees information technology (IT) governance and security for the executive branch of the State government.¹ The Florida Digital Service (FLDS) within the DMS was established by the Legislature in 2020² to replace the Division of State Technology. The FLDS works subordinate to the DMS to implement policies for IT and agency cybersecurity, and to fully support Florida's cloud first policy.³

The FLDS was created to modernize state government technology and information services.⁴ Accordingly, the DMS, through the FLDS, has the following powers, duties, and functions:

- Develop IT policy for the management of the state's IT resources;
- Develop an enterprise architecture that facilitates interoperability between agencies and supports the cloud-first policy;
- Establish IT project management and oversight standards for state agencies;
- Oversee state agency IT projects that cost \$10 million or more and that are funded in the General Appropriations Act or any other law;⁵ and
- Standardize and consolidate IT services that support interoperability, Florida's cloud first policy, and other common business functions and operations.

The head of FLDS is appointed by the Secretary of DMS and serves as the state chief information officer (CIO).⁶ The CIO must have at least 5 years of experience in the development of IT system strategic planning and IT policy, and preferably have leadership-level experience in the design, development, and deployment of interoperable software and data solutions.⁷

¹ Section 282.0051, F.S.

² Ch. 2020-161, Laws of Fla.

³ Section 282.0051(1), F.S.

⁴ Section 282.0051(1), F.S.

⁵ The FLDS provides project oversight on IT projects that have a total cost of \$20 million or more for the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services. Section 282.0051(1)(m), F.S.

⁶ Section 282.0051(2)(a), F.S.

⁷ *Id.*

State Data Center

Present Situation

In 2022 the State Data Center (SDC) was moved from FLDS to DMS, which now operates and maintains the SDC.⁸ The SDC provides data center services that comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements.⁹ The standards used by the SDC are created through the Information Technology Infrastructure Library (ITIL); the International Organization for Standardization; and the International Electrotechnical Commission (ISO/IEC) 27,000; and the Project Management Institute's (PMI) best practices.

Northwest Regional Data Center

The Northwest Regional Data Center (NWRDC) is the leading computing provider for educational and governmental communities in Florida. In 2022, NWRDC (located at Florida State University) was declared an official state data center, and the current SDC resources, contracts, and assets were transferred to NWRDC, through contract.¹⁰ This allows for NWRDC to provide services from the SDC facility. The NWRDC offers services and 24/7 management support for various IT support solutions, including: public/private cloud services, backup and recovery, storage, managed services, Tallahassee fiber loop, Florida LambdaRail, MyFloridaNet, Florida Power and Light Fibernet, CenturyLink Connectivity, security services, multi-site colocation, and disaster recovery.¹¹

State Cybersecurity Act

Agency Cybersecurity Standards

The State Cybersecurity Act¹² requires the DMS and the heads of state agencies to meet certain requirements to enhance state agencies' cybersecurity.¹³ Specifically, the DMS, acting through the FLDS, must:¹⁴

- Assess state agency cybersecurity risks and determine appropriate security measures consistent with generally accepted best practices for cybersecurity.
- Adopt rules to mitigate risk, support a security governance framework, and safeguard state agency digital assets, data, information, and IT resources¹⁵ to ensure availability, confidentiality, and integrity.
- Designate a chief information security officer (CISO) who must develop, operate, and oversee state technology systems' cybersecurity. The CISO must be notified of all confirmed

⁸ Ch. 2022-153, Laws of Fla.

⁹ Section 282.201(1), F.S.

¹⁰ Section 282.201(5), F.S.

¹¹ NWRDC: Florida's Cloud Broker, *About Northwest Regional Data Center*, <https://www.nwrdc.fsu.edu/about> (last visited Mar. 29, 2023).

¹² Section 282.318, F.S.

¹³ "Cybersecurity" means the protection afforded to an automated information system in order to attain the applicable objectives of preserving the confidentiality, integrity, and availability of data, information, and information technology resources. Section 282.0041(8), F.S.

¹⁴ Section 282.318(3), F.S.

¹⁵ "Information technology resources" means data processing hardware and software and services, communications, supplies, personnel, facility resources, maintenance, and training. Section 282.0041(22), F.S.

or suspected incidents or threats of state agency IT resources and must report such information to the CIO and the Governor.

- Develop and annually update a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for cyber incidents.
- Develop a cybersecurity governance framework and publish it for state agency use.
- Assist state agencies in complying with the State Cybersecurity Act.
- Train state agency information security managers and computer security incident response team members, in collaboration with the Florida Department of Law Enforcement (FDLE) Cybercrime Office, on issues relating to cybersecurity, including cybersecurity threats, trends, and best practices.
- Provide cybersecurity training to all state agency technology professionals that develop, assess, and document competencies by role and skill level. The training may be provided in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system.
- Annually review state agencies' strategic and operational cybersecurity plans.
- Track, in coordination with agency inspectors general, state agencies' implementation of remediation plans.
- Operate and maintain a Cybersecurity Operations Center led by the CISO to serve as a clearinghouse for threat information and to coordinate with the FDLE to support state agency response to cybersecurity incidents.
- Lead an Emergency Support Function under the state comprehensive emergency management plan.

The State Cybersecurity Act requires the head of each state agency to designate an information security manager to administer the cybersecurity program of the state agency.¹⁶ In addition, agency heads must:

- Establish an agency cybersecurity incident response team, which must report any confirmed or suspected cybersecurity incidents to the CISO.
- Submit an annual strategic and operational cybersecurity plan to the DMS.
- Conduct a triennial comprehensive risk assessment to determine the security threats to the data, information, and IT resources of the state agency.
- Develop and update internal policies and procedures, including procedures for reporting cybersecurity incidents and breaches to the FLDS and the Cybercrime Office.
- Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the DMS to address identified risks to the data, information, and IT resources of the agency.
- Ensure periodic internal audits and evaluations of the agency's cybersecurity program.
- Ensure that cybersecurity contract requirements of IT and IT resources and services meet or exceed applicable state and federal laws, regulations, and standards for cybersecurity, including the NIST cybersecurity framework.
- Provide cybersecurity awareness training to all state agency employees concerning cybersecurity risks and the responsibility of employees to comply with policies, standards,

¹⁶ Section 282.318(4)(a), F.S.

guidelines, and operating procedures adopted by the state agency to reduce those risks. The training may be provided in collaboration with the Cybercrime Office, a private sector entity, or an institution of the state university system.

- Develop a process, consistent with FLDS rules and guidelines, to detect, report, and respond to threats, breaches, or cybersecurity incidents.

Specifically, state agencies and local governments in Florida, must report all ransomware incidents and any cybersecurity incidents at severity levels three, four, and five incident as soon as possible, but no later than 48 hours after discovery of a cybersecurity incident and no later than 12 hours after discovery of a ransomware incident, to the Cybersecurity Operations Center.¹⁷ The Cybersecurity Operations Center shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level three, four, or five as soon as possible, but no later than 12 hours after receiving the incident report from the state agency or local government.¹⁸ For state agency and local government incidents at severity levels one and two, they must report these to the Cybersecurity Operations Center and the Cybercrime Office at FDLE as soon as possible.¹⁹

In addition, the Cybersecurity Operations Center must provide consolidated incident reports to the President of the Senate, Speaker of the House of Representatives, and the Advisory Council on a quarterly basis.²⁰

State agencies and local governments must also submit an after-action report to FLDS within 1 week of the remediation of a cybersecurity or ransomware incident.²¹ The report must summarize the incident, state the resolution, and provide any insights from the incident.

Public Record and Public Meetings Exemption for Specific Cybersecurity Records Held by Agencies

The State Cybersecurity Act makes confidential and exempt from public records copying and inspection requirements the portions of risk assessments, evaluations, external audits, and other agency cybersecurity program reports that are held by an agency, if the disclosure would facilitate unauthorized access to, modification, disclosure, or destruction of data or IT resources.²² However, this information must be shared with the Auditor General, DLE Cybercrime Office, FLDS, and the Chief Inspector General. An agency may share its confidential and exempt documents with a local government, another agency, or a federal agency if given for a cybersecurity purpose, or in furtherance of the agency's official duties.²³

The State Cybersecurity act also exempts portions of any public meeting that would reveal records that it makes confidential and exempt.²⁴

¹⁷ Sections 282.318(3)(c)9.c, and 282.3185(5)(b)1., F.S.

¹⁸ Sections 282.318(3)(c)9.c.(II), and 282.3185(5)(b)2. F.S.

¹⁹ Sections 282.318(3)(c)9.d., 282.3185(5)(c), F.S.

²⁰ Sections 282.318(3)(c)9.e, and 282.3185(5)(d), F.S.

²¹ Sections 282.318(4)(k), and 282.3185(6), F.S. *See also*, ch. 2022-220, Laws of Fla.

²² Section 282.318(5), F.S.

²³ Section 282.318(7), F.S.

²⁴ Section 282.318(6), F.S.

Florida Cybersecurity Advisory Council

The Florida Cybersecurity Advisory Council (Advisory Council) within the DMS²⁵ protects IT resources from cyber threats and incidents.²⁶

The Advisory Council's membership must consist of:

- The Lieutenant Governor or his or her designee.
- The state chief information officer.
- The state chief information security officer.
- The director of the Division of Emergency Management or his or her designee.
- A representative of the computer crime center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement.
- A representative of the Florida Fusion Center of the Department of Law Enforcement, appointed by the executive director of the Department of Law Enforcement.
- The Chief Inspector General.
- A representative from the Public Service Commission.
- Up to two representatives from institutions of higher education located in this state, appointed by the Governor.
- Three representatives from critical infrastructure sectors, one of whom must be from a water treatment facility, appointed by the Governor.
- Four representatives of the private sector with senior level experience in cybersecurity or software engineering from within the finance, energy, health care, and transportation sectors, appointed by the Governor.
- Two representatives with expertise on emerging technology, with one appointed by the President of the Senate and one appointed by the Speaker of the House of Representatives.

The Advisory Council must assist the FLDS with the implementation of best cybersecurity practices, taking into consideration the final recommendations of the Florida Cybersecurity Task Force – a task force created to review and assess the state's cybersecurity infrastructure, governance, and operations.²⁷ The Advisory Council meets at least quarterly to:²⁸

- Review existing state agency cybersecurity policies.
- Assess ongoing risks to state agency IT.
- Recommend a reporting and information sharing system to notify state agencies of new risks.
- Recommend data breach simulation exercises.
- Develop cybersecurity best practice recommendations for state agencies, including continuous risk monitoring, password management, and protecting data in legacy and new systems.
- Examine inconsistencies between state and federal law regarding cybersecurity.

²⁵ Section 282.319(1), F.S.

²⁶ Section 282.319(2), F.S.

²⁷ Section 282.319(3), F.S. The Cybersecurity Task Force is no longer active. *See*, Florida DMS, *Cybersecurity Task Force Overview*, https://www.dms.myflorida.com/other_programs/cybersecurity_advisory_council/cybersecurity_task_force (last visited Mar. 29, 2023).

²⁸ Section 282.319(9), F.S.

Beginning June 30, 2022, and each June 30 thereafter, the Advisory Council must submit cybersecurity recommendations to the Legislature.²⁹

Limitation on Liability

Tort Liability and Negligence

A tort is a civil legal action to recover damages for a loss, injury, or death due to the conduct of another. Some have characterized a tort as a civil wrong, other than a claim for breach of contract, in which a remedy is provided through damages.³⁰ When a plaintiff files a tort claim, he or she alleges that the defendant's "negligence" caused the injury. Negligence is defined as the failure to use reasonable care. It means the care that a reasonably careful person would use under similar circumstances. According to the Florida Standard Jury Instructions, negligence means "doing something that a reasonably careful person would not do" in a similar situation or "failing to do something that a reasonably careful person would do" in a similar situation.³¹

When a plaintiff seeks to recover damages for a personal injury and alleges that the injury was caused by the defendant's negligence, the plaintiff bears the legal burden of proving that the defendant's alleged action was a breach of the duty that the defendant owed to the plaintiff.³²

Negligence Pleadings

To establish a claim for relief and initiate a negligence lawsuit, a plaintiff must file a "complaint." The complaint must state a cause of action and contain: a short and plain statement establishing the court's jurisdiction, a short and plain statement of the facts showing why the plaintiff is entitled to relief, and a demand for judgment for relief that the plaintiff deems himself or herself entitled. The defendant responds with an "answer," and provides in short and plain terms the defenses to each claim asserted, admitting or denying the averments in response.³³

Under the Florida Rules of Civil Procedure, there is a limited group of allegations that must be pled with "particularity." These allegations include allegations of fraud, mistake, and a denial of performance or occurrence.³⁴

Four Elements of a Negligence Claim

To establish liability, the plaintiff must prove four elements:

- Duty – That the defendant owed a duty, or obligation, of care to the plaintiff;
- Breach – That the defendant breached that duty by not conforming to the standard required;
- Causation – That the breach of the duty was the legal cause of the plaintiff's injury; and
- Damages – That the plaintiff suffered actual harm or loss.

²⁹ Section 282.319(11), F.S.

³⁰ BLACK'S LAW DICTIONARY (11th ed. 2019).

³¹ Fla. Std. Jury Instr. Civil 401.3, *Negligence*.

³² Florida is a comparative negligence jurisdiction as provided in s. 768.81(2), F.S. In lay terms, if a plaintiff and defendant are both at fault, a plaintiff may still recover damages, but those damages are reduced proportionately by the degree that the plaintiff's negligence caused the injury.

³³ Fla. R. Civ. P. 1.110.

³⁴ Fla. R. Civ. P. 1.120(b) and (c).

Burden or Standard of Proof

A “burden of proof” is the obligation a party bears to prove a material fact. The “standard of proof” is the level or degree to which an issue must be proved.³⁵ The plaintiff carries the burden of proving, by a specific legal standard, that the defendant breached the duty that was owed to the plaintiff that resulted in the injury. In civil cases, two standards of proof generally apply:

- The “greater weight of the evidence” standard, which applies most often in civil cases, or
- The “clear and convincing evidence” standard, which applies less often, and is a higher standard of proof.³⁶

However, there are certain statutory and common law presumptions³⁷ that may shift the burden of proof from the party asserting the material fact in issue to the party defending against such fact.³⁸ These presumptions remain in effect following the introduction of evidence rebutting the presumption, and the factfinder must decide if such evidence is strong enough to overcome the presumption.³⁹ A presumption is a legal inference that can be made with knowing certain facts. Most presumptions are able to be rebutted, if proven to be false or thrown into sufficient doubt by the evidence.⁴⁰

Greater Weight of the Evidence

The greater weight of the evidence standard of proof means “the more persuasive and convincing force and effect of the entire evidence in the case.”⁴¹ Some people explain the “greater weight of the evidence” concept to mean that, if each party’s evidence is placed on a balance scale, the side that dips down, even by the smallest amount, has met the burden of proof by the greater weight of the evidence.

Clear and Convincing

The clear and convincing standard, a higher standard of proof than a preponderance of the evidence, requires that the evidence be credible and the facts which the witness testifies to must be remembered distinctly. The witness’s testimony “must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue.” The evidence must be so strong that it guides the trier of fact to a firm conviction, to which there is no hesitation, that the allegations are true.⁴²

Standards of Care and Degrees of Negligence

Courts have developed general definitions for the degrees of negligence.

³⁵ 5 Fla. Prac. Civil Practice s. 17.1, (2023 ed.)

³⁶ *Id.*

³⁷ These presumptions tend to be social policy expressions, such as the presumption that all people are sane or that all children born in wedlock are legitimate. 5 *Florida Practice Series* s. 16:1.

³⁸ 5 *Florida Practice Series* s. 16:1.

³⁹ *Id.*

⁴⁰ Legal Information Institute, *Presumption*, <https://www.law.cornell.edu/wex/presumption> (last visited Mar. 29, 2023).

⁴¹ Fla. Std. Jury Instr. 401.3, *Greater Weight of the Evidence*.

⁴² *Slomowitz v. Walker*, 429 So. 2d 797, 800 (Fla. 4th DCA 1983).

Slight Negligence	The failure to exercise great care. ⁴³
Ordinary Negligence or Simple Negligence	The conduct that a reasonable and prudent person would know might result in injury to others. ⁴⁴
Gross Negligence	A course of conduct which a reasonable and prudent person knows would probably and most likely result in injury to another. ⁴⁵ To prove gross negligence, a plaintiff must show: circumstances that, when taken together, create a clear and present danger; an awareness that the danger exists; and a conscious, voluntary act or omission to act that will likely result in an injury.

Florida Information Protection Act (FIPA)⁴⁶

FIPA is a data security measure that requires governmental entities, specific business entities, and any third-party agent that holds or processes personal information on behalf of these entities to take reasonable measures to protect a consumer's personal information. Additionally, FIPA requires covered business entities⁴⁷ that are subject to data breaches to attempt to remediate the breach by notification to affected consumers in Florida, and in cases where more than 500 individual's information was breached—by additional notification to the Department of Legal Affairs (DLA).⁴⁸ If the breach affected more than 1,000 individuals in Florida, the entity must also notify credit reporting agencies, with certain exceptions.⁴⁹

FIPA defines “personal information” as:

- Online account information, such as security questions and answers, email addresses, and passwords; and
- An individual's first name or first initial and last name, in combination with any one or more of the following information regarding him or her:
 - A social security number;
 - A driver license or similar identity verification number issued on a government document;
 - A financial account number or credit or debit card number, in combination with any required security code, access code, or password that is necessary to permit access to an individual's financial account;

⁴³ See *Faircloth v. Hill*, 85 So. 2d 870 (Fla. 1956); see also *Holland America Cruises, Inc. v. Underwood*, 470 So. 2d 19 (Fla. 2d DCA 1985); *Werndli v. Greyhound Corp.*, 365 So. 2d 177 (Fla. 2d DCA 1978); 6 *Florida Practice Series* s. 1.2.

⁴⁴ See *De Wald v. Quarnstrom*, 60 So. 2d 919 (Fla. 1952); see also *Clements v. Deeb*, 88 So. 2d 505 (Fla. 1956); 6 *Florida Practice Series* s. 1.2.

⁴⁵ See *Clements*, 88 So. 2d 505; 6 *Florida Practice Series* s. 1.2.

⁴⁶ Section 501.171, F.S.; Chapter 2014-189, Laws of Fla. (FIPA expanded and updated Florida's data breach disclosure laws contained in s. 817.5681, F.S. (2013), which was adopted in 2005 and repealed in 2014).

⁴⁷ A “covered entity” is a sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information. Section 501.171(1)(b), F.S.

⁴⁸ Florida Office of the Attorney General (OAG), *How to Protect Yourself: Data Security*, <http://myfloridalegal.com/pages.nsf/Main/53D4216591361BCD85257F77004BE16C> (last visited Mar. 29, 2023). Section 501.171(3)-(4), F.S.

⁴⁹ Section 501.171(3)-(6), F.S.

- Medical history information or health insurance identification numbers; or
- An individual's health insurance identification numbers.⁵⁰

Personal information does not include information:

- About an individual that a federal, state, or local governmental entity has made publicly available; or
- That is encrypted, secured, or modified to remove elements that personally identify an individual or that otherwise renders the information unusable.⁵¹

FIPA does not provide a private cause of action, but authorizes the DLA to file charges against covered entities under Florida's Unfair and Deceptive Trade Practices Act (FDUTPA).⁵²

In addition to the remedies provided for under FDUTPA, a covered entity that fails to notify the DLA, or an individual whose personal information was accessed, of the data breach is liable for a civil penalty of \$1,000 per day for the first 30 days of any violation; \$50,000 for each subsequent 30-day period of violation; and up to \$500,000 for any violation that continues more than 180 days. These civil penalties apply per breach, not per individual affected by the breach.

Cybersecurity Standards

Local governments are required to adopt cybersecurity standards that safeguard the local government's data, information technology, and information technology resources to ensure availability, confidentiality, and integrity.⁵³ The standards must be consistent with generally accepted best practices for cybersecurity, including the NIST cybersecurity framework.⁵⁴ Once it adopts the standards, the local government must notify FLDS as soon as possible.⁵⁵

The National Institute for Standards and Technology (NIST) is a non-regulatory federal agency housed within the U.S. Department of Commerce. NIST is charged with providing a prioritized, flexible, repeatable, performance-based, and cost-effective framework that helps owners and operators of critical infrastructure identify, assess, and manage cyber risk. While the framework was developed with critical infrastructure in mind, it can be used by organizations in any sector of the economy or society.⁵⁶ The framework is designed to complement an organization's own approach to cybersecurity risk management. As such, there are a variety of ways to use the framework and the decision about how to apply it is left to the implementing organization. For example, an organization may use its current processes and consider the framework to identify opportunities to strengthen its cybersecurity risk management. The framework, overall, provides an outline of best practices that helps organizations decide where to focus resources for cybersecurity protection.⁵⁷ Other cybersecurity standards include:

⁵⁰ Section 501.171(1)(g)1., F.S.; OAG *supra* note 41.

⁵¹ Section 501.171(1)(g)2., F.S.

⁵² Section 501.171(9), (10), F.S.; OAG *supra* note 41.

⁵³ Section 282.3185(4)(a), F.S.

⁵⁴ *Id.*

⁵⁵ Section 282.3185(4)(d), F.S.

⁵⁶ National Institute of Standards and Technology, *Framework for Improving Critical Infrastructure Cybersecurity*, <https://nvlpubs.nist.gov/nistpubs/CSWP/NIST.CSWP.04162018.pdf> (last visited March 29, 2023).

⁵⁷ *Id.*

NIST special publication 800-171	Provides recommended requirements for protecting the confidentiality of controlled unclassified information. If a manufacturer is part of a Department of Defense, General Services Administration, NASA, or other state or federal agency supply chain then they must comply with these security requirements. ⁵⁸
NIST special publications 800-53 and 800-53A	A category of security and privacy controls. Covers the steps in the Risk Management Framework that address security controls for federal information systems. ⁵⁹
The Federal Risk and Authorization Management Program security assessment framework	Organization established by the General Services Administration (a Federal Government Program) that provides U.S. federal agencies, state agencies, and their vendors with a standardized set of best practices to assess, adopt, and monitor the use of cloud-based technology services under the Federal Information Security Management Act (FISMA). ⁶⁰
CIS Critical Security Controls	The Center for Internet Security Critical Security Controls (CIS) are a prescriptive and simplified set of best practices for strengthening cybersecurity for different organizations. CIS was created in response to extreme data losses experienced by organizations in the U.S. defense industrial base. ⁶¹
The International Organization for Standardization/International Electrotechnical Commission 27000 – series family of standards	ISO/IEC 27001 (ISO) enables organizations of all sectors to manage security of financial information, intellectual property, employee data and information entrusted by third parties. ISO has auditors and is an international standard. There are 804 technical committees and subcommittees concerned with such standards of development. ⁶²

⁵⁸ NIST, *What is the NIST SP 800-171 and Who Needs to Follow It?*, <https://www.nist.gov/blogs/manufacturing-innovation-blog/what-nist-sp-800-171-and-who-needs-follow-it-0#:~:text=NIST%20SP%20800-171%20is%20a%20NIST%20Special%20Publication,protecting%20the%20confidentiality%20of%20controlled%20unclassified%20information%20%28CUI%29> (last visited Mar. 29, 2023).

⁵⁹ NIST, *Selecting Security and Privacy Controls: Choosing the Right Approach*, <https://www.nist.gov/blogs/cybersecurity-insights/selecting-security-and-privacy-controls-choosing-right-approach> (last visited Mar. 29, 2023).

⁶⁰ Reciprocity, *How State and Local Agencies Can Use FedRAMP*, <https://reciprocity.com/how-state-and-local-agencies-can-use-fedramp/#:~:text=The%20Federal%20Risk%20and%20Authorization%20Management%20Program%20%28FedRAMP%29,cloud%20products%20offered%20by%20cloud%20service%20providers%20%28CSPs%29> (last visited Mar. 29, 2023).

⁶¹ CIS Security, *CIS Critical Security Controls*, <https://www.cisecurity.org/controls> (last visited Mar. 29, 2023).

⁶² ITGovernance, *ISO 27001, The International Security Standard*, <https://www.itgovernanceusa.com/iso27001#:~:text=ISO%2027001%20is%20a%20globally%20recognized%20information%20security,trusted%20benchmark.%20Protect%20your%20data%2C%20wherever%20it%20lives> (last visited Mar. 29, 2023).

III. Effect of Proposed Changes:

IT Project Oversight

Section 4 amends s. 282.0051, F.S., to require the DMS, acting through the FLDS, to provide *independent*⁶³ oversight of state agency IT projects that cost \$10 million or more. Specifically:

- The DMS cannot provide project oversight if it has provided, or may be asked to provide, any operational or technical advice on the project, including advice and review. However, it can procure project oversight for agencies and other entities;
- The DMS must create a form contract that state agencies, the DLA, DFS, and DACS⁶⁴ can use to procure project oversight services;
- Independent entities that provide project oversight must submit a project oversight report to the DMS; and
- The DMS, acting through the FLDS, must compile the project oversight reports it receives on a quarterly basis and submit a report to the Governor, President of the Senate, and Speaker of the House of Representatives.

Operations Committee

Section 4 also creates an operations committee within the FLDS that will develop collaborative efforts regarding cybersecurity issues between agencies, including agency responses to cybersecurity incidents and interoperability of agency projects. The Secretary of the DMS will serve as the committee's executive director, and the committee's membership will consist of:

- The Attorney General, or his or her designee;
- The Secretary of State, or his or her designee;
- The executive director of the Department of Law Enforcement, or his or her designee;
- The Secretary of Transportation, or his or her designee;
- The director of the Division of Emergency Management, or his or her designee;
- The Secretary of Health Care Administration, or his or her designee;
- The Commissioner of Education, or his or her designee;
- The executive director of the Department of Highway Safety and Motor Vehicles, or his or her designee;
- The chair of the Public Service Commission, or his or her designee;
- The director of the Florida State Guard, or his or her designee;
- The adjutant General of the Florida National Guard, or his or her designee; and
- Any other agency head appointed by the Governor.

Appointments

Section 4 also removes the DMS Secretary's authority to appoint the FLDS CIO, and gives that authority to the Governor, subject to confirmation by the Senate.

⁶³ Section 3 of the bill defines "independent" as, for an entity providing independent verification and validation, having no technical, managerial, or financial interest in the relevant technology project; no relationship to the relevant agency; and no responsibility for or participation in any aspect of the project, which includes project oversight by the Florida Digital Service."

⁶⁴ These entities, combined, are defined as the "enterprise" for the purposes of ch. 282, F.S. See s. 282.0041(15), F.S.

The bill removes the CIO's duty to consult with the DMS' Secretary to designate a state chief data officer.

Section 4 of the bill creates the position of state chief technology officer (CTO), who is responsible for:

- Exploring technology solutions to meet the enterprise's needs;
- The deployments of adopted enterprise solutions;
- Compliance with the cloud-first policy, for which the CTO may acquire cloud migration services;
- Recommending best practices to increase technology project success;
- Developing strategic partnerships with the private sector; and
- Directly supporting enterprise cybersecurity and data interoperability initiatives.

The CIO will designate the CTO.

State Data Center

Section 5 amends s. 282.201, F.S., to add additional oversight structure to the state data center. Pursuant to the bill, the data center will be overseen and accountable to the DMS, in consultation with the CIO, state chief data officer, CISO, and CTO. The CIO will appoint the director of the data center.

If the data center will procure or purchase enterprise architecture that would be comparable to a project subject to oversight pursuant to s. 282.0051(4), F.S., if the cost will be \$10 million or more, and that may be consumed by an enterprise, then the data center must provide the procurement or purchase documents to the DMS and the FLDS before its publication.

As an additional function of this oversight, the bill grants the CIO authority to assume responsibility for the Northwest Regional Data Center contract, and states that "notwithstanding the terms of the contract" the Northwest Regional Data Center must provide the FLDS with access to information regarding its operation of the state data center.

The bill creates an additional subsection that requires the state data center and any successor entity, including but not limited to the Northwest Regional Data Center, to give the FLDS full access to any infrastructure, system, application, or other means that hosts, supports, or manages data held by a state agency or other enterprise member. The state data center or its successor must fully integrate with the Cybersecurity Operations Center.

Lastly, the state data center or its successor must submit a quarterly report to the FLDS that provides the number of:

- Technology assets which are within 1 year of the end of their life, or beyond the end of their life, as defined by their manufacturer;
- Technology assets which are unsupported by their manufacturer, or within 2 years of being unsupported;

- Workloads which are and those which are not hosted by a commercial cloud service provider as defined in the NIST publication 500-292; and
- Service level disruptions and their average duration.

State Cybersecurity Act

Agency Cybersecurity

Section 6 amends s. 282.318, F.S., to broaden agency cybersecurity duties, requiring that each state agency head:

- Designate a chief information security officer to integrate the technical and operational cybersecurity efforts at their agency with the Cybersecurity Operations Center (CSOC), or request that the FLDS procure one for them. This chief information security officer will report to the agency's CIO;
- Provide notice of the designation of a chief information security officer to the FLDS by January 1, annually; and
- Incorporate the Florida State Guard resources.

The bill clarifies that the role of the agency information security managers is to ensure agency compliance with cybersecurity governance, manage risk, and ensure compliance with the state's incident response plan.

State agencies must now conduct their comprehensive cybersecurity risk assessments on an annual basis, rather than triennially, per the criteria, methodology, and scope developed by the state CIO. The bill allows the risk assessment to be facilitated by the DMS, or completed by a private sector vendor. The agency head or his or his designee, and the FLDS must sign off on the risk assessment's findings.

Cybersecurity Incident Reporting Requirements

Sections 6 and 7 broaden the FLDS' role in reporting of cybersecurity incidents at agencies and local governments. The bill:

- Grants the FLDS authority to respond to any state agency cybersecurity incident;
- Requires an agency and local government to report any level cybersecurity incident to the FLDS within 4 hours of discovery of the incident; and
- Requires an agency and local governments to report a ransomware incident to the FLDS within 2 hours of its discovery.

The FLDS must notify the Governor, Senate President, and Speaker of the House of Representatives of an agency's or local government's failure to timely report a cybersecurity incident. The CSOC must also notify the Governor, Senate President, and Speaker of the House of Representatives, in a secure environment, of level 3, 4, or 5 cybersecurity incidents.

The bill amends an agency's or local government's duty to report cybersecurity incidents to the DLE's Cybercrime Office and the CSOC, whereas previously, level 1 or 2 incidents were required to be reported *as soon as possible*, now they must report within the timeframes listed above.

Emergency Support Function

The bill clarifies the DMS' (acting through the FLDS) role under the state comprehensive emergency management plan, requiring that it "lead an emergency support function, ESF CYBER *and* DIGITAL." This refers to its responsibility to assist not only with cybersecurity, in accordance with ESF CYBER standards, but also to assist with any digital needs the state may have, such as the creation of a website, during a period of emergency.

Cybersecurity Briefings

The DMS, acting through the FLDS, is also vested with the duty to provide cybersecurity briefings to legislative members of committees or subcommittees that are responsible for cybersecurity policy.

The bill also allows legislative committees or subcommittees that are responsible for cybersecurity-related policy to hold closed meetings for the purpose of briefing the body on records that are confidential and exempt pursuant to s. 282.318(5) and (6), F.S.

Florida Cybersecurity Advisory Council

Section 8 amends s. 282.319, F.S., to remove the requirement that one of the representatives appointed to the Florida Cybersecurity Advisory Council be from a water treatment facility.

Liability for Cybersecurity Incident-Related Torts

Section 9 amends s. 786.401, F.S., to provide that a county or municipality that substantially complies with incident notification requirements in s. 282.3185, F.S., is not liable for torts related to a cybersecurity incident. It further states that a county's or municipality's failure to substantially implement a cybersecurity program that complies with s. 282.3185, F.S., does not constitute evidence of negligence or negligence per se.

The bill establishes the same bar on liability for private businesses⁶⁵ that are involved in a cybersecurity incident, if the entity substantially complies with the data breach notice requirements of s. 501.171, F.S., if applicable, and have:

- Adopted a cybersecurity program that substantially aligns with the current version of the:
 - NIST Framework for Improving Critical Infrastructure Cybersecurity;
 - NIST special publication 800-171;
 - NIST special publications 800-53 and 800-53A;
 - Federal Risk and Authorization management Program security assessment framework;
 - CIS Critical Security Controls; or
 - International Organization for Standardization/International Electrotechnical Commission 27000-series family of standards; or
- Substantially conformed its cybersecurity to the following laws, if regulated by state or Federal governments, or is otherwise subject to the requirements of any of the following laws and regulations:

⁶⁵ The bill limits this to sole proprietorships, partnerships, corporations, trusts, estates, cooperatives, associations, or other commercial entities. Additionally, it specifically applies to businesses that acquire, maintain, store, or use personal information

- Security requirements of HIPAA;
- Title V of the Gramm-Leach-Bliley Act of 1999;
- Federal Information Security Modernization Act of 2014; or
- Health Information Technology for Economic and Clinical Health Act.

The following factors should be used to determine a private business' or covered entity's substantial compliance with the standards provided in the bill:

- Size and complexity of the covered entity;
- Nature and scope of the covered entity's activities; and
- Sensitivity of the information that the business protects.

A commercial entity that substantially complies with a combination of industry-recognized cybersecurity frameworks or standards, including the payment card industry data security standard, is provided a presumption against liability for a cybersecurity incident only if it updates its compliance with the frameworks or standards outlined in subsection (2) within 1 year of the latest publication date stated in the revision after two or more of its pertinent frameworks or standards have been updated.

Whether the defendant is a local government, private business, or covered entity, it has the burden of proof to establish their substantial compliance to reach the bar on liability.

Lastly, the bill provides that s. 786.401, F.S., does not establish a private cause of action.

Miscellaneous

Section 1 provides that this Act may be entitled the "Florida Cyber Protection Act."

Section 2 amends s. 110.205, F.S., to classify personnel who are employed by or who report to the state chief information security officer, the state chief data officer, a chief information security officer, and an agency information security manager as select exempt personnel, rather than career services.

Section 3 amends definitions used in ch. 282, F.S., to provide and amend definitions for some of the terms introduced by amendments to the bill.

Section 10 provides that the act takes effect on July 1, 2023.

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:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

Open Meetings

Meetings of the Legislature must be open and noticed as provided in article. III, section 4(e), of the Florida Constitution, except with respect to those meetings exempted by the Legislature pursuant to article I, section 24, Florida Constitution, or specifically closed by the Constitution.⁶⁶ The Legislature must adopt rules which provide that all legislative committee and subcommittee meetings of each house and joint conference committee meetings be open and noticed.⁶⁷ Such rules must also provide:

[A]ll 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. All open meetings shall be subject to order and decorum. This section shall be implemented and defined by the rules of each house, and such rules shall control admission to the floor of each legislative chamber and may, where reasonably necessary for security purposes or to protect a witness appearing before a committee, provide for the closure of committee meetings. Each house shall be the sole judge for the interpretation, implementation, and enforcement of this section.

Rule 1.44 of the Florida Senate requires that all meetings at which legislative business⁶⁸ is discussed between two or more members of the Legislature be open to the public, unless, at the sole discretion of the President after consultation with appropriate authorities—the meeting concerns measures to address security, espionage, sabotage, attack, and other acts of terrorism, or for the protection of a witness as required by law.

Lines 1045 through 1051 of the bill state that legislative committees or subcommittees that are responsible for matters that relate to cybersecurity may hold closed meetings

⁶⁶ FLA. CONST. art. I, s. 24.

⁶⁷ FLA. CONST. art. III, s. 4(e).

⁶⁸ “Legislative business” is defined as “issues pending before, or upon which foreseeable action is reasonably expected to be taken by the Senate, a Senate committee, or a Senate subcommittee.” Fla. Senate R. 1.44.

closed, if approved by the respective legislative body under the rules of such legislative body. This is duplicative of Senate Rule 1.44. Additionally, it may conflict with article III, section 4(e), of the Florida Constitution, because the statute—rather than a legislative rule or constitutional provision—provides for the methods in which a Legislative body may close its meetings.

Lines 352-378 create an operations committee that will consist of the CIO and many state agency heads, or their designees. This may present a need to notice a public meeting whenever the CIO discusses cybersecurity issues with any other member of the operations committee—whether or not it is for operations committee business.⁶⁹ This may cause issues in the performance of some of the CIO’s assigned duties regarding oversight of agency cybersecurity operations.

Access to Courts

The State Constitution provides in Article 1, s. 21, that “[the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial or delay.”

Case law has demonstrated, however, that this provision is not absolute. In 1973, the Florida Supreme Court, in *Kluger v. White*,⁷⁰ held that it would not completely prohibit the Legislature from altering a cause of action, but would not allow it to “destroy a traditional and long-standing cause of action upon mere legislative whim...”

The case involved the abolition of a statute governing a tort action for property damage in an automobile accident case. When the Legislature abolished the remedy, it did not provide an alternative protection to the injured party. The Court was confronted with the issue of whether the Legislature could abolish a right of access to the courts. The Court determined that the Legislature may not abolish a pre-1968 common law right or a statutory cause of action unless the Legislature provides a reasonable alternative to that action or unless an overpowering public necessity exists for abolishing the right of action. The Court applies a three-part test to determine whether a statute violates the access to courts provision:

- Does the change abolish a preexisting right of access?
- If so, whether a reasonable alternative exists to protect that preexisting right of access.
- If no reasonable alternative exists, whether an overwhelming public necessity exists.⁷¹

Restrictions on the ability to bring a lawsuit have been upheld as constitutional, but the point at which a restriction becomes an unconstitutional bar is not well defined.

Impairment of Contracts

The bill unilaterally transfers a contract with a private party to a new government entity. The United States Constitution and the Florida Constitution prohibit the state from

⁶⁹ See, e.g., *Florida Citizens Alliance, Inc. v. School Board of Collier County*, 328 So.3d 22 (Fla. 2d DCA 2021).

⁷⁰ *Kluger v. White*, 281 So. 2d 1 (Fla. 1973).

⁷¹ *Eller v. Shova*, 630 So. 2d 537 (Fla. 1993).

passing any law impairing the obligation of contracts.⁷² “[T]he first inquiry must be whether the state law has, in fact, operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear.”⁷³ If a law does impair contracts, the courts will assess whether the law is deemed reasonable and necessary to serve an important public purpose.⁷⁴ The factors that a court will consider when balancing the impairment of contracts with the public purpose include:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the parties undertook their contractual obligations, or whether it invades an area never before subject to regulation; and
- Whether the law results in a temporary alteration of the contractual relationships of those within its scope, or whether it permanently and immediately changes those contractual relationships, irrevocably and retroactively.⁷⁵

It is unclear to what extent the provisions specific to the state data center and the Northwest Regional Data Center contract will be impaired as a result of this bill. The requirement that the state data center fully integrate with the cybersecurity operations center could at least require an amendment to the current contract.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private businesses may enjoy lower cyber liability insurance premiums as a result of their shield from liability created by the bill.

C. Government Sector Impact:

The bill may increase state expenditures related to cybersecurity oversight.

VI. Technical Deficiencies:

The committee created on lines 282-311 of the bill is an advisory body adjunct to an executive agency, and therefore must be established and maintained in accordance with the requirements of s. 20.052, F.S. The committee must be created pursuant to a finding of necessity and public benefit, and be terminated when it no longer serves that purpose. Additionally, meetings of any

⁷²U.S. Const. Article I, s. 10; Art. I, s. 10, Fla. Const.

⁷³*Pomponio v Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 779 (Fla. 1979) (quoting *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)). See also *General Motors Corp. v. Romein*, 503 U.S. 181 (1992).

⁷⁴*Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681, 683 (Fla. 1980); *Yellow Cab Co. of Dade County v. Dade County*, 412 So. 2d 395, 397 (Fla. 3rd DCA 1982) (citing *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977)).

⁷⁵See *supra* note 2.

collegial body created by specific statutory enactment as an adjunct to an executive agency must be open to the public, in accordance with s. 286.011, F.S., and minutes must be maintained.

VII. Related Issues:

Legislative Briefing on Confidential and Exempt Subject Matter

The bill's provision that allows any legislative committee or subcommittee that is responsible for cybersecurity-related issues to hold closed meetings for the purposes of being briefed on confidential and exempt subject matter is duplicative of the Legislature's current ability to do so.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 282.0041, 282.0051, 282.201, 282.318, 282.3185, and 282.319.

This bill creates section 768.401 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 29, 2023:

The committee substitute:

- Classifies personnel employed by or reporting to the state CISO, state chief data officer, a chief information security officer, and an agency information security manager as select exempt.
- Removes language in the bill that would have shifted authority relating to cybersecurity governance from the DMS to the FLDS.
- Provides DMS additional IT project and cybersecurity incident monitoring oversight.
- Modifies the FLDS' operations committee's membership.
- Requires the CIO to designate a state chief technology officer, and outlines its duties.
- Restores the \$10 million threshold for the FLDS' oversight of agency IT projects.
- Specifies oversight of the State Data Center and requires the FLDS rather than the DMS to appoint its director.
- Requires the SDC to fully integrate with the CSOC.
- Requires state agencies to designate a chief information technology security officer, in addition to their information security manager. This new position will integrate the agency's technical and operational cybersecurity efforts with the CSOC.
- Requires agencies to conduct their comprehensive risk assessment annually, rather than triennially, and requires that it be conducted in accordance with criteria developed by the CISO.
- Removes language that required legislative members to be invited to the Cybersecurity Advisory Council Meetings.
- Removes language that created the State Technology Advancement Council.

- Clarifies that a local government or private business that seeks the protection from liability created by the bill has the burden to prove substantial compliance with specific cybersecurity protocols.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2023	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. This act may be cited as the "Florida Cyber
Protection Act."

Section 2. Paragraph (y) is added to subsection (2) of
section 110.205, Florida Statutes, to read:

110.205 Career service; exemptions.—

(2) EXEMPT POSITIONS.—The exempt positions that are not



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covered by this part include the following:

(y) Personnel employed by or reporting to the state chief information security officer, the state chief data officer, a chief information security officer, and an agency information security manager.

Section 3. Present subsections (3) through (5), (6) through (19), and (20) through (38) of section 282.0041, Florida Statutes, are redesignated as subsections (4) through (6), (8) through (21), and (24) through (42), respectively, new subsections (3), (7), (22), and (23) are added to that section, and present subsection (19) is amended, to read:

282.0041 Definitions.—As used in this chapter, the term:

(3) "As a service" means the contracting with or outsourcing to a third-party of a defined role or function as a means of delivery.

(7) "Cloud provider" has the same meaning as provided in Special Publication 800-145 issued by the National Institute of Standards and Technology.

(21) ~~(19)~~ "Incident" means a violation or an imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices, or which may jeopardize the confidentiality, integrity, or availability of an information technology system or the information the system processes, stores, or transmits. An imminent threat of violation refers to a situation in which a state agency, county, or municipality has a factual basis for believing that a specific incident is about to occur.

(22) "Independent" means, for an entity providing



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independent verification and validation, having no technical, managerial, or financial interest in the relevant technology project; no relationship to the relevant agency; and no responsibility for or participation in any aspect of the project, which includes project oversight by the Florida Digital Service.

(23) "Independent verification and validation" means third-party support services that provide a completely independent and impartial assessment of the progress and work products of a technology project from concept to business case and throughout the project life cycle.

Section 4. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service is ~~has been~~ created within the department to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy as specified in s. 282.206. The department, through the Florida Digital Service, shall have the following powers, duties, and functions:

(a) Develop and publish information technology policy for the management of the state's information technology resources.

(b) Develop an enterprise architecture that:

1. Acknowledges the unique needs of the entities within the enterprise in the development and publication of standards and terminologies to facilitate digital interoperability;



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2. Supports the cloud-first policy as specified in s.
282.206; and

3. Addresses how information technology infrastructure may
be modernized to achieve cloud-first objectives.

(c) Establish project management and oversight standards
with which state agencies must comply when implementing
information technology projects. The department, acting through
the Florida Digital Service, shall provide training
opportunities to state agencies to assist in the adoption of the
project management and oversight standards. To support data-
driven decisionmaking, the standards must include, but are not
limited to:

1. Performance measurements and metrics that objectively
reflect the status of an information technology project based on
a defined and documented project scope, cost, and schedule.

2. Methodologies for calculating acceptable variances in
the projected versus actual scope, schedule, or cost of an
information technology project.

3. Reporting requirements, including requirements designed
to alert all defined stakeholders that an information technology
project has exceeded acceptable variances defined and documented
in a project plan.

4. Content, format, and frequency of project updates.

5. Technical standards to ensure an information technology
project complies with the enterprise architecture.

(d) Ensure that independent ~~Perform~~ project oversight on
all state agency information technology projects that have total
project costs of \$10 million or more and that are funded in the
General Appropriations Act or any other law is performed and in



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compliance with applicable state and federal law.

1. The department may not be considered independent for purposes of project oversight under this paragraph on a project for which the department has provided or may be asked to provide any operational or technical support, including, but not limited to, providing advice or conducting any review.

2. The department shall establish an appropriate contract vehicle to facilitate procurement of project oversight as a service by the enterprise and ensure that the contract vehicle includes offerings that incorporate the ability to comply with applicable state and federal law, including any independent verification and validation requirements. An entity that provides project oversight as a service must provide a project oversight report to the department.

3. An agency may request the department to procure project oversight as a service for a project that is subject to this paragraph. Such procurement by the department does not violate the requirement that the project oversight must be independent.

4. The department, acting through the Florida Digital Service, shall at least quarterly review received project oversight reports and, upon acceptance of the contents of such reports, provide the reports to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

5. The department, acting through the Florida Digital Service, shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project that the department identifies as high-risk due to the



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project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project.

(e) Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy, as specified in s. 282.206, and business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The department, acting through the Florida Digital Service, shall biennially on January 15 ~~1~~ of each even-numbered year provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

(g) Develop standards for information technology reports and updates, including, but not limited to, operational work plans, project spend plans, and project status reports, for use by state agencies.

(h) Upon request, assist state agencies in the development of information technology-related legislative budget requests.

(i) Conduct annual assessments of state agencies to



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determine compliance with all information technology standards and guidelines developed and published by the department and provide results of the assessments to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(j) Conduct a market analysis not less frequently than every 3 years beginning in 2021 to determine whether the information technology resources within the enterprise are utilized in the most cost-effective and cost-efficient manner, while recognizing that the replacement of certain legacy information technology systems within the enterprise may be cost prohibitive or cost inefficient due to the remaining useful life of those resources; whether the enterprise is complying with the cloud-first policy specified in s. 282.206; and whether the enterprise is utilizing best practices with respect to information technology, information services, and the acquisition of emerging technologies and information services. Each market analysis shall be used to prepare a strategic plan for continued and future information technology and information services for the enterprise, including, but not limited to, proposed acquisition of new services or technologies and approaches to the implementation of any new services or technologies. Copies of each market analysis and accompanying strategic plan must be submitted to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives not later than December 31 of each year that a market analysis is conducted.

(k) Recommend other information technology services that should be designed, delivered, and managed as enterprise



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information technology services. Recommendations must include the identification of existing information technology resources associated with the services, if existing services must be transferred as a result of being delivered and managed as enterprise information technology services.

(l) In consultation with state agencies, propose a methodology and approach for identifying and collecting both current and planned information technology expenditure data at the state agency level.

(m)1. Notwithstanding any other law, provide project oversight on any information technology project of the Department of Financial Services, the Department of Legal Affairs, and the Department of Agriculture and Consumer Services which has a total project cost of \$20 million or more. Such information technology projects must also comply with the applicable information technology architecture, project management and oversight, and reporting standards established by the department, acting through the Florida Digital Service.

2. When performing the project oversight function specified in subparagraph 1., report by the 15th day after the end of each quarter ~~at least quarterly~~ to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project that the department, acting through the Florida Digital Service, identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in the project plan. The report shall include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project and a recommendation for corrective actions required, including



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suspension or termination of the project.

(n) If an information technology project implemented by a state agency must be connected to or otherwise accommodated by an information technology system administered by the Department of Financial Services, the Department of Legal Affairs, or the Department of Agriculture and Consumer Services, consult with these departments regarding the risks and other effects of such projects on their information technology systems and work cooperatively with these departments regarding the connections, interfaces, timing, or accommodations required to implement such projects.

(o) If adherence to standards or policies adopted by or established pursuant to this section causes conflict with federal regulations or requirements imposed on an entity within the enterprise and results in adverse action against an entity or federal funding, work with the entity to provide alternative standards, policies, or requirements that do not conflict with the federal regulation or requirement. The department, acting through the Florida Digital Service, shall annually by January 15 report such alternative standards to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(p)1. Establish an information technology policy for all information technology-related state contracts, including state term contracts for information technology commodities, consultant services, and staff augmentation services. The information technology policy must include:

a. Identification of the information technology product and service categories to be included in state term contracts.



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b. Requirements to be included in solicitations for state term contracts.

c. Evaluation criteria for the award of information technology-related state term contracts.

d. The term of each information technology-related state term contract.

e. The maximum number of vendors authorized on each state term contract.

f. At a minimum, a requirement that any contract for information technology commodities or services meet the National Institute of Standards and Technology Cybersecurity Framework.

g. For an information technology project wherein project oversight is required pursuant to paragraph (d) or paragraph (m), a requirement that independent verification and validation be employed throughout the project life cycle with the primary objective of independent verification and validation being to provide an objective assessment of products and processes throughout the project life cycle. An entity providing independent verification and validation may not have technical, managerial, or financial interest in the project and may not have responsibility for, or participate in, any other aspect of the project.

2. Evaluate vendor responses for information technology-related state term contract solicitations and invitations to negotiate.

3. Answer vendor questions on information technology-related state term contract solicitations.

4. Ensure that the information technology policy established pursuant to subparagraph 1. is included in all



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solicitations and contracts that are administratively executed by the department.

(q) Recommend potential methods for standardizing data across state agencies which will promote interoperability and reduce the collection of duplicative data.

(r) Recommend open data technical standards and terminologies for use by the enterprise.

(s) Ensure that enterprise information technology solutions are capable of utilizing an electronic credential and comply with the enterprise architecture standards.

(t) Establish an operations committee that shall meet as necessary for the purpose of developing collaborative efforts between agencies and other governmental entities relating to cybersecurity issues, including the coordination of preparedness and response efforts relating to cybersecurity incidents and issues relating to the interoperability of agency projects. The Secretary of Management Services shall serve as the executive director of the committee. The committee shall be composed of the following members:

1. The state chief information officer, or his or her designee.

2. The Attorney General, or his or her designee.

3. The Secretary of State, or his or her designee.

4. The executive director of the Department of Law Enforcement, or his or her designee.

5. The Secretary of Transportation, or his or her designee.

6. The director of the Division of Emergency Management, or his or her designee.

7. The Secretary of Health Care Administration, or his or



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her designee.

8. The Commissioner of Education, or his or her designee.

9. The executive director of the Department of Highway
Safety and Motor Vehicles, or his or her designee.

10. The chair of the Public Service Commission, or his or
her designee.

11. The director of the Florida State Guard, or his or her
designee.

12. The Adjutant General of the Florida National Guard, or
his or her designee.

13. Any other agency head appointed by the Governor.

(2) (a) The Governor shall appoint ~~Secretary of Management
Services shall designate~~ a state chief information officer,
subject to confirmation by the Senate, who shall administer the
Florida Digital Service. The state chief information officer,
before ~~prior to~~ appointment, must have at least 5 years of
experience in the development of information system strategic
planning and development or information technology policy, and,
preferably, have leadership-level experience in the design,
development, and deployment of interoperable software and data
solutions.

(b) The state chief information officer, ~~in consultation
with the Secretary of Management Services,~~ shall designate a
state chief data officer. The chief data officer must be a
proven and effective administrator who must have significant and
substantive experience in data management, data governance,
interoperability, and security.

(c) The state chief information officer shall designate a
state chief technology officer who shall be responsible for:



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- 330 1. Exploring technology solutions to meet the enterprise
331 need;
332 2. The deployments of adopted enterprise solutions;
333 3. Compliance with the cloud-first policy specified in s.
334 282.206;
335 4. Recommending best practices to increase the likelihood
336 of technology project success;
337 5. Developing strategic partnerships with the private
338 sector; and
339 6. Directly supporting enterprise cybersecurity and data
340 interoperability initiatives.

341
342 The state chief technology officer may acquire cloud migration
343 as a service to comply with this section as it pertains to the
344 implementation across the enterprise of the cloud-first policy.

345 (3) The department, acting through the Florida Digital
346 Service and from funds appropriated to the Florida Digital
347 Service, shall:

348 (a) ~~Create, not later than December 1, 2022,~~ and maintain a
349 comprehensive indexed data catalog in collaboration with the
350 enterprise that lists the data elements housed within the
351 enterprise and the legacy system or application in which these
352 data elements are located. The data catalog must, at a minimum,
353 specifically identify all data that is restricted from public
354 disclosure based on federal or state laws and regulations and
355 require that all such information be protected in accordance
356 with s. 282.318.

357 (b) ~~Develop and publish, not later than December 1, 2022,~~
358 in collaboration with the enterprise, a data dictionary for each



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agency that reflects the nomenclature in the comprehensive indexed data catalog.

(c) Adopt, by rule, standards that support the creation and deployment of an application programming interface to facilitate integration throughout the enterprise.

(d) Adopt, by rule, standards necessary to facilitate a secure ecosystem of data interoperability that is compliant with the enterprise architecture.

(e) Adopt, by rule, standards that facilitate the deployment of applications or solutions to the existing enterprise system in a controlled and phased approach.

(f) After submission of documented use cases developed in conjunction with the affected agencies, assist the affected agencies with the deployment, contingent upon a specific appropriation therefor, of new interoperable applications and solutions:

1. For the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

2. To support military members, veterans, and their families.

(4) For information technology projects that have a total project costs ~~cost~~ of \$10 million or more:

(a) State agencies must provide the Florida Digital Service with written notice of any planned procurement of an information technology project.

(b) The Florida Digital Service must participate in the development of specifications and recommend modifications to any



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planned procurement of an information technology project by state agencies so that the procurement complies with the enterprise architecture.

(c) The Florida Digital Service must participate in post-award contract monitoring.

(5) The department, acting through the Florida Digital Service, may not retrieve or disclose any data without a shared-data agreement in place between the department and the enterprise entity that has primary custodial responsibility of, or data-sharing responsibility for, that data.

(6) The department, acting through the Florida Digital Service, shall adopt rules to administer this section.

Section 5. Section 282.201, Florida Statutes, is amended to read:

282.201 State data center.—The state data center is established within the department and shall be overseen by and accountable to the department in consultation with the state chief information officer, the state chief data officer, the state chief information security officer, and the state chief technology officer. Any procurement or purchase of enterprise architecture which is comparable to a project that would be subject to requirements under s. 282.0051(4) if the total project cost was \$10 million or more and which may be consumed by an enterprise must be provided to the department and the Florida Digital Service for review before publication. The provision of data center services must comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements. The Florida Digital Service ~~department~~ shall appoint a director of



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the state data center who has experience in leading data center facilities and has expertise in cloud-computing management.

(1) STATE DATA CENTER DUTIES.—The state data center shall:

(a) Offer, develop, and support the services and applications defined in service-level agreements executed with its customer entities.

(b) Maintain performance of the state data center by ensuring proper data backup; data backup recovery; disaster recovery; and appropriate security, power, cooling, fire suppression, and capacity.

(c) Develop and implement business continuity and disaster recovery plans, and annually conduct a live exercise of each plan.

(d) Enter into a service-level agreement with each customer entity to provide the required type and level of service or services. If a customer entity fails to execute an agreement within 60 days after commencement of a service, the state data center may cease service. A service-level agreement may not have a term exceeding 3 years and at a minimum must:

1. Identify the parties and their roles, duties, and responsibilities under the agreement.

2. State the duration of the contract term and specify the conditions for renewal.

3. Identify the scope of work.

4. Identify the products or services to be delivered with sufficient specificity to permit an external financial or performance audit.

5. Establish the services to be provided, the business standards that must be met for each service, the cost of each



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service by agency application, and the metrics and processes by which the business standards for each service are to be objectively measured and reported.

6. Provide a timely billing methodology to recover the costs of services provided to the customer entity pursuant to s. 215.422.

7. Provide a procedure for modifying the service-level agreement based on changes in the type, level, and cost of a service.

8. Include a right-to-audit clause to ensure that the parties to the agreement have access to records for audit purposes during the term of the service-level agreement.

9. Provide that a service-level agreement may be terminated by either party for cause only after giving the other party and the department notice in writing of the cause for termination and an opportunity for the other party to resolve the identified cause within a reasonable period.

10. Provide for mediation of disputes by the Division of Administrative Hearings pursuant to s. 120.573.

(e) For purposes of chapter 273, be the custodian of resources and equipment located in and operated, supported, and managed by the state data center.

(f) Assume administrative access rights to resources and equipment, including servers, network components, and other devices, consolidated into the state data center.

1. Upon consolidation, a state agency shall relinquish administrative rights to consolidated resources and equipment. State agencies required to comply with federal and state criminal justice information security rules and policies shall



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retain administrative access rights sufficient to comply with the management control provisions of those rules and policies; however, the state data center shall have the appropriate type or level of rights to allow the center to comply with its duties pursuant to this section. The Department of Law Enforcement shall serve as the arbiter of disputes pertaining to the appropriate type and level of administrative access rights pertaining to the provision of management control in accordance with the federal criminal justice information guidelines.

2. The state data center shall provide customer entities with access to applications, servers, network components, and other devices necessary for entities to perform business activities and functions, and as defined and documented in a service-level agreement.

(g) In its procurement process, show preference for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of state data center infrastructure, and that meet the needs of customer agencies, that reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for cybersecurity.

(h) Assist customer entities in transitioning from state data center services to the Northwest Regional Data Center or other third-party cloud-computing services procured by a customer entity or by the Northwest Regional Data Center on behalf of a customer entity.

(2) USE OF THE STATE DATA CENTER.—The following are exempt from the use of the state data center: the Department of Law Enforcement, the Department of the Lottery's Gaming System, Systems Design and Development in the Office of Policy and



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Budget, the regional traffic management centers as described in s. 335.14(2) and the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation.

(3) AGENCY LIMITATIONS.—Unless exempt from the use of the state data center pursuant to this section or authorized by the Legislature, a state agency may not:

(a) Create a new agency computing facility or data center, or expand the capability to support additional computer equipment in an existing agency computing facility or data center; or

(b) Terminate services with the state data center without giving written notice of intent to terminate services 180 days before such termination.

(4) DEPARTMENT RESPONSIBILITIES.—The department shall provide operational management and oversight of the state data center, which includes:

(a) Implementing industry standards and best practices for the state data center's facilities, operations, maintenance, planning, and management processes.

(b) Developing and implementing cost-recovery mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity. The



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department may recommend other payment mechanisms to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such mechanisms may be implemented only if specifically authorized by the Legislature.

(c) Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to subsection (1). The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

1. Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

2. Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

3. Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

4. Requiring customer entities to validate that sufficient funds exist before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

5. By November 15 of each year, providing to the Office of



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Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

6. Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to subparagraph 4. Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

7. Standardizing and consolidating procurement and contracting practices.

(d) In collaboration with the Department of Law Enforcement and the Florida Digital Service, developing and implementing a process for detecting, reporting, and responding to cybersecurity incidents, breaches, and threats.

(e) Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery methodologies, and operating procedures.

(5) NORTHWEST REGIONAL DATA CENTER CONTRACT.—In order for the department to carry out its duties and responsibilities relating to the state data center, the state chief information officer shall assume responsibility for the contract entered into by the secretary of the department ~~shall contract by July 1, 2022,~~ with the Northwest Regional Data Center pursuant to s. 287.057(11). The contract shall provide that the Northwest Regional Data Center will manage the operations of the state data center and provide data center services to state agencies.



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Notwithstanding the terms of the contract, the Northwest Regional Data Center must provide the Florida Digital Service with access to information regarding the operations of the state data center.

(a) The department shall provide contract oversight, including, but not limited to, reviewing invoices provided by the Northwest Regional Data Center for services provided to state agency customers.

(b) The department shall approve or request updates to invoices within 10 business days after receipt. If the department does not respond to the Northwest Regional Data Center, the invoice will be approved by default. The Northwest Regional Data Center must submit approved invoices directly to state agency customers.

(6) FLORIDA DIGITAL SERVICE ACCESS.—The state data center, and any successor entity assuming the responsibilities of the state data center, including, but not limited to, the Northwest Regional Data Center, shall provide the Florida Digital Service with full access to any infrastructure, system, application, or other means that hosts, supports, or manages data in the custody of an enterprise. For any such infrastructure, system, application, or other means, the state data center or a successor entity shall fully integrate with the Cybersecurity Operations Center.

(7) STATE DATA CENTER REPORT.—Subject to s. 119.0725, the state data center and any successor entity must submit to the department and the Florida Digital Service a quarterly report that provides, relating to infrastructure servicing enterprise customers and data, the number of:



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(a) Technology assets which are within 1 year of end of life as defined by the manufacturer.

(b) Technology assets which are beyond end of life as defined by the manufacturer.

(c) Technology assets which are within 2 years of being unsupported by the manufacturer.

(d) Technology assets which are currently unsupported by the manufacturer.

(e) Workloads which are hosted by a commercial cloud service provider as defined in the National Institute of Standards and Technology publication 500-292.

(f) Workloads which are not hosted by a commercial entity which is a cloud service provider as defined in the National Institute of Standards and Technology publication 500-292.

(g) Service level disruptions and average duration of disruption.

Section 6. Present subsection (10) of section 282.318, Florida Statutes, is redesignated as subsection (11), a new subsection (10) is added to that section, and subsections (3) and (4) of that section are amended, to read:

282.318 Cybersecurity.—

(3) The department, acting through the Florida Digital Service, is the lead entity responsible for establishing standards and processes for assessing state agency cybersecurity risks and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The department, acting through the Florida



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Digital Service, shall adopt rules that mitigate risks; safeguard state agency digital assets, data, information, and information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework. The department, acting through the Florida Digital Service, shall also:

(a) Designate an employee of the Florida Digital Service as the state chief information security officer. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The state chief information security officer shall be notified of all confirmed or suspected incidents or threats of state agency information technology resources and must report such incidents or threats to the state chief information officer and the Governor.

(b) Develop, and annually update by February 1, a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber incident.

(c) Develop and publish for use by state agencies a cybersecurity governance framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and



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managed consistent with their relative importance to the agency's business objectives.

2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the department.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity incident response teams and describing their responsibilities for responding to cybersecurity incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a cybersecurity incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity incident reporting process that includes procedures for notifying the department and the Department of Law Enforcement of cybersecurity incidents.



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a. The level of severity of the cybersecurity incident is defined by the National Cyber Incident Response Plan of the United States Department of Homeland Security as follows:

(I) Level 5 is an emergency-level incident within the specified jurisdiction that poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local government security; or the lives of the country's, state's, or local government's residents.

(II) Level 4 is a severe-level incident that is likely to result in a significant impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; or civil liberties.

(III) Level 3 is a high-level incident that is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(IV) Level 2 is a medium-level incident that may impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(V) Level 1 is a low-level incident that is unlikely to impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

b. The cybersecurity incident reporting process must specify the information that must be reported by a state agency following a cybersecurity incident or ransomware incident, which, at a minimum, must include the following:

(I) A summary of the facts surrounding the cybersecurity incident or ransomware incident.



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(II) The date on which the state agency most recently backed up its data; the physical location of the backup, if the backup was affected; and if the backup was created using cloud computing.

(III) The types of data compromised by the cybersecurity incident or ransomware incident.

(IV) The estimated fiscal impact of the cybersecurity incident or ransomware incident.

(V) In the case of a ransomware incident, the details of the ransom demanded.

c.(I) A state agency shall report all ransomware incidents and ~~any cybersecurity incidents~~ ~~incident determined by the state agency to be of severity level 3, 4, or 5~~ to the Florida Digital Service, the Cybersecurity Operations Center, and the Cybercrime Office of the Department of Law Enforcement as soon as possible but no later than 4 ~~48~~ hours after discovery of the cybersecurity incident and no later than 2 ~~12~~ hours after discovery of the ransomware incident. The report must contain the information required in sub-subparagraph b. The Florida Digital Service shall notify the Governor, the President of the Senate, and the Speaker of the House of Representatives of any incident discovered by a state agency but not timely reported under this sub-sub-subparagraph.

(II) The Cybersecurity Operations Center shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a state agency's incident report. The notification must include a high-level description of the incident and the likely effects



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and must be provided in a secure environment.

~~d. A state agency shall report a cybersecurity incident determined by the state agency to be of severity level 1 or 2 to the Cybersecurity Operations Center and the Cybercrime Office of the Department of Law Enforcement as soon as possible. The report must contain the information required in sub-subparagraph b.~~

~~e.~~ The Cybersecurity Operations Center shall provide a consolidated incident report by the 15th day after the end of each quarter ~~on a quarterly basis~~ to the President of the Senate, the Speaker of the House of Representatives, and the Florida Cybersecurity Advisory Council. The report provided to the Florida Cybersecurity Advisory Council may not contain the name of any agency, network information, or system identifying information but must contain sufficient relevant information to allow the Florida Cybersecurity Advisory Council to fulfill its responsibilities as required in s. 282.319(9).

10. Incorporating information obtained through detection and response activities into the agency's cybersecurity incident response plans.

11. Developing agency strategic and operational cybersecurity plans required pursuant to this section.

12. Establishing the managerial, operational, and technical safeguards for protecting state government data and information technology resources that align with the state agency risk management strategy and that protect the confidentiality, integrity, and availability of information and data.

13. Establishing procedures for procuring information technology commodities and services that require the commodity



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or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

14. Submitting after-action reports following a cybersecurity incident or ransomware incident. Such guidelines and processes for submitting after-action reports must be developed and published by December 1, 2022.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on cybersecurity, including cybersecurity threats, trends, and best practices.

(f) Annually review the strategic and operational cybersecurity plans of state agencies.

(g) Annually provide cybersecurity training to all state agency technology professionals and employees with access to highly sensitive information which develops, assesses, and documents competencies by role and skill level. The cybersecurity training curriculum must include training on the identification of each cybersecurity incident severity level referenced in sub-subparagraph (c)9.a. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(h) Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must be primarily virtual and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center



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shall serve as a clearinghouse for threat information and coordinate with the Department of Law Enforcement to support state agencies and their response to any confirmed or suspected cybersecurity incident.

(i) Lead an Emergency Support Function, ESF CYBER and DIGITAL, under the state comprehensive emergency management plan as described in s. 252.35.

(j) Provide cybersecurity briefings to the members of any legislative committee or subcommittee responsible for policy matters relating to cybersecurity.

(k) Have the authority to respond to any state agency cybersecurity incident.

(4) Each state agency head shall, at a minimum:

(a) Designate a chief information security officer to integrate the agency's technical and operational cybersecurity efforts with the Cybersecurity Operations Center. This designation must be provided annually in writing to the Florida Digital Service by January 1. An agency's chief information security officer shall report to the agency's chief information officer. An agency may request the department to procure a chief information security officer as a service to fulfill the agency's duties under this paragraph.

(b) ~~(a)~~ Designate an information security manager to ensure compliance with cybersecurity governance, manage risk, and ensure compliance with the state's incident response plan
~~administer the cybersecurity program of the state agency.~~ This designation must be provided annually in writing to the department by January 15 4. A state agency's information security manager, for purposes of these information security



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duties, shall report directly to the agency head.

(c)~~(b)~~ In consultation with the department, through the Florida Digital Service, and the Cybercrime Office of the Department of Law Enforcement, and incorporating the resources of the Florida State Guard as appropriate, establish an agency cybersecurity response team to respond to a cybersecurity incident. The agency cybersecurity response team shall convene upon notification of a cybersecurity incident and must immediately report all confirmed or suspected incidents to the state chief information security officer, or his or her designee, and comply with all applicable guidelines and processes established pursuant to paragraph (3)(c).

(d)~~(e)~~ Submit to the department annually by July 31, the state agency's strategic and operational cybersecurity plans developed pursuant to rules and guidelines established by the department, through the Florida Digital Service.

1. The state agency strategic cybersecurity plan must cover a 3-year period and, at a minimum, define security goals, intermediate objectives, and projected agency costs for the strategic issues of agency information security policy, risk management, security training, security incident response, and disaster recovery. The plan must be based on the statewide cybersecurity strategic plan created by the department and include performance metrics that can be objectively measured to reflect the status of the state agency's progress in meeting security goals and objectives identified in the agency's strategic information security plan.

2. The state agency operational cybersecurity plan must include a progress report that objectively measures progress



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made towards the prior operational cybersecurity plan and a project plan that includes activities, timelines, and deliverables for security objectives that the state agency will implement during the current fiscal year.

(e)~~(d)~~ Conduct, and update annually by April 30 ~~every 3 years~~, a comprehensive risk assessment, which may be facilitated by the department or completed by a private sector vendor, to determine the security threats to the data, information, and information technology resources, including mobile devices and print environments, of the agency. The risk assessment must comply with the risk assessment criteria, methodology, and scope developed by the state chief information security officer. The risk assessment findings must be signed by the agency head or the agency head's designee and the Florida Digital Service. The risk assessment methodology developed by the department and is confidential and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Florida Digital Service within the department, the Cybercrime Office of the Department of Law Enforcement, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General. If a private sector vendor is used to complete a comprehensive risk assessment, it must attest to the validity of the risk assessment findings.

(f)~~(e)~~ Develop, and periodically update, written internal policies and procedures, which include procedures for reporting cybersecurity incidents and breaches to the Cybercrime Office of the Department of Law Enforcement and the Florida Digital Service within the department. Such policies and procedures must be consistent with the rules, guidelines, and processes



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established by the department to ensure the security of the data, information, and information technology resources of the agency. The internal policies and procedures that, if disclosed, could facilitate the unauthorized modification, disclosure, or destruction of data or information technology resources are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for state agencies under the jurisdiction of the Governor, the Chief Inspector General.

(g)~~(f)~~ Implement managerial, operational, and technical safeguards and risk assessment remediation plans recommended by the department to address identified risks to the data, information, and information technology resources of the agency. The department, through the Florida Digital Service, shall track implementation by state agencies upon development of such remediation plans in coordination with agency inspectors general.

(h)~~(g)~~ Ensure that periodic internal audits and evaluations of the agency's cybersecurity program for the data, information, and information technology resources of the agency are conducted. The results of such audits and evaluations are confidential information and exempt from s. 119.07(1), except that such information shall be available to the Auditor General, the Cybercrime Office of the Department of Law Enforcement, the Florida Digital Service within the department, and, for agencies under the jurisdiction of the Governor, the Chief Inspector General.



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939 (i)~~(h)~~ Ensure that the cybersecurity requirements in the
940 written specifications for the solicitation, contracts, and
941 service-level agreement of information technology and
942 information technology resources and services meet or exceed the
943 applicable state and federal laws, regulations, and standards
944 for cybersecurity, including the National Institute of Standards
945 and Technology Cybersecurity Framework. Service-level agreements
946 must identify service provider and state agency responsibilities
947 for privacy and security, protection of government data,
948 personnel background screening, and security deliverables with
949 associated frequencies.

950 (j)~~(i)~~ Provide cybersecurity awareness training to all
951 state agency employees within 30 days after commencing
952 employment, and annually thereafter, concerning cybersecurity
953 risks and the responsibility of employees to comply with
954 policies, standards, guidelines, and operating procedures
955 adopted by the state agency to reduce those risks. The training
956 may be provided in collaboration with the Cybercrime Office of
957 the Department of Law Enforcement, a private sector entity, or
958 an institution of the State University System.

959 (k)~~(j)~~ Develop a process for detecting, reporting, and
960 responding to threats, breaches, or cybersecurity incidents
961 which is consistent with the security rules, guidelines, and
962 processes established by the department through the Florida
963 Digital Service.

964 1. All cybersecurity incidents and ransomware incidents
965 must be reported by state agencies. Such reports must comply
966 with the notification procedures and reporting timeframes
967 established pursuant to paragraph (3)(c).



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2. For cybersecurity breaches, state agencies shall provide notice in accordance with s. 501.171.

(1) ~~(*)~~ Submit to the Florida Digital Service, within 1 week after the remediation of a cybersecurity incident or ransomware incident, an after-action report that summarizes the incident, the incident's resolution, and any insights gained as a result of the incident.

(10) Any legislative committee or subcommittee responsible for policy matters relating to cybersecurity may hold meetings closed by the respective legislative body under the rules of such legislative body at which such committee or subcommittee is briefed on records made confidential and exempt under subsections (5) and (6). The committee or subcommittee must maintain the confidential and exempt status of such records.

Section 7. Paragraphs (b) and (c) of subsection (5) of section 282.3185, Florida Statutes, are amended to read:

282.3185 Local government cybersecurity.—

(5) INCIDENT NOTIFICATION.—

(b)1. A local government shall report all ransomware incidents and ~~any cybersecurity incidents incident determined by the local government to be of severity level 3, 4, or 5 as~~ provided in s. 282.318(3)(c) to the Florida Digital Service, the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government as soon as possible but no later than 4 ~~48~~ hours after discovery of the cybersecurity incident and no later than 2 ~~12~~ hours after discovery of the ransomware incident. The report must contain the information required in paragraph (a). The Florida Digital Service shall



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notify the Governor, the President of the Senate, and the Speaker of the House of Representatives of any incident discovered by a local government but not timely reported under this subparagraph.

2. The Cybersecurity Operations Center shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a local government's incident report. The notification must include a high-level description of the incident and the likely effects and must be provided in a secure environment.

~~(c) A local government may report a cybersecurity incident determined by the local government to be of severity level 1 or 2 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government. The report shall contain the information required in paragraph (a).~~

Section 8. Paragraph (j) of subsection (4) of section 282.319, Florida Statutes, is amended to read:

282.319 Florida Cybersecurity Advisory Council.—

(4) The council shall be comprised of the following members:

(j) Three representatives from critical infrastructure sectors, ~~one of whom must be from a water treatment facility,~~ appointed by the Governor.

Section 9. Section 768.401, Florida Statutes, is created to read:

768.401 Limitation on liability for cybersecurity



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incidents.—

(1) A county or municipality that substantially complies with s. 282.3185 is not liable in connection with a cybersecurity incident.

(2) A sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information is not liable in connection with a cybersecurity incident if the entity substantially complies with s. 501.171, if applicable, and has:

(a) Adopted a cybersecurity program that substantially aligns with the current version of any of the following standards:

1. The National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity.

2. NIST special publication 800-171.

3. NIST special publications 800-53 and 800-53A.

4. The Federal Risk and Authorization Management Program security assessment framework.

5. CIS Critical Security Controls.

6. The International Organization for Standardization/International Electrotechnical Commission 27000-series family of standards; or

(b) If regulated by the state or Federal Government, or both, or if otherwise subject to the requirements of any of the following laws and regulations, substantially complied its cybersecurity program to the current version of the following, as applicable:



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1. The security requirements of the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. part 164 subpart C.

2. Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended.

3. The Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283.

4. The Health Information Technology for Economic and Clinical Health Act, 45 C.F.R. part 162.

(3) The scale and scope of compliance with a standard, law, or regulation under paragraph (2) (a) or paragraph (2) (b) by a covered entity, as applicable, is appropriate if it is based on all of the following factors:

(a) The size and complexity of the covered entity;

(b) The nature and scope of the activities of the covered entity; and

(c) The sensitivity of the information to be protected.

(4) Any commercial entity covered by subsection (2) that substantially complies with a combination of industry-recognized cybersecurity frameworks or standards, including the payment card industry data security standard, to gain the presumption against liability pursuant to subsection (2) must, upon the revision of two or more of the frameworks or standards with which the entity complies, adopt the revised frameworks or standards within 1 year after the latest publication date stated in the revisions.

(5) This section does not establish a private cause of action. Failure of a county, municipality, or commercial entity to substantially implement a cybersecurity program that is in



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compliance with this section is not evidence of negligence and
does not constitute negligence per se.

(6) In an action in connection with a cybersecurity
incident, if the defendant is an entity covered by subsection
(1) or subsection (2), the defendant has the burden of proof to
establish substantial compliance.

Section 10. This act shall take effect July 1, 2023.

===== T I T L E A M E N D M E N T =====
And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to cybersecurity; providing a short
title; amending s. 110.205, F.S.; exempting certain
personnel from the career service; amending s.
282.0041, F.S.; defining terms; revising the
definition of the term "incident"; amending s.
282.0051, F.S.; requiring the Florida Digital Service
to ensure that independent project oversight is
performed in a certain manner and to take certain
actions relating to the procurement of project
oversight as a service; requiring the Florida Digital
Service to provide certain reports by certain dates;
requiring the Florida Digital Service to establish an
operations committee for a certain purpose and
composed of certain members; requiring the Governor to
appoint a state chief information officer subject to
confirmation by the Senate; requiring the state chief



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1113 information officer to designate a state chief
1114 technology officer; providing duties of the state
1115 chief technology officer; amending s. 282.201, F.S.;
1116 requiring that the state data center be overseen by
1117 and accountable to the Department of Management
1118 Services in consultation with certain officers;
1119 providing requirements for certain state data center
1120 procurements; requiring the state chief information
1121 officer to assume responsibility for a certain
1122 contract; requiring that the Florida Digital Service
1123 be provided with full access to state data center
1124 infrastructure, systems, applications, and other means
1125 of hosting, supporting, and managing certain data;
1126 requiring the state data center to submit a certain
1127 report to the department and the Florida Digital
1128 Service; amending s. 282.318, F.S.; requiring a state
1129 agency to report ransomware and cybersecurity
1130 incidents within a certain time period; requiring the
1131 Florida Digital Service to notify the Governor and
1132 Legislature of certain incidents; requiring that
1133 certain notification be provided in a secure
1134 environment; requiring the Florida Digital Service to
1135 provide cybersecurity briefings to certain legislative
1136 committees; authorizing the Florida Digital Service to
1137 respond to certain cybersecurity incidents; requiring
1138 a state agency head to designate a chief information
1139 security officer for the agency; revising the purpose
1140 of an agency's information security manager and the
1141 date by which he or she must be designated; revising



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1142 the frequency of a comprehensive risk assessment;
1143 authorizing the department to facilitate and providing
1144 requirements for such assessment; authorizing certain
1145 legislative committees to hold closed meetings to
1146 receive certain briefings; requiring such committees
1147 to maintain the confidential and exempt status of
1148 certain records; amending s. 282.3185, F.S.; requiring
1149 a local government to report ransomware and
1150 cybersecurity incidents within a certain time period;
1151 requiring the Florida Digital Service to notify the
1152 Governor and Legislature of certain incidents;
1153 requiring that certain notification be provided in a
1154 secure environment; amending s. 282.319, F.S.;
1155 revising the membership of the Florida Cybersecurity
1156 Advisory Council; creating s. 768.401, F.S.; providing
1157 that a county, municipality, or commercial entity that
1158 complies with certain requirements is not liable in
1159 connection with a cybersecurity incident; requiring
1160 certain entities to adopt certain revised frameworks
1161 or standards within a specified time period; providing
1162 that a private cause of action is not established;
1163 providing that certain failures are not evidence of
1164 negligence and do not constitute negligence per se;
1165 specifying that the defendant in certain actions has a
1166 certain burden of proof; providing an effective date.

By Senator DiCeglie

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1 A bill to be entitled
 2 An act relating to cybersecurity; providing a short
 3 title; amending s. 282.0041, F.S.; revising
 4 definitions; amending s. 282.0051, F.S.; clarifying
 5 the powers, duties, and functions of the Florida
 6 Digital Service; revising the cost threshold of state
 7 agency information technology projects for which the
 8 Florida Digital Service must perform project
 9 oversight; requiring the Florida Digital Service to
 10 establish an operations committee for a certain
 11 purpose; providing for membership of the committee;
 12 requiring the Governor to appoint a state chief
 13 information officer subject to confirmation by the
 14 Senate; conforming provisions to changes made by the
 15 act; amending s. 282.201, F.S.; requiring the Florida
 16 Digital Service to oversee the state data center;
 17 requiring the Florida Digital Service to be provided
 18 with full access to state data center infrastructure;
 19 requiring the Northwest Regional Data Center to
 20 provide the Florida Digital Service with access to
 21 certain information; conforming provisions to changes
 22 made by the act; amending s. 282.318, F.S.; clarifying
 23 the authority of the Florida Digital Service;
 24 requiring the Florida Digital Service to oversee
 25 certain cybersecurity audits; requiring state agencies
 26 to report ransomware and cybersecurity incidents
 27 within a certain time period; requiring the Florida
 28 Digital Service to notify the Governor and Legislature
 29 of certain incidents; requiring that certain

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30 notification be provided in a secure environment;
 31 requiring the Florida Digital Service to provide
 32 cybersecurity briefings to certain legislative
 33 committees; authorizing the Florida Digital Service to
 34 respond to certain cybersecurity incidents;
 35 authorizing certain legislative committees to hold
 36 closed meetings to receive certain briefings;
 37 requiring such committees to maintain the confidential
 38 and exempt status of certain records; amending s.
 39 282.3185, F.S.; requiring a local government to report
 40 ransomware and cybersecurity incidents within a
 41 certain time period; requiring the Florida Digital
 42 Service to notify the Governor and Legislature of
 43 certain incidents; requiring that certain notification
 44 be provided in a secure environment; amending s.
 45 282.319, F.S.; revising the membership of the Florida
 46 Cybersecurity Advisory Council; requiring that members
 47 of certain legislative committees be invited to attend
 48 meetings of the council; providing construction;
 49 creating s. 282.3195, F.S.; creating the State
 50 Technology Advancement Council within the Executive
 51 Office of the Governor; providing for the purpose,
 52 membership, terms of office, and meetings of the
 53 council and members; providing requirements for
 54 members relating to confidential and exempt
 55 information and certain agreements; requiring the
 56 council to submit an annual report to the Governor and
 57 Legislature beginning on a specified date; creating s.
 58 768.401, F.S.; providing a presumption against

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liability in connection with a cybersecurity incident for a county, municipality, or commercial entity that complies with certain requirements; requiring certain entities to adopt certain revised frameworks or standards within a specified time period; providing that a private cause of action is not established; providing that certain failures are not evidence of negligence and do not constitute negligence per se; amending s. 1004.649, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. This act may be cited as the "Florida Cyber Protection Act."

Section 2. Subsections (1), (7), (19), and (28) of section 282.0041, Florida Statutes, are amended to read:

282.0041 Definitions.—As used in this chapter, the term:

(1) "Agency assessment" means the amount each customer entity must pay annually for services from the Florida Digital Service Department of Management Services and includes administrative and data center services costs.

(7) "Customer entity" means an entity that obtains services from the Florida Digital Service Department of Management Services.

(19) "Incident" means a violation or an imminent threat of violation, whether such violation is accidental or deliberate, of information technology resources, security, policies, or practices which may jeopardize the confidentiality, integrity,

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or availability of an information technology system or the information the system processes, stores, or transmits. An imminent threat of violation refers to a situation in which a state agency, county, or municipality has a factual basis for believing that a specific incident is about to occur.

(28) "Ransomware incident" means a malicious cybersecurity incident in which a person or an entity introduces software that gains unauthorized access to or encrypts, modifies, or otherwise renders unavailable a state agency's, county's, or municipality's data and thereafter the person or entity demands a ransom to prevent the publication of the data, restore access to the data, or otherwise remediate the impact of the software. Such incidents are commonly referred to as cyberextortion.

Section 3. Section 282.0051, Florida Statutes, is amended to read:

282.0051 Department of Management Services; Florida Digital Service; powers, duties, and functions.—

(1) The Florida Digital Service is ~~has been~~ created within the department to propose innovative solutions that securely modernize state government, including technology and information services, to achieve value through digital transformation and interoperability, and to fully support the cloud-first policy as specified in s. 282.206. The ~~department, through the~~ Florida Digital Service, shall have the following powers, duties, and functions:

(a) Develop and publish information technology policy for the management of the state's information technology resources.

(b) Develop an enterprise architecture that:

1. Acknowledges the unique needs of the entities within the

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enterprise in the development and publication of standards and terminologies to facilitate digital interoperability;

2. Supports the cloud-first policy as specified in s. 282.206; and

3. Addresses how information technology infrastructure may be modernized to achieve cloud-first objectives.

(c) Establish project management and oversight standards with which state agencies must comply when implementing information technology projects. The ~~department, acting through the Florida Digital Service,~~ shall provide training opportunities to state agencies to assist in the adoption of the project management and oversight standards. To support data-driven decisionmaking, the standards must include, but are not limited to:

1. Performance measurements and metrics that objectively reflect the status of an information technology project based on a defined and documented project scope, cost, and schedule.

2. Methodologies for calculating acceptable variances in the projected versus actual scope, schedule, or cost of an information technology project.

3. Reporting requirements, including requirements designed to alert all defined stakeholders that an information technology project has exceeded acceptable variances defined and documented in a project plan.

4. Content, format, and frequency of project updates.

5. Technical standards to ensure an information technology project complies with the enterprise architecture.

(d) Perform project oversight on all state agency information technology projects that have total project costs of

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\$5 \$10 million or more and that are funded in the General Appropriations Act or any other law. The ~~department, acting through the Florida Digital Service,~~ shall report at least quarterly to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives on any information technology project that the Florida Digital Service ~~department~~ identifies as high-risk due to the project exceeding acceptable variance ranges defined and documented in a project plan. The report must include a risk assessment, including fiscal risks, associated with proceeding to the next stage of the project, and a recommendation for corrective actions required, including suspension or termination of the project.

(e) Identify opportunities for standardization and consolidation of information technology services that support interoperability and the cloud-first policy, as specified in s. 282.206, and business functions and operations, including administrative functions such as purchasing, accounting and reporting, cash management, and personnel, and that are common across state agencies. The ~~department, acting through the Florida Digital Service,~~ shall biennially on January 1 of each even-numbered year provide recommendations for standardization and consolidation to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives.

(f) Establish best practices for the procurement of information technology products and cloud-computing services in order to reduce costs, increase the quality of data center services, or improve government services.

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175 (g) Develop standards for information technology reports
 176 and updates, including, but not limited to, operational work
 177 plans, project spend plans, and project status reports, for use
 178 by state agencies.

179 (h) Upon request, assist state agencies in the development
 180 of information technology-related legislative budget requests.

181 (i) Conduct annual assessments of state agencies to
 182 determine compliance with all information technology standards
 183 and guidelines developed and published by the Florida Digital
 184 Service ~~department~~ and provide results of the assessments to the
 185 Executive Office of the Governor, the President of the Senate,
 186 and the Speaker of the House of Representatives.

187 (j) Conduct a market analysis not less frequently than
 188 every 3 years beginning in 2021 to determine whether the
 189 information technology resources within the enterprise are
 190 utilized in the most cost-effective and cost-efficient manner,
 191 while recognizing that the replacement of certain legacy
 192 information technology systems within the enterprise may be cost
 193 prohibitive or cost inefficient due to the remaining useful life
 194 of those resources; whether the enterprise is complying with the
 195 cloud-first policy specified in s. 282.206; and whether the
 196 enterprise is utilizing best practices with respect to
 197 information technology, information services, and the
 198 acquisition of emerging technologies and information services.
 199 Each market analysis shall be used to prepare a strategic plan
 200 for continued and future information technology and information
 201 services for the enterprise, including, but not limited to,
 202 proposed acquisition of new services or technologies and
 203 approaches to the implementation of any new services or

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204 technologies. Copies of each market analysis and accompanying
 205 strategic plan must be submitted to the Executive Office of the
 206 Governor, the President of the Senate, and the Speaker of the
 207 House of Representatives not later than December 31 of each year
 208 that a market analysis is conducted.

209 (k) Recommend other information technology services that
 210 should be designed, delivered, and managed as enterprise
 211 information technology services. Recommendations must include
 212 the identification of existing information technology resources
 213 associated with the services, if existing services must be
 214 transferred as a result of being delivered and managed as
 215 enterprise information technology services.

216 (l) In consultation with state agencies, propose a
 217 methodology and approach for identifying and collecting both
 218 current and planned information technology expenditure data at
 219 the state agency level.

220 (m)1. Notwithstanding any other law, provide project
 221 oversight on any information technology project of the
 222 Department of Financial Services, the Department of Legal
 223 Affairs, and the Department of Agriculture and Consumer Services
 224 which has a total project cost of \$20 million or more. Such
 225 information technology projects must also comply with the
 226 applicable information technology architecture, project
 227 management and oversight, and reporting standards established by
 228 the ~~department, acting through the~~ Florida Digital Service.

229 2. When performing the project oversight function specified
 230 in subparagraph 1., report at least quarterly to the Executive
 231 Office of the Governor, the President of the Senate, and the
 232 Speaker of the House of Representatives on any information

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technology project that the ~~department, acting through the~~
 Florida Digital Service, identifies as high-risk due to the
 project exceeding acceptable variance ranges defined and
 documented in the project plan. The report shall include a risk
 assessment, including fiscal risks, associated with proceeding
 to the next stage of the project and a recommendation for
 corrective actions required, including suspension or termination
 of the project.

(n) If an information technology project implemented by a
 state agency must be connected to or otherwise accommodated by
 an information technology system administered by the Department
 of Financial Services, the Department of Legal Affairs, or the
 Department of Agriculture and Consumer Services, consult with
 these departments regarding the risks and other effects of such
 projects on their information technology systems and work
 cooperatively with these departments regarding the connections,
 interfaces, timing, or accommodations required to implement such
 projects.

(o) If adherence to standards or policies adopted by or
 established pursuant to this section causes conflict with
 federal regulations or requirements imposed on an entity within
 the enterprise and results in adverse action against an entity
 or federal funding, work with the entity to provide alternative
 standards, policies, or requirements that do not conflict with
 the federal regulation or requirement. The ~~department, acting~~
~~through the~~ Florida Digital Service, shall annually report such
 alternative standards to the Executive Office of the Governor,
 the President of the Senate, and the Speaker of the House of
 Representatives.

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(p)1. Establish an information technology policy for all
 information technology-related state contracts, including state
 term contracts for information technology commodities,
 consultant services, and staff augmentation services. The
 information technology policy must include:

a. Identification of the information technology product and
 service categories to be included in state term contracts.

b. Requirements to be included in solicitations for state
 term contracts.

c. Evaluation criteria for the award of information
 technology-related state term contracts.

d. The term of each information technology-related state
 term contract.

e. The maximum number of vendors authorized on each state
 term contract.

f. At a minimum, a requirement that any contract for
 information technology commodities or services meet the National
 Institute of Standards and Technology Cybersecurity Framework.

g. For an information technology project wherein project
 oversight is required pursuant to paragraph (d) or paragraph
 (m), a requirement that independent verification and validation
 be employed throughout the project life cycle with the primary
 objective of independent verification and validation being to
 provide an objective assessment of products and processes
 throughout the project life cycle. An entity providing
 independent verification and validation may not have technical,
 managerial, or financial interest in the project and may not
 have responsibility for, or participate in, any other aspect of
 the project.

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- 291 2. Evaluate vendor responses for information technology-
 292 related state term contract solicitations and invitations to
 293 negotiate.
- 294 3. Answer vendor questions on information technology-
 295 related state term contract solicitations.
- 296 4. Ensure that the information technology policy
 297 established pursuant to subparagraph 1. is included in all
 298 solicitations and contracts that are administratively executed
 299 by the department.
- 300 (q) Recommend potential methods for standardizing data
 301 across state agencies which will promote interoperability and
 302 reduce the collection of duplicative data.
- 303 (r) Recommend open data technical standards and
 304 terminologies for use by the enterprise.
- 305 (s) Ensure that enterprise information technology solutions
 306 are capable of utilizing an electronic credential and comply
 307 with the enterprise architecture standards.
- 308 (t) Establish an operations committee that shall meet as
 309 necessary for the purpose of developing collaborative efforts
 310 between agencies and other governmental entities relating to
 311 cybersecurity issues, including the coordination of response
 312 efforts relating to cybersecurity incidents and issues relating
 313 to the interoperability of agency projects. The state chief
 314 information security officer shall serve as the executive
 315 director of the committee. The committee shall be composed of
 316 the following members:
- 317 1. The Attorney General, or his or her designee.
 318 2. The Secretary of State, or his or her designee.
 319 3. The executive director of the Department of Law

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- 320 Enforcement, or his or her designee.
- 321 4. A representative of each state agency.
- 322 5. A representative of the Florida State Guard.
- 323 6. A representative of the Florida National Guard.
- 324 (2) (a) ~~The Governor shall appoint Secretary of Management~~
 325 ~~Services shall designate~~ a state chief information officer,
 326 subject to confirmation by the Senate, who shall administer the
 327 Florida Digital Service. The state chief information officer,
 328 before ~~prior to~~ appointment, must have at least 5 years of
 329 experience in the development of information system strategic
 330 planning and development or information technology policy, and,
 331 preferably, have leadership-level experience in the design,
 332 development, and deployment of interoperable software and data
 333 solutions.
- 334 (b) The state chief information officer, ~~in consultation~~
 335 ~~with the Secretary of Management Services~~, shall designate a
 336 state chief data officer. The chief data officer must be a
 337 proven and effective administrator who must have significant and
 338 substantive experience in data management, data governance,
 339 interoperability, and security.
- 340 (3) ~~The department, acting through the~~ Florida Digital
 341 Service, ~~and~~ from funds appropriated to the Florida Digital
 342 Service, shall:
- 343 (a) ~~Create, not later than December 1, 2022,~~ and maintain a
 344 comprehensive indexed data catalog in collaboration with the
 345 enterprise that lists the data elements housed within the
 346 enterprise and the legacy system or application in which these
 347 data elements are located. The data catalog must, at a minimum,
 348 specifically identify all data that is restricted from public

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disclosure based on federal or state laws and regulations and require that all such information be protected in accordance with s. 282.318.

(b) Develop and publish, ~~not later than December 1, 2022,~~ in collaboration with the enterprise, a data dictionary for each agency that reflects the nomenclature in the comprehensive indexed data catalog.

(c) Adopt, by rule, standards that support the creation and deployment of an application programming interface to facilitate integration throughout the enterprise.

(d) Adopt, by rule, standards necessary to facilitate a secure ecosystem of data interoperability that is compliant with the enterprise architecture.

(e) Adopt, by rule, standards that facilitate the deployment of applications or solutions to the existing enterprise system in a controlled and phased approach.

(f) After submission of documented use cases developed in conjunction with the affected agencies, assist the affected agencies with the deployment, contingent upon a specific appropriation therefor, of new interoperable applications and solutions:

1. For the Department of Health, the Agency for Health Care Administration, the Agency for Persons with Disabilities, the Department of Education, the Department of Elderly Affairs, and the Department of Children and Families.

2. To support military members, veterans, and their families.

(4) For information technology projects that have a total project ~~costs~~ ~~cost~~ of \$5 ~~\$10~~ million or more:

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(a) State agencies must provide the Florida Digital Service with written notice of any planned procurement of an information technology project.

(b) The Florida Digital Service must participate in the development of specifications and recommend modifications to any planned procurement of an information technology project by state agencies so that the procurement complies with the enterprise architecture.

(c) The Florida Digital Service must participate in post-award contract monitoring.

(5) The department, acting through the Florida Digital Service, may not retrieve or disclose any data without a shared-data agreement in place between the department and the enterprise entity that has primary custodial responsibility of, or data-sharing responsibility for, that data.

(6) The ~~department, acting through the~~ Florida Digital Service, shall adopt rules to administer this section.

Section 4. Section 282.201, Florida Statutes, is amended to read:

282.201 State data center.—The state data center is established within the department and shall be overseen by the Florida Digital Service. The provision of data center services must comply with applicable state and federal laws, regulations, and policies, including all applicable security, privacy, and auditing requirements. The Florida Digital Service ~~department~~ shall appoint a director of the state data center who has experience in leading data center facilities and has expertise in cloud-computing management. The Florida Digital Service shall be provided with full access to state data center

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407 infrastructure.

408 (1) STATE DATA CENTER DUTIES.—The state data center shall:

409 (a) Offer, develop, and support the services and
410 applications defined in service-level agreements executed with
411 its customer entities.

412 (b) Maintain performance of the state data center by
413 ensuring proper data backup; data backup recovery; disaster
414 recovery; and appropriate security, power, cooling, fire
415 suppression, and capacity.

416 (c) Develop and implement business continuity and disaster
417 recovery plans, and annually conduct a live exercise of each
418 plan.

419 (d) Enter into a service-level agreement with each customer
420 entity to provide the required type and level of service or
421 services. If a customer entity fails to execute an agreement
422 within 60 days after commencement of a service, the state data
423 center may cease service. A service-level agreement may not have
424 a term exceeding 3 years and at a minimum must:

425 1. Identify the parties and their roles, duties, and
426 responsibilities under the agreement.

427 2. State the duration of the contract term and specify the
428 conditions for renewal.

429 3. Identify the scope of work.

430 4. Identify the products or services to be delivered with
431 sufficient specificity to permit an external financial or
432 performance audit.

433 5. Establish the services to be provided, the business
434 standards that must be met for each service, the cost of each
435 service by agency application, and the metrics and processes by

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436 which the business standards for each service are to be
437 objectively measured and reported.

438 6. Provide a timely billing methodology to recover the
439 costs of services provided to the customer entity pursuant to s.
440 215.422.

441 7. Provide a procedure for modifying the service-level
442 agreement based on changes in the type, level, and cost of a
443 service.

444 8. Include a right-to-audit clause to ensure that the
445 parties to the agreement have access to records for audit
446 purposes during the term of the service-level agreement.

447 9. Provide that a service-level agreement may be terminated
448 by either party for cause only after giving the other party and
449 the Florida Digital Service department notice in writing of the
450 cause for termination and an opportunity for the other party to
451 resolve the identified cause within a reasonable period.

452 10. Provide for mediation of disputes by the Division of
453 Administrative Hearings pursuant to s. 120.573.

454 (e) For purposes of chapter 273, be the custodian of
455 resources and equipment located in and operated, supported, and
456 managed by the state data center.

457 (f) Assume administrative access rights to resources and
458 equipment, including servers, network components, and other
459 devices, consolidated into the state data center.

460 1. Upon consolidation, a state agency shall relinquish
461 administrative rights to consolidated resources and equipment.
462 State agencies required to comply with federal and state
463 criminal justice information security rules and policies shall
464 retain administrative access rights sufficient to comply with

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the management control provisions of those rules and policies; however, the state data center shall have the appropriate type or level of rights to allow the center to comply with its duties pursuant to this section. The Department of Law Enforcement shall serve as the arbiter of disputes pertaining to the appropriate type and level of administrative access rights pertaining to the provision of management control in accordance with the federal criminal justice information guidelines.

2. The state data center shall provide customer entities with access to applications, servers, network components, and other devices necessary for entities to perform business activities and functions, and as defined and documented in a service-level agreement.

(g) In its procurement process, show preference for cloud-computing solutions that minimize or do not require the purchasing, financing, or leasing of state data center infrastructure, and that meet the needs of customer agencies, that reduce costs, and that meet or exceed the applicable state and federal laws, regulations, and standards for cybersecurity.

(h) Assist customer entities in transitioning from state data center services to the Northwest Regional Data Center or other third-party cloud-computing services procured by a customer entity or by the Northwest Regional Data Center on behalf of a customer entity.

(2) USE OF THE STATE DATA CENTER.—The following are exempt from the use of the state data center: the Department of Law Enforcement, the Department of the Lottery's Gaming System, Systems Design and Development in the Office of Policy and Budget, the regional traffic management centers as described in

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s. 335.14(2) and the Office of Toll Operations of the Department of Transportation, the State Board of Administration, state attorneys, public defenders, criminal conflict and civil regional counsel, capital collateral regional counsel, and the Florida Housing Finance Corporation.

(3) AGENCY LIMITATIONS.—Unless exempt from the use of the state data center pursuant to this section or authorized by the Legislature, a state agency may not:

(a) Create a new agency computing facility or data center, or expand the capability to support additional computer equipment in an existing agency computing facility or data center; or

(b) Terminate services with the state data center without giving written notice of intent to terminate services 180 days before such termination.

(4) FLORIDA DIGITAL SERVICE ~~DEPARTMENT~~ RESPONSIBILITIES.—The Florida Digital Service ~~department~~ shall provide operational management and oversight of the state data center, which includes:

(a) Implementing industry standards and best practices for the state data center's facilities, operations, maintenance, planning, and management processes.

(b) Developing and implementing cost-recovery mechanisms that recover the full direct and indirect cost of services through charges to applicable customer entities. Such cost-recovery mechanisms must comply with applicable state and federal regulations concerning distribution and use of funds and must ensure that, for any fiscal year, no service or customer entity subsidizes another service or customer entity. The

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Florida Digital Service ~~department~~ may recommend other payment mechanisms to the Executive Office of the Governor, the President of the Senate, and the Speaker of the House of Representatives. Such mechanisms may be implemented only if specifically authorized by the Legislature.

(c) Developing and implementing appropriate operating guidelines and procedures necessary for the state data center to perform its duties pursuant to subsection (1). The guidelines and procedures must comply with applicable state and federal laws, regulations, and policies and conform to generally accepted governmental accounting and auditing standards. The guidelines and procedures must include, but need not be limited to:

1. Implementing a consolidated administrative support structure responsible for providing financial management, procurement, transactions involving real or personal property, human resources, and operational support.

2. Implementing an annual reconciliation process to ensure that each customer entity is paying for the full direct and indirect cost of each service as determined by the customer entity's use of each service.

3. Providing rebates that may be credited against future billings to customer entities when revenues exceed costs.

4. Requiring customer entities to validate that sufficient funds exist before implementation of a customer entity's request for a change in the type or level of service provided, if such change results in a net increase to the customer entity's cost for that fiscal year.

5. By November 15 of each year, providing to the Office of

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Policy and Budget in the Executive Office of the Governor and to the chairs of the legislative appropriations committees the projected costs of providing data center services for the following fiscal year.

6. Providing a plan for consideration by the Legislative Budget Commission if the cost of a service is increased for a reason other than a customer entity's request made pursuant to subparagraph 4. Such a plan is required only if the service cost increase results in a net increase to a customer entity for that fiscal year.

7. Standardizing and consolidating procurement and contracting practices.

(d) In collaboration with the Department of Law Enforcement and the Florida Digital Service, developing and implementing a process for detecting, reporting, and responding to cybersecurity incidents, breaches, and threats.

(e) Adopting rules relating to the operation of the state data center, including, but not limited to, budgeting and accounting procedures, cost-recovery methodologies, and operating procedures.

(5) NORTHWEST REGIONAL DATA CENTER CONTRACT.—In order for the Florida Digital Service ~~department~~ to carry out its duties and responsibilities relating to the state data center, the state chief information officer shall assume responsibility for the contract entered into by the secretary of the department ~~shall contract by July 1, 2022,~~ with the Northwest Regional Data Center pursuant to s. 287.057(11). The contract shall provide that the Northwest Regional Data Center will manage the operations of the state data center and provide data center

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services to state agencies. Notwithstanding the terms of the contract, the Northwest Regional Data Center must provide the Florida Digital Service with access to information regarding the operations of the state data center.

(a) The Florida Digital Service ~~department~~ shall provide contract oversight, including, but not limited to, reviewing invoices provided by the Northwest Regional Data Center for services provided to state agency customers.

(b) The Florida Digital Service ~~department~~ shall approve or request updates to invoices within 10 business days after receipt. If the Florida Digital Service ~~department~~ does not respond to the Northwest Regional Data Center, the invoice will be approved by default. The Northwest Regional Data Center must submit approved invoices directly to state agency customers.

Section 5. Present subsection (10) of section 282.318, Florida Statutes, is redesignated as subsection (11), a new subsection (10) is added to that section, and subsections (3), (4), and (7) and present subsection (10) are amended, to read:

282.318 Cybersecurity.—

(3) The ~~department, acting through the~~ Florida Digital Service, is the lead entity responsible for establishing standards and processes for assessing state agency cybersecurity risks and determining appropriate security measures. Such standards and processes must be consistent with generally accepted technology best practices, including the National Institute for Standards and Technology Cybersecurity Framework, for cybersecurity. The ~~department, acting through the~~ Florida Digital Service, shall adopt rules that mitigate risks; safeguard state agency digital assets, data, information, and

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information technology resources to ensure availability, confidentiality, and integrity; and support a security governance framework. The ~~department, acting through the~~ Florida Digital Service, shall also:

(a) Designate an employee of the Florida Digital Service as the state chief information security officer. The state chief information security officer must have experience and expertise in security and risk management for communications and information technology resources. The state chief information security officer is responsible for the development, operation, and oversight of cybersecurity for state technology systems. The state chief information security officer shall be notified of all confirmed or suspected incidents or threats of state agency information technology resources and must report such incidents or threats to the state chief information officer and the Governor.

(b) Develop, and annually update by February 1, a statewide cybersecurity strategic plan that includes security goals and objectives for cybersecurity, including the identification and mitigation of risk, proactive protections against threats, tactical risk detection, threat reporting, and response and recovery protocols for a cyber incident.

(c) Develop and publish for use by state agencies a cybersecurity governance framework that, at a minimum, includes guidelines and processes for:

1. Establishing asset management procedures to ensure that an agency's information technology resources are identified and managed consistent with their relative importance to the agency's business objectives.

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2. Using a standard risk assessment methodology that includes the identification of an agency's priorities, constraints, risk tolerances, and assumptions necessary to support operational risk decisions.

3. Completing comprehensive risk assessments and cybersecurity audits, which may be completed by a private sector vendor, and submitting completed assessments and audits to the Florida Digital Service. The Florida Digital Service shall oversee any cybersecurity audit completed by a private sector vendor to ensure that the audit meets applicable standards, processes, and timelines ~~department~~.

4. Identifying protection procedures to manage the protection of an agency's information, data, and information technology resources.

5. Establishing procedures for accessing information and data to ensure the confidentiality, integrity, and availability of such information and data.

6. Detecting threats through proactive monitoring of events, continuous security monitoring, and defined detection processes.

7. Establishing agency cybersecurity incident response teams and describing their responsibilities for responding to cybersecurity incidents, including breaches of personal information containing confidential or exempt data.

8. Recovering information and data in response to a cybersecurity incident. The recovery may include recommended improvements to the agency processes, policies, or guidelines.

9. Establishing a cybersecurity incident reporting process that includes procedures for notifying the Florida Digital

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~~Service department~~ and the Department of Law Enforcement of cybersecurity incidents.

a. The level of severity of the cybersecurity incident is defined by the National Cyber Incident Response Plan of the United States Department of Homeland Security as follows:

(I) Level 5 is an emergency-level incident within the specified jurisdiction that poses an imminent threat to the provision of wide-scale critical infrastructure services; national, state, or local government security; or the lives of the country's, state's, or local government's residents.

(II) Level 4 is a severe-level incident that is likely to result in a significant impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; or civil liberties.

(III) Level 3 is a high-level incident that is likely to result in a demonstrable impact in the affected jurisdiction to public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(IV) Level 2 is a medium-level incident that may impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

(V) Level 1 is a low-level incident that is unlikely to impact public health or safety; national, state, or local security; economic security; civil liberties; or public confidence.

b. The cybersecurity incident reporting process must specify the information that must be reported by a state agency following a cybersecurity incident or ransomware incident, which, at a minimum, must include the following:

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697 (I) A summary of the facts surrounding the cybersecurity
 698 incident or ransomware incident.

699 (II) The date on which the state agency most recently
 700 backed up its data; the physical location of the backup, if the
 701 backup was affected; and if the backup was created using cloud
 702 computing.

703 (III) The types of data compromised by the cybersecurity
 704 incident or ransomware incident.

705 (IV) The estimated fiscal impact of the cybersecurity
 706 incident or ransomware incident.

707 (V) In the case of a ransomware incident, the details of
 708 the ransom demanded.

709 c.(I) A state agency shall report all ransomware incidents
 710 and any cybersecurity incidents ~~incident determined by the state~~
 711 ~~agency to be of severity level 3, 4, or 5 to the Florida Digital~~
 712 Service, the Cybersecurity Operations Center, and the Cybercrime
 713 Office of the Department of Law Enforcement as soon as possible
 714 but no later than 4 48 hours after discovery of the
 715 cybersecurity incident and no later than 2 12 hours after
 716 discovery of the ransomware incident. The report must contain
 717 the information required in sub-subparagraph b. The Florida
 718 Digital Service shall notify the Governor, the President of the
 719 Senate, and the Speaker of the House of Representatives of any
 720 incident discovered by a state agency but not timely reported
 721 under this sub-sub-subparagraph.

722 (II) The Cybersecurity Operations Center shall notify the
 723 President of the Senate and the Speaker of the House of
 724 Representatives of any severity level 3, 4, or 5 incident as
 725 soon as possible but no later than 12 hours after receiving a

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726 state agency's incident report. The notification must include a
 727 high-level description of the incident and the likely effects
 728 and must be provided in a secure environment.

729 ~~d. A state agency shall report a cybersecurity incident~~
 730 ~~determined by the state agency to be of severity level 1 or 2 to~~
 731 ~~the Cybersecurity Operations Center and the Cybercrime Office of~~
 732 ~~the Department of Law Enforcement as soon as possible. The~~
 733 ~~report must contain the information required in sub-subparagraph~~
 734 ~~b.~~

735 e. The Cybersecurity Operations Center shall provide a
 736 consolidated incident report on a quarterly basis to the
 737 President of the Senate, the Speaker of the House of
 738 Representatives, and the Florida Cybersecurity Advisory Council.
 739 The report provided to the Florida Cybersecurity Advisory
 740 Council may not contain the name of any agency, network
 741 information, or system identifying information but must contain
 742 sufficient relevant information to allow the Florida
 743 Cybersecurity Advisory Council to fulfill its responsibilities
 744 as required in s. 282.319(9).

745 10. Incorporating information obtained through detection
 746 and response activities into the agency's cybersecurity incident
 747 response plans.

748 11. Developing agency strategic and operational
 749 cybersecurity plans required pursuant to this section.

750 12. Establishing the managerial, operational, and technical
 751 safeguards for protecting state government data and information
 752 technology resources that align with the state agency risk
 753 management strategy and that protect the confidentiality,
 754 integrity, and availability of information and data.

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13. Establishing procedures for procuring information technology commodities and services that require the commodity or service to meet the National Institute of Standards and Technology Cybersecurity Framework.

14. Submitting after-action reports following a cybersecurity incident or ransomware incident. Such guidelines and processes for submitting after-action reports must be developed and published by December 1, 2022.

(d) Assist state agencies in complying with this section.

(e) In collaboration with the Cybercrime Office of the Department of Law Enforcement, annually provide training for state agency information security managers and computer security incident response team members that contains training on cybersecurity, including cybersecurity threats, trends, and best practices.

(f) Annually review the strategic and operational cybersecurity plans of state agencies.

(g) Annually provide cybersecurity training to all state agency technology professionals and employees with access to highly sensitive information which develops, assesses, and documents competencies by role and skill level. The cybersecurity training curriculum must include training on the identification of each cybersecurity incident severity level referenced in sub-subparagraph (c)9.a. The training may be provided in collaboration with the Cybercrime Office of the Department of Law Enforcement, a private sector entity, or an institution of the State University System.

(h) Operate and maintain a Cybersecurity Operations Center led by the state chief information security officer, which must

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be primarily virtual and staffed with tactical detection and incident response personnel. The Cybersecurity Operations Center shall serve as a clearinghouse for threat information and coordinate with the Department of Law Enforcement to support state agencies and their response to any confirmed or suspected cybersecurity incident.

(i) Lead an Emergency Support Function, ESF CYBER, under the state comprehensive emergency management plan as described in s. 252.35.

(j) Provide cybersecurity briefings to the members of any legislative committee or subcommittee responsible for policy matters relating to cybersecurity.

(k) Have the authority to respond to any state agency cybersecurity incident.

(4) Each state agency head shall, at a minimum:

(a) Designate an information security manager to administer the cybersecurity program of the state agency. This designation must be provided annually in writing to the Florida Digital Service ~~department~~ by January 1. A state agency's information security manager, for purposes of these information security duties, shall report directly to the agency head.

(b) In consultation with the ~~department, through the~~ Florida Digital Service, and the Cybercrime Office of the Department of Law Enforcement, establish an agency cybersecurity response team to respond to a cybersecurity incident. The agency cybersecurity response team shall convene upon notification of a cybersecurity incident and must immediately report all confirmed or suspected incidents to the state chief information security officer, or his or her designee, and comply with all applicable

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813 guidelines and processes established pursuant to paragraph
814 (3) (c).

815 (c) Submit to the Florida Digital Service ~~department~~
816 annually by July 31, the state agency's strategic and
817 operational cybersecurity plans developed pursuant to rules and
818 guidelines established by the ~~department, through the~~ Florida
819 Digital Service.

820 1. The state agency strategic cybersecurity plan must cover
821 a 3-year period and, at a minimum, define security goals,
822 intermediate objectives, and projected agency costs for the
823 strategic issues of agency information security policy, risk
824 management, security training, security incident response, and
825 disaster recovery. The plan must be based on the statewide
826 cybersecurity strategic plan created by the Florida Digital
827 Service ~~department~~ and include performance metrics that can be
828 objectively measured to reflect the status of the state agency's
829 progress in meeting security goals and objectives identified in
830 the agency's strategic information security plan.

831 2. The state agency operational cybersecurity plan must
832 include a progress report that objectively measures progress
833 made towards the prior operational cybersecurity plan and a
834 project plan that includes activities, timelines, and
835 deliverables for security objectives that the state agency will
836 implement during the current fiscal year.

837 (d) Conduct, and update every 3 years, a comprehensive risk
838 assessment, which may be completed by a private sector vendor,
839 to determine the security threats to the data, information, and
840 information technology resources, including mobile devices and
841 print environments, of the agency. The risk assessment must

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842 comply with the risk assessment methodology developed by the
843 Florida Digital Service ~~department~~ and is confidential and
844 exempt from s. 119.07(1), except that such information shall be
845 available to the Auditor General, the Florida Digital Service
846 ~~within the department~~, the Cybercrime Office of the Department
847 of Law Enforcement, and, for state agencies under the
848 jurisdiction of the Governor, the Chief Inspector General. If a
849 private sector vendor is used to complete a comprehensive risk
850 assessment, it must attest to the validity of the risk
851 assessment findings.

852 (e) Develop, and periodically update, written internal
853 policies and procedures, which include procedures for reporting
854 cybersecurity incidents and breaches to the Cybercrime Office of
855 the Department of Law Enforcement and the Florida Digital
856 Service ~~within the department~~. Such policies and procedures must
857 be consistent with the rules, guidelines, and processes
858 established by the Florida Digital Service ~~department~~ to ensure
859 the security of the data, information, and information
860 technology resources of the agency. The internal policies and
861 procedures that, if disclosed, could facilitate the unauthorized
862 modification, disclosure, or destruction of data or information
863 technology resources are confidential information and exempt
864 from s. 119.07(1), except that such information shall be
865 available to the Auditor General, the Cybercrime Office of the
866 Department of Law Enforcement, the Florida Digital Service
867 ~~within the department~~, and, for state agencies under the
868 jurisdiction of the Governor, the Chief Inspector General.

869 (f) Implement managerial, operational, and technical
870 safeguards and risk assessment remediation plans recommended by

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871 the Florida Digital Service ~~department~~ to address identified
 872 risks to the data, information, and information technology
 873 resources of the agency. The ~~department, through the Florida~~
 874 Digital Service, shall track implementation by state agencies
 875 upon development of such remediation plans in coordination with
 876 agency inspectors general.

877 (g) Ensure that periodic internal audits and evaluations of
 878 the agency's cybersecurity program for the data, information,
 879 and information technology resources of the agency are
 880 conducted. The results of such audits and evaluations are
 881 confidential information and exempt from s. 119.07(1), except
 882 that such information shall be available to the Auditor General,
 883 the Cybercrime Office of the Department of Law Enforcement, the
 884 Florida Digital Service ~~within the department~~, and, for agencies
 885 under the jurisdiction of the Governor, the Chief Inspector
 886 General.

887 (h) Ensure that the cybersecurity requirements in the
 888 written specifications for the solicitation, contracts, and
 889 service-level agreement of information technology and
 890 information technology resources and services meet or exceed the
 891 applicable state and federal laws, regulations, and standards
 892 for cybersecurity, including the National Institute of Standards
 893 and Technology Cybersecurity Framework. Service-level agreements
 894 must identify service provider and state agency responsibilities
 895 for privacy and security, protection of government data,
 896 personnel background screening, and security deliverables with
 897 associated frequencies.

898 (i) Provide cybersecurity awareness training to all state
 899 agency employees within 30 days after commencing employment, and

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900 annually thereafter, concerning cybersecurity risks and the
 901 responsibility of employees to comply with policies, standards,
 902 guidelines, and operating procedures adopted by the state agency
 903 to reduce those risks. The training may be provided in
 904 collaboration with the Cybercrime Office of the Department of
 905 Law Enforcement, a private sector entity, or an institution of
 906 the State University System.

907 (j) Develop a process for detecting, reporting, and
 908 responding to threats, breaches, or cybersecurity incidents
 909 which is consistent with the security rules, guidelines, and
 910 processes established by the ~~department through the Florida~~
 911 Digital Service.

912 1. All cybersecurity incidents and ransomware incidents
 913 must be reported by state agencies. Such reports must comply
 914 with the notification procedures and reporting timeframes
 915 established pursuant to paragraph (3) (c).

916 2. For cybersecurity breaches, state agencies shall provide
 917 notice in accordance with s. 501.171.

918 (k) Submit to the Florida Digital Service, within 1 week
 919 after the remediation of a cybersecurity incident or ransomware
 920 incident, an after-action report that summarizes the incident,
 921 the incident's resolution, and any insights gained as a result
 922 of the incident.

923 (7) The portions of records made confidential and exempt in
 924 subsections (5) and (6) shall be available to the Auditor
 925 General, the Cybercrime Office of the Department of Law
 926 Enforcement, the Florida Digital Service ~~within the department~~,
 927 and, for agencies under the jurisdiction of the Governor, the
 928 Chief Inspector General. Such portions of records may be made

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available to a local government, another state agency, or a federal agency for cybersecurity purposes or in furtherance of the state agency's official duties.

(10) Any legislative committee or subcommittee responsible for policy matters relating to cybersecurity may hold meetings closed by the respective legislative body under the rules of such legislative body at which such committee or subcommittee is briefed on records made confidential and exempt under subsections (5) and (6). The committee or subcommittee must maintain the confidential and exempt status of such records.

(11)~~(10)~~ The Florida Digital Service ~~department~~ shall adopt rules relating to cybersecurity and to administer this section.

Section 6. Paragraphs (b) and (c) of subsection (5) of section 282.3185, Florida Statutes, are amended to read:

282.3185 Local government cybersecurity.—

(5) INCIDENT NOTIFICATION.—

(b)1. A local government shall report all ransomware incidents and any cybersecurity incidents incident determined by the local government to be of severity level 3, 4, or 5 as provided in s. 282.318(3)(c) to the Florida Digital Service, the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government as soon as possible but no later than 4 48 hours after discovery of the cybersecurity incident and no later than 2 12 hours after discovery of the ransomware incident. The report must contain the information required in paragraph (a). The Florida Digital Service shall notify the Governor, the President of the Senate, and the Speaker of the House of Representatives of any incident

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discovered by a local government but not timely reported under this subparagraph.

2. The Cybersecurity Operations Center shall notify the President of the Senate and the Speaker of the House of Representatives of any severity level 3, 4, or 5 incident as soon as possible but no later than 12 hours after receiving a local government's incident report. The notification must include a high-level description of the incident and the likely effects and must be provided in a secure environment.

~~(e) A local government may report a cybersecurity incident determined by the local government to be of severity level 1 or 2 as provided in s. 282.318(3)(c) to the Cybersecurity Operations Center, the Cybercrime Office of the Department of Law Enforcement, and the sheriff who has jurisdiction over the local government. The report shall contain the information required in paragraph (a).~~

Section 7. Present subsections (10) through (13) of section 282.319, Florida Statutes, are redesignated as subsections (11) through (14), respectively, a new subsection (10) is added to that section, and paragraph (j) of subsection (4) and subsection (6) are amended, to read:

282.319 Florida Cybersecurity Advisory Council.—

(4) The council shall be comprised of the following members:

(j) Three representatives from critical infrastructure sectors, ~~one of whom must be from a water treatment facility,~~ appointed by the Governor.

(6) The state chief information officer ~~Secretary of Management Services~~, or his or her designee, shall serve as the

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ex officio, nonvoting executive director of the council.

(10) Members of any legislative committee or subcommittee responsible for policy matters relating to cybersecurity must be invited to and may attend meetings of the council. A council meeting at which two or more members of the Legislature are in attendance may not be construed as a meeting of a legislative committee or subcommittee or as a prearranged gathering between more than two members of the Legislature, the purpose of which is to agree upon formal legislative action that will be taken at a subsequent time.

Section 8. Section 282.3195, Florida Statutes, is created to read:

282.3195 State Technology Advancement Council.—

(1) The State Technology Advancement Council, an advisory council as defined in s. 20.03(7), is created within the Executive Office of the Governor. Except as otherwise provided in this section, the advisory council shall operate in a manner consistent with s. 20.052.

(2) The purpose of the council is to:

(a) Assist state agencies and advise the Legislature on innovative technologies.

(b) Improve state technology project timelines.

(c) Develop efficient state technology processes.

(d) Assist in the creation of development and testing environments that allow state entities to proof technology concepts before engaging in procurement and otherwise develop processes to reduce wasteful spending on inappropriate technology.

(e) Assist Florida College System institutions and state

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universities with technology transfer processes.

(f) Support research on and development of innovative technologies.

(3) The state chief information officer, or his or her designee, shall serve as the executive director of the council. The council shall be comprised of the following members appointed by the Governor:

(a) A person with senior level experience in cloud computing technology.

(b) An engineer.

(c) A person with senior level experience in the space industry.

(d) A data scientist.

(e) Other persons with relevant experience as determined by the Governor.

(4) Members shall serve for terms of 4 years; however, for the purpose of providing staggered terms, the initial appointments of two members shall be for terms of 2 years. A vacancy shall be filled for the remainder of the unexpired term in the same manner as the initial appointment. All members of the council are eligible for reappointment.

(5) The state chief information officer shall serve as the ex officio, nonvoting executive director of the council.

(6) Members shall serve without compensation but are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(7) Members of the council shall maintain the confidential or exempt status of information received in the performance of their duties and responsibilities as members of the council. In

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accordance with s. 112.313, a current or former member of the council may not disclose or use information not available to the general public and gained by reason of his or her official position, except for information relating exclusively to governmental practices, for his or her personal gain or benefit or for the personal gain or benefit of any other person or business entity. Members shall sign an agreement acknowledging the provisions of this subsection.

(8) The council shall meet at least quarterly.

(9) Beginning June 1, 2024, and annually on June 1 thereafter, the council shall submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report describing the activities of the council and providing recommendations as appropriate.

Section 9. Section 768.401, Florida Statutes, is created to read:

768.401 Limitation on liability for cybersecurity incidents.—

(1) A county or municipality that substantially complies with s. 282.3185 shall gain a presumption against liability in connection with a cybersecurity incident.

(2) A sole proprietorship, partnership, corporation, trust, estate, cooperative, association, or other commercial entity that acquires, maintains, stores, or uses personal information shall gain a presumption against liability in connection with a cybersecurity incident if the entity substantially complies with s. 501.171, if applicable, and has:

(a) Adopted a cybersecurity program that substantially aligns with the current version of any of the following:

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1. The National Institute of Standards and Technology (NIST) Framework for Improving Critical Infrastructure Cybersecurity.

2. NIST special publication 800-171.

3. NIST special publications 800-53 and 800-53A.

4. The Federal Risk and Authorization Management Program security assessment framework.

5. CIS Critical Security Controls.

6. The International Organization for Standardization/International Electrotechnical Commission 27000-series family of standards; or

(b) If regulated by the state or Federal Government, or both, or if otherwise subject to the requirements of any of the following laws and regulations, substantially complied its cybersecurity program to the current version of the following, as applicable:

1. The security requirements of the Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. part 164 subpart C.

2. Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended.

3. The Federal Information Security Modernization Act of 2014, Pub. L. No. 113-283.

4. The Health Information Technology for Economic and Clinical Health Act, 45 C.F.R. part 162.

(3) A commercial entity that substantially complies with a combination of industry-recognized cybersecurity frameworks or standards, including the payment card industry data security standard, to gain the presumption against liability pursuant to

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subsection (2) must, upon the revision of two or more of the frameworks or standards with which the entity complies, adopt the revised frameworks or standards within 1 year after the latest publication date stated in the revisions.

(4) This section does not establish a private cause of action. Failure of a county, municipality, or commercial entity to substantially implement a cybersecurity program that is in compliance with this section is not evidence of negligence and does not constitute negligence per se.

Section 10. Paragraph (k) of subsection (1) of section 1004.649, Florida Statutes, is amended to read:

1004.649 Northwest Regional Data Center.—

(1) For the purpose of providing data center services to its state agency customers, the Northwest Regional Data Center is designated as a state data center for all state agencies and shall:

(k) Prepare and submit state agency customer invoices to the Florida Digital Service ~~Department of Management Services~~ for approval. Upon approval or by default pursuant to s. 282.201(5), submit invoices to state agency customers.

Section 11. This act shall take effect July 1, 2023.



The Florida Senate

Committee Agenda Request

To: Senator Bryan Avila, Chair
Committee on Governmental Oversight and Accountability

Subject: Committee Agenda Request

Date: March 20, 2023

I respectfully request that **Senate Bill #1708**, relating to Cybersecurity be placed on the:

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

A handwritten signature in blue ink that reads "Nick DiCeglie".

Senator Nick DiCeglie
Florida Senate, District 18

The Florida Senate

APPEARANCE RECORD

3/29/23

Meeting Date

1708

Bill Number or Topic

Gov Oversight

Deliver both copies of this form to
Senate professional staff conducting the meeting

793268

Committee

Amendment Barcode (if applicable)

Name

Bill Cotterall

Phone

Address

218 S Monroe St

Email

wcotterall@myfla.org

Street

Tallahassee

FL

32308

City

State

Zip

Speaking:

☐

For

☒

Against

☐

Information

OR

Waive Speaking:

☐

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Justice Assoc.

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022JointRules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
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Meeting Date

Bill Number or Topic

Committee

Amendment Barcode (if applicable)

Name

Phone

Address

Email

Street

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

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In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

A I F

☐

I am not a lobbyist, but received
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This form is part of the public record for this meeting.

S-001 (08/10/2021)

The Florida Senate

APPEARANCE RECORD

1708

3/29

Meeting Date

Govt. Oversight

Committee

Deliver both copies of this form to
Senate professional staff conducting the meeting

Bill Number or Topic

Amendment Barcode (if applicable)

Name

Carol Kende

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Tallahassee

FL

32301

City

State

Zip

Speaking:

☐

For

☐

Against

☐

Information

OR

Waive Speaking:

☒

In Support

☐

Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐

I am appearing without
compensation or sponsorship.

☒

I am a registered lobbyist,
representing:

Florida Chamber
of Commerce

☐

I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: CS/CS/SB 346

INTRODUCER: Governmental Oversight and Accountability Committee; Community Affairs Committee; and Senator DiCeglie

SUBJECT: Public Construction

DATE: March 30, 2023

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Hunter</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
2.	<u>Harmsen</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 346 requires each contract for construction services between a local government entity and a contractor to include a list of items required to render complete, satisfactory, and acceptable the construction services contracted for which outlines the estimated cost of each item necessary to complete the work. The local government must pay all portions of the contract balance, except for 150 percent of the portion attributed to those projects on the list, within 20 days after the list is created, subject to certain exceptions. A local government must pay the contractor for the remaining list projects upon their total completion, subject to certain exceptions.

The bill limits local governments' ability to withhold certain amounts under the contract to only those subject to a written good faith dispute or claims against public surety bonds.

The bill shortens timeframes in which a disputed construction services contract must be resolved, and clarifies that a local government must pay the undisputed portions of a contract within 20 days.

The bill makes similar conforming changes to construction services contracts with public entities.

The bill revises the definition of “public works project” to include any construction, maintenance, repair, renovation, remodeling, improvement, or portion thereof that uses any amount of state-appropriated funds. This will prohibit the political subdivision that undertakes the public works project that uses state-appropriated funds from imposing specified requirements on contractors.

The bill may have a negative fiscal impact on local governments; however, the impact is indeterminate.

The bill takes effect July 1, 2023.

II. Present Situation:

Prompt Payments for Public Construction Contracts

Contracts between local governments and private contractors for construction of public projects are subject to prompt payment requirements. The Local Government Prompt Payment Act¹ provides for timely payment by local governmental entities² to construction contractors.³ If an agent of the local government is not required to approve payment, then payment is due 20 business days after receipt of the payment request or invoice.⁴

If local government agent approval is required, payment is due 25 business days after proper receipt.⁵ A local government must identify its agent, employee, facility, or office to which the contractor may submit a payment request.⁶ Once an agent, employee, facility, or office receives a contractor’s payment request, it must stamp the request as received; this begins the time period for payment or rejection of a payment request.⁷

If a payment request does not meet the contract requirements, the local government must reject the request in writing within 20 business days after its receipt. The rejection must specify both the deficiency and its resolution.⁸ If the contractor corrects the deficiency, the local government must pay the corrected payment request or invoice on the later of 10 business days after it received the corrected invoice, or, if the local government must approve the invoice, the first business day after its next regularly scheduled meeting.⁹

If a dispute between the local government and the contractor cannot be resolved by a local government’s requirement for cure letter, the dispute must be resolved using the dispute

¹ Section 218.70, F.S.

² 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. Section 218.72(5), F.S.

³ Section 218.71, F.S. A contractor is one who contracts directly with a local government to provide construction services. Section 218.72(3), F.S.

⁴ Section 218.735(1)(b), F.S.

⁵ Section 218.735(1)(a), F.S. Proper receipt occurs when the payment request or invoice is stamped as received on the day that it is delivered to an agent or employee of the local government entity or of a facility or office of the local governmental entity, as provided in s. 218.74(1), F.S.

⁶ Section 218.735(1)(b), F.S. This requirement must be included in the contract or provided by the local governmental in a separate written notice, as required under the contract, no later than 10 days after the contract award or notice to proceed.

⁷ Section 218.735(1)(b), F.S.

⁸ Section 218.735(2), F.S.

⁹ Section 218.735(3), F.S.

resolution procedure or applicable ordinance provided in the contract.¹⁰ Absent a prescribed procedure, the dispute must be resolved pursuant to a dispute resolution procedure established by the local government.¹¹

If a local government disputes a portion of a payment request or an invoice, it must still timely pay the undisputed portion.¹² A contractor who receives a local government's payment for labor, services, or materials must remit payments due to its subcontractors and suppliers within 10 days after it receives payment from the local government. A subcontractor must remit payments due to its subcontractors and suppliers within 7 days after it receives payment.¹³

Punch List

Each local government contract for construction services must provide for the development of a single list of items required to render complete, satisfactory, and acceptable construction services purchased by the local governmental entity (also called a "punch list").¹⁴ The contract must specify the process and a reasonable time for developing the list, including the responsibilities of the local government and the contractor in developing and reviewing the list.¹⁵ Generally, the punch list is required to be created after substantial completion of the construction project and must include those projects necessary to repair or complete the project in its entirety.¹⁶

For construction projects of less than \$10 million, the list must be developed within 30 calendar days after reaching substantial completion of construction as defined in the contract or, if not defined, upon reaching beneficial occupancy or use.¹⁷ The general deadline for completion of the list for construction projects that cost \$10 million or more is the same (30 days after reaching substantial completion), but the deadline may be extended by contract to up to 60 calendar days after reaching substantial completion of construction as defined in the contract or, if not so defined, upon reaching beneficial occupancy or use.¹⁸ The local government's contract must specify the date that the deliverables list must be given to the contractor. This date cannot be later than 5 days after the deliverables list completion and review.

If the project relates to construction services on more than one building or structure, or involves a multi-phased project, the same general timeframes apply for creation of a deliverables list, but a list must be created for each building, structure, or phase of the project.¹⁹

¹⁰ Section 218.735(4), F.S.

¹¹ Section 218.76(2), F.S.

¹² Section 218.735(5), F.S. Payment must be made within 25 days after the payment request or invoice is properly received, or within 20 days of the submission of an invoice by a contractor (if an agent does not need to approve the payment).

¹³ Section 218.735(6), F.S.

¹⁴ Section 218.735(7), F.S.

¹⁵ Section 218.735(7)(a), F.S.

¹⁶ See, e.g., Town of Jupiter Island, *Construction General Conditions*, s. 9.4, <https://townofjupiterisland.com/wp-content/uploads/2019/01/Construction-General-Conditions.pdf> (last visited Mar. 29, 2023); and Monroe County, Florida, *General Conditions of the Contract for Construction*, s. 9.8.2, https://www.monroecounty-fl.gov/DocumentCenter/View/28603/General-Requirements-from-RFP_22021---DO-NOT-DELETE?bidId= (last visited Mar. 29, 2023).

¹⁷ Section 218.735(7)(a)1., F.S.

¹⁸ Section 218.735(7)(a)2., F.S.

¹⁹ Section 218.735(7)(b), F.S.

The final contract completion date must be at least 30 days after the deliverables list is given to the contractor. If the list is not provided to the contractor by the agreed upon delivery date, the contract's completion date must be extended by the number of days the local government exceeded the list delivery date. Damages may not be assessed against a contractor for its failure to complete a project within the time required, unless the contractor failed to complete the project within the contract period as extended.²⁰ The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the contractor to complete all the construction services purchased pursuant to the contract.²¹

Retainage

A local government can withhold up to 5 percent of each progress payment as retainage.²² Once a contractor has completed all items on the deliverables list, it can submit a payment request for all remaining retainage withheld by the local government.²³ If a good faith dispute exists as to whether one or more items on the deliverables list have been properly completed, the local government may continue to withhold up to 150 percent of the total costs to complete such items.²⁴ All items requiring correction to complete the contract and that are identified after preparation and delivery of the list remain the contractor's obligation as defined by the contract.²⁵ Warranty items or items not included in the list may not affect the final payment of retainage nor payment as provided in contracts between the contractor and its subcontractors and suppliers.²⁶ A local government or contractor cannot withhold retainage to secure payment of insurance premiums, and the final payment of retainage may not be delayed pending a final audit by the local government's or contractor's insurance provider.²⁷

If a local government fails to develop the deliverables list in a timely manner, the contractor may submit a payment request for all remaining retainage withheld by the local government and payment of any remaining undisputed contract amounts, less any amount withheld under the contract for incomplete or uncorrected work, which must be paid within 20 business days after receipt of a request. If the local government gives the contractor written notice that it failed to meet contract requirements in developing the deliverables list, then the local government need not pay or process any payment request for retainage.²⁸

Improper Payment Requests and Resolution of Disputes

If a vendor submits an improper payment request, the local government must notify the vendor that its request is improper within 10 days of its receipt. The local government's notice must indicate what corrective action is required.²⁹

²⁰ Section 218.735(7)(c), F.S.

²¹ Section 218.735(7)(d), F.S.

²² Section 218.735(8), F.S.

²³ Section 218.735(7)(e), F.S.

²⁴ *Id.*

²⁵ Section 218.735(7)(f), F.S.

²⁶ Section 218.735(7)(g), F.S.

²⁷ Section 218.735(7)(h), F.S.

²⁸ Section 218.735(7)(i), F.S.

²⁹ Section 218.76(1), F.S.

If a dispute arises between a vendor and a local government concerning a payment request, the dispute is adjudicated under the dispute resolution procedure established the local governmental entity. Proceedings to resolve the dispute must begin within 45 days after the date the payment request was received; the local government must render its final decision within 60 days after the date the payment request was received. If the dispute is resolved in favor of the local government, interest begins to accrue 15 days after the final decision. If the dispute is resolved in favor of the vendor, interest accrual relates back to the original date the payment became due.³⁰

Public Entity Construction Contracts

State government public construction contracts are subject to the Florida Prompt Payment Act.³¹ If a public entity³² disputes a portion of a payment request, the undisputed portion must be timely paid.³³

Under procedures established by the public entity, each payment request is marked as received on the date it is delivered to the agent, employee, designated facility or office of the public entity. If the terms under which a purchase is made allow for partial deliveries and a payment request is submitted for a partial delivery, the time for such payment must be calculated from the time of the partial delivery and the submission of the payment request. A public entity must submit a payment request to the Chief Financial Officer for payment no more than 20 days after receipt.³⁴

Prohibited Governmental Actions Related to Public Works Projects

Except as required by federal or state law, the state or any political subdivision³⁵ that contracts for a public works project³⁶ may not:

- Prevent a certified, licensed, or registered contractor, subcontractor, or material supplier or carrier, from participating in the bidding process based on the geographic location of the company headquarters or offices of the contractor, subcontractor, or material supplier or carrier submitting a bid on a public works project or the residences of employees of such contractor, subcontractor, or material supplier or carrier;
- Require a contractor, subcontractor, or material supplier or carrier engaged in the project to:
 - Pay employees a predetermined amount of wages or prescribe any wage rate;
 - Provide employees a specified type, amount, or rate of employee benefits;
 - Control, limit, or expand staffing; or

³⁰ Section 218.76(2)(a), F.S.

³¹ Section 255.0705, F.S. This act expressly excludes local governments as defined in s. 218.72, F.S. Section 255.072(5), F.S.

³² The state, or any office, board, bureau, commission, department, branch, division, or institution thereof. Section 255.072(5), F.S.

³³ Section 255.073(2), F.S.

³⁴ Section 255.074, F.S.

³⁵ “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works. *See* s. 255.0992(1)(a), F.S.

³⁶ “Public works project” means an activity exceeding \$1 million in value that is paid for with any state-appropriated funds and which consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision. *See* s. 255.0992(1)(b), F.S.

- Recruit, train, or hire employees from a designated, restricted, or single source.
- Prohibit any contractor, subcontractor, or material supplier or carrier from submitting a bid on the project if such individual is able to perform the work described and is qualified, licensed, or certified as required by state law.³⁷

The foregoing governmental actions are prohibited only for projects that:

- Exceed \$1 million in value;
- Are paid for with any state-appropriated funds; and
- Are to construct, maintain, repair, renovate, remodel, or improve any building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof that is owned in whole or in part by any political subdivision.³⁸

Under current law, a political subdivision, for instance, may impose the otherwise prohibited requirements on contractors for projects that are paid for entirely with local funds or, if state funds are used, for projects up to \$1 million.

III. Effect of Proposed Changes:

Prompt Pay for Public Construction

The bill amends the requirements for construction service contracts between local governments and contractors and public entities and contractors for public construction projects.

Punch List

Under **section 1** of the bill, a local government must include in its contract for construction services, a process by which the contractor will develop a punch list and determine the cost for each item on that list. The punch list enumerates the projects required to complete the contract.

The punch list is created within a contractually-specified timeframe after the contractor reaches substantial completion of the construction services as defined in the contract, or if that is not defined, then after the project reaches beneficial occupancy or use. If the contract is valued at less than \$10 million, then the punch list must be developed within 30 calendar days; if the contract is valued at \$10 million or more, then it must be developed within 45 calendar days.

If a local government fails to develop a punch list within either 30 or 45 days of the project's substantial completion, depending on the contract value, then the contractor may submit a payment request for the contract balance, including the remaining retainage, and the local government must pay it within 20 business days. Conversely, if a contractor fails to coordinate with the local government to create a punch list in the required timeframe and the local government has given written notice of the failure, then the local government may keep back 150 percent of the estimated costs required to complete the items it intended to include on the punch list. The local government must still pay the contractor the remaining contract balance, which includes the retainage.

³⁷ Section 255.0992, F.S.

³⁸ Section 255.0992(1)(b), F.S.

Prompt Payment

The bill adds a new requirement that the local government must pay the remaining contract balance within 20 business days after the punch list has been developed. This payment must include the remaining retainage withheld, minus 150 percent of the cost to complete the punch list projects. Once the contractor completes all of the deliverables on the punch list, it may submit a payment request for this amount. The local government must pay, unless a good faith dispute exists regarding whether one or more items on the punch list has been completed pursuant to the contract. If a good faith dispute exists, then the local government can continue to withhold up to 150 percent of the total cost to complete those items.

Pursuant to the bill, a local government can no longer withhold any amounts for payment or release that are subject to a claim or demand by the local government or contractor, limiting withholding only for good faith disputes made in writing pursuant to the contract or for certain bond claims disputed pursuant to s. 255.05, F.S.

Payment Disputes

Section 2 of the bill reduces the time afforded for a contract dispute regarding improper payment. A local government must begin its dispute proceeding within 30 days after it received a contractor's payment request. The local agency must render a final decision in the dispute within 45 days of its receipt of the payment request, versus 60 days.

Public Entity Provisions

Section 5 of the bill requires construction contracts with public entities to specify the process for the creation of a punch list and for the determination of the costs associated with those projects required to complete the contract, consistent with changes to local government construction contracts. Likewise, the parties have 30 days from substantial completion of construction services, as defined in a contract of less than \$10 million, or if not defined, then from beneficial occupancy or use, to develop and review the punch list and associated costs. If the contract is valued at \$10 million or more, then the parties have 45 days.

If the public entity fails to coordinate to create the punch list, then it must pay the contractor all remaining retainage withheld within 20 business days of receipt of the contractor's payment request. However, a public entity is not required to pay or process a payment request for retainage if the contractor did not cooperate or failed to perform its contractual duties in the development of the punch list.

Like its local government counterpart, a public entity must, pay the remaining contract balance, including the remaining retainage, within 20 business days after the punch list is developed, and after its receipt of a proper invoice or payment request. The contract balance does not include 150 percent of the estimated cost to complete the items on the punch list.

Section 3 of the bill requires a public entity to pay the undisputed portions of a construction contractor's payment request, as required under the contract or within 20 days of the request, whichever is earlier.

Section 4 reduces the time in which a public entity must submit a payment request to the Chief Financial Officer for payment from 20 to 14 days after its receipt of the payment request.

Section 6 of the bill clarifies that the public entity is always permitted to withhold a retainage payment that is the subject of a good faith dispute made in writing pursuant to the contract, or the subject of a claims against public surety bonds, but can no longer withhold amounts that are subject to a claim or demand by the public entity or the contractor.

Public Works Projects

Section 7 of the bill amends the definition of “public works project” in s. 255.0992, F.S., to include any construction, maintenance, repair, renovation, remodeling, or improvement activity that is paid for with state-appropriated funds. Therefore, political subdivisions³⁹ that pay for public works projects with any amount of state-appropriated funds cannot, for example:⁴⁰

- Exclude contractors from bidding on a public works project based on their geographic location;
- Impose certain wage and employment conditions on contractors and their employees;
- Require that a contractor recruit, train, or hire employees from a designated, restricted, or single source; and
- Prohibit any contractor, subcontractor, materials supplier, or carrier from submitting a bid if the entity is qualified, licensed, or certified.

Section 8 provides that the bill takes effect on July 1, 2023.

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:

None.

C. Trust Funds Restrictions:

None.

³⁹ “Political subdivision” means a separate agency or unit of local government created or established by law or ordinance and the officers thereof. The term includes, but is not limited to, a county; a city, town, or other municipality; or a department, commission, authority, school district, taxing district, water management district, board, public corporation, institution of higher education, or other public agency or body thereof authorized to expend public funds for construction, maintenance, repair, or improvement of public works. *See* s. 255.0992(1)(a), F.S.

⁴⁰ Section 255.0992(2)(b)-(c), F.S.

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 bill may have a positive financial impact on building contractors to the extent payments of undisputed amounts under contracts are paid more promptly.

The change to the definition of “public works project” may result in a shift in the award of certain construction contracts among locally-based and out of town contractors. Preventing political subdivisions from imposing certain predetermined wage, benefit, and staffing requirements for certain public works projects may have a positive fiscal impact on contractors and a potential negative fiscal impact on contractor employees.

C. Government Sector Impact:

The bill may have a negative fiscal impact on local governments to the extent they must settle construction contracts under shorter deadlines.

The change to the definition of “public works project” may increase competition and lower costs for local public construction projects.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 218.735, 218.76, 255.073, 255.074, 255.077, 255.078, and 255.0992.

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

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

CS/CS by Governmental Oversight and Accountability on March 29, 2023:

The committee substitute:

- Requires a local government's or public entity's contract for construction services to include a prescribed process that the contractor must use to determine the estimated cost to complete the projects that remain after substantial completion of the overall construction project.
- Distinguishes the reasonable time in which the parties to both local government and public entity construct contracts have to develop the punch list—allowing up to 30 days for contracts under \$10 million, and up to 45 days for contracts of \$10 million or more.
- Allows a local government to retain up to 150% of the estimated cost to complete items on the punch list after it receives a contractor's request that it pay the contract balance, and clarifies that the local government must pay the withheld cost upon completion of those punch list projects—barring a good faith dispute.
- Requires a local government and public entity to present its good faith dispute in writing before it may refuse to pay on the basis thereof.
- Clarifies that a public entity must pay the remaining contract balance (excluding costs associated with the punch list) only after the punch list has been developed, and within 20 days of its receipt of a proper invoice or payment request.
- Removes language included in the bill that defined a public works project as any that uses any local funds that exceeds \$350,000.
- Defines a public works project as any activity that is paid for with any state-appropriated funds, deleting any dollar threshold entirely. This will prevent state and local governments from using the following provisions in their public works contract procurements:
 - geographic location restrictions for the sourcing of a contractor, supplier, or carrier;
 - wage rate and employee benefit prescriptions; and
 - limits on the source of employee recruitment, training, or hiring.

CS by Community Affairs on March 15, 2023:

The CS removes section 1 of the bill relating to issuing development permits and orders.

As it pertains to the prompt pay provisions, the CS requires that the estimated costs to complete all items on a construction list must be “a dollar valuation, reasonably determined by the contractor as a portion of the contract value.” The bill as filed required estimated costs to be calculated “using reasonable market rates.”

The CS restores the ability for political subdivisions to impose the governmental actions identified in s. 255.0992(2)(b)-(c), F.S., for public works projects, but only for those projects that do not exceed \$350,000.

B. Amendments:

None.

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



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2023	.	
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The Committee on Governmental Oversight and Accountability
(DiCeglie) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (7) and paragraph (c) of subsection
(8) of section 218.735, Florida Statutes, are amended to read:
218.735 Timely payment for purchases of construction
services.—

(7) Each contract for construction services between a local
governmental entity and a contractor must provide for the



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development of a single list of items and the estimated cost to complete each item on the list required to render complete, satisfactory, and acceptable the construction services purchased by the local governmental entity.

(a) The contract must specify the process for developing the list and for determining the cost to complete each item on the list, and should include,~~including~~ the responsibilities of the local governmental entity and the contractor in developing and reviewing the list and a reasonable time for developing the list:

1. For construction projects having an estimated cost of less than \$10 million, within 30 calendar days after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use; or

2. For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, or, if extended by contract, up to 45 ~~60~~ calendar days after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use.

The contract must also specify a date for the delivery of the list of items, not to exceed 5 days after the list of items has been developed and reviewed in accordance with the time periods set forth in subparagraphs 1. and 2.

(b) If the contract between the local governmental entity and the contractor relates to the purchase of construction services on more than one building or structure, or involves a



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40 multiphased project, the contract must provide for the
41 development of a list of items required to render complete,
42 satisfactory, and acceptable all the construction services
43 purchased pursuant to the contract for each building, structure,
44 or phase of the project within the time limitations provided in
45 paragraph (a).

46 (c) The final contract completion date must be at least 30
47 days after the delivery of the list of items. If the list is not
48 provided to the contractor by the agreed upon date for delivery
49 of the list, the contract time for completion must be extended
50 by the number of days the local governmental entity exceeded the
51 delivery date. Damages may not be assessed against a contractor
52 for failing to complete a project within the time required by
53 the contract, unless the contractor failed to complete the
54 project within the contract period as extended under this
55 paragraph.

56 (d) The failure to include any corrective work or pending
57 items not yet completed on the list does not alter the
58 responsibility of the contractor to complete all the
59 construction services purchased pursuant to the contract.

60 (e) Within 20 business days after the list is created, the
61 local governmental entity must pay the contractor the remaining
62 contract balance that includes all retainage previously withheld
63 by the local governmental entity less an amount equal to 150
64 percent of the estimated cost to complete the items on the list.

65 (f) Upon completion of all items on the list, the
66 contractor may submit a payment request for the amount ~~all~~
67 ~~remaining retainage~~ withheld by the local governmental entity
68 pursuant to paragraph (e) ~~this section~~. If a good faith dispute



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exists as to whether one or more items identified on the list have been completed pursuant to the contract, the local governmental entity may continue to withhold up to 150 percent of the total costs to complete such items.

(g)~~(f)~~ All items that require correction under the contract which and that are identified after the preparation and delivery of the list remain the obligation of the contractor as defined by the contract.

(h)~~(g)~~ Warranty items or items not included in the list of items required under paragraph (a) may not affect the final payment of retainage as provided in paragraph (a) ~~this section~~ or as provided in the contract between the contractor and its subcontractors and suppliers.

(i)~~(h)~~ Retainage may not be held by a local governmental entity or a contractor to secure payment of insurance premiums under a consolidated insurance program or series of insurance policies issued to a local governmental entity or a contractor for a project or group of projects, and the final payment of retainage as provided in this section may not be delayed pending a final audit by the local governmental entity's or contractor's insurance provider.

(j)~~(i)~~ If a local governmental entity fails to comply with its responsibilities to develop the list required under paragraph (a) or paragraph (b) within the time limitations provided in paragraph (a), the contractor may submit a payment request to the local governmental entity for the all remaining balance of the contract, including all remaining retainage withheld by the local governmental entity. The local governmental entity must pay the contractor pursuant to this



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~~section; and payment of any remaining undisputed contract amount, less any amount withheld pursuant to the contract for incomplete or uncorrected work, must be paid within 20 business days after receipt of a proper invoice or payment request. If the local governmental entity has provided written notice to the contractor specifying the failure of the contractor to meet contract requirements in the development of the list of items to be completed, the local governmental entity must pay the contractor the remaining balance of the contract, less an amount equal to 150 percent of the estimated cost to complete the items that the local governmental entity intended to include on the list need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the local governmental entity in the development of the list or to perform its contractual responsibilities, if any, with regard to the development of the list or if paragraph (8)(c) applies.~~

(8)

(c) This section does not require the local governmental entity to pay or release any amounts that are the subject of a good faith dispute made in writing pursuant to the contract or, the subject of a claim brought pursuant to s. 255.05, ~~or otherwise the subject of a claim or demand by the local governmental entity or contractor.~~

Section 2. Paragraph (a) of subsection (2) of section 218.76, Florida Statutes, is amended to read:

218.76 Improper payment request or invoice; resolution of disputes.—

(2)(a) If a dispute arises between a vendor and a local



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governmental entity concerning payment of a payment request or
an invoice, the dispute must ~~shall~~ be finally determined by the
local governmental entity pursuant to a dispute resolution
procedure established by the local governmental entity. Such
procedure must provide that proceedings to resolve the dispute
commence ~~are commenced~~ within 30 ~~45~~ days after the date the
payment request or proper invoice was received by the local
governmental entity and conclude ~~concluded~~ by final decision of
the local governmental entity within 45 ~~60~~ days after the date
the payment request or proper invoice was received by the local
governmental entity. Such procedures are not subject to chapter
120 and do not constitute an administrative proceeding that
prohibits a court from deciding de novo any action arising out
of the dispute. If the dispute is resolved in favor of the local
governmental entity, interest charges begin to accrue 15 days
after the local governmental entity's final decision. If the
dispute is resolved in favor of the vendor, interest begins to
accrue as of the original date the payment became due.

Section 3. Subsection (2) of section 255.073, Florida
Statutes, is amended to read:

255.073 Timely payment for purchases of construction
services.—

(2) If a public entity disputes a portion of a payment
request, the undisputed portion must be ~~timely~~ paid by the date
required under the contract or by 20 business days after receipt
of the request, whichever is earlier.

Section 4. Subsection (3) of section 255.074, Florida
Statutes, is amended to read:

255.074 Procedures for calculation of payment due dates.—



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(3) A public entity must submit a payment request to the Chief Financial Officer for payment no later ~~more~~ than 14 ~~20~~ days after receipt of the payment request.

Section 5. Present subsections (4) through (8) of section 255.077, Florida Statutes, are redesignated as subsections (5) through (9), respectively, a new subsection (4) is added to that section, and subsection (1) and present subsection (8) of that section are amended, to read:

255.077 Project closeout and payment of retainage.—

(1) Each contract for construction services between a public entity and a contractor must provide for the development of a list of items and the estimated cost to complete each item on the list required to render complete, satisfactory, and acceptable the construction services purchased by the public entity. The contract must specify the process for the development of the list and for determining the cost to complete each item on the list, and should include the, ~~including~~ responsibilities of the public entity and the contractor in developing and reviewing the list and a reasonable time for developing the list, as follows:

(a) For construction projects having an estimated cost of less than \$10 million, within 30 calendar days after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use; or

(b) For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, unless otherwise extended by contract not to exceed 45 ~~60~~ calendar days, after reaching substantial completion of the construction services



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purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use.

(4) Within 20 business days after developing the list, and after receipt of a proper invoice or payment request, the public entity must pay the contractor the remaining balance of the contract, including any remaining retainage withheld by the public entity pursuant to s. 255.078, less an amount equal to 150 percent of the estimated cost to complete the items on the list.

(9)(8) If a public entity fails to comply with its responsibilities to develop the list required under subsection (1) or subsection (2), as defined in the contract, within the time limitations provided in subsection (1), the contractor may submit a payment request for all remaining retainage withheld by the public entity pursuant to s. 255.078 and the public entity must pay the contractor all remaining retainage previously withheld within 20 days after receipt of the payment request.

The public entity is not required to need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the public entity in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the list or if s. 255.078(3) applies.

Section 6. Subsection (3) of section 255.078, Florida Statutes, is amended to read:

255.078 Public construction retainage.—

(3) This section and s. 255.077 do not require the public entity to pay or release any amounts that are the subject of a good faith dispute made in writing pursuant to the contract or



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the subject of a claim brought pursuant to s. 255.05, ~~or~~
~~otherwise the subject of a claim or demand by the public entity~~
~~or contractor.~~

Section 7. Paragraph (b) of subsection (1) of section
255.0992, Florida Statutes, is amended to read:

255.0992 Public works projects; prohibited governmental
actions.—

(1) As used in this section, the term:

(b) "Public works project" means an activity ~~exceeding \$1~~
~~million in value~~ that is paid for with any state-appropriated
funds and that ~~which~~ consists of the construction, maintenance,
repair, renovation, remodeling, or improvement of a building,
road, street, sewer, storm drain, water system, site
development, irrigation system, reclamation project, gas or
electrical distribution system, gas or electrical substation, or
other facility, project, or portion thereof ~~that is~~ owned in
whole or in part by any political subdivision.

Section 8. This act shall take effect July 1, 2023.

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

And the title is amended as follows:

Delete everything before the enacting clause
and insert:

A bill to be entitled
An act relating to public construction; amending s.
218.735, F.S.; requiring that certain contracts
provide the estimated cost to complete each item on a
specified list; requiring that such contracts specify
the process for determining the cost to complete each



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item on the list; revising the extension by contract of a specified timeframe to develop and review a specified list; requiring a local governmental entity to pay a contractor the remaining contract balance within a specified timeframe; authorizing the contractor to submit a payment request for the amount withheld by the local governmental entity under specified conditions; authorizing a contractor to submit a payment request to the local governmental entity for the remaining balance of the contract, under specified conditions; requiring a local governmental entity to pay the contractor within a specified timeframe; requiring the local governmental entity to pay the remaining balance of the contract under specified conditions; revising the conditions that require a local governmental entity to pay or release amounts subject to certain disputes or claims; amending s. 218.76, F.S.; revising the timeframe within which proceedings must commence to resolve disputes between vendors and local governmental entities; revising the timeframe for such proceedings to conclude; amending s. 255.073, F.S.; requiring that undisputed portions of payment requests be paid within a specified timeframe; amending s. 255.074, F.S.; revising the timeframe for a public entity to submit a payment request to the Chief Financial Officer; amending s. 255.077, F.S.; requiring that certain contracts provide the estimated cost to complete each item on a specified list; requiring that such



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contracts specify the process for determining the cost to complete the items on the list; revising the extension authorized by contract to develop the specified list; requiring the public entity to pay the contractor the remaining balance of the contract within a specified timeframe; requiring a public entity to pay all remaining retainage if the public entity has not developed a specified list; amending s. 255.078, F.S.; revising the conditions that require a public entity to pay or release amounts subject to certain disputes or claims; amending s. 255.0992, F.S.; revising the definition of the term "public works project"; providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/29/2023	.	
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The Committee on Governmental Oversight and Accountability
(DiCeglie) recommended the following:

Senate Amendment to Amendment (570730)

Delete line 79
and insert:
payment of retainage as provided in paragraph (e) ~~this~~
~~section~~

By the Committee on Community Affairs; and Senator DiCeglie

578-02612-23

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1 A bill to be entitled
 2 An act relating to public construction; amending s.
 3 218.735, F.S.; requiring that a certain list include a
 4 dollar valuation, as reasonably determined by the
 5 contractor as a portion of the contract value, of the
 6 estimated cost to complete each item on the list;
 7 deleting a provision authorizing an extension by
 8 contract for construction projects of less than \$10
 9 million; requiring a local governmental entity to pay
 10 a contractor the remaining contract balance within a
 11 specified timeframe; revising the conditions that
 12 would require a local governmental entity to pay
 13 unpaid contract sums to a contractor if a specified
 14 list is not developed; requiring a local governmental
 15 entity to pay the remaining contract balance if the
 16 local governmental entity provided a certain written
 17 notice to the contractor; revising the conditions that
 18 require a local governmental entity to pay or release
 19 amounts subject to certain disputes or claims;
 20 amending s. 218.76, F.S.; revising the timeframe
 21 within which proceedings must commence to resolve
 22 disputes between vendors and local governmental
 23 entities; revising the timeframe for such proceedings
 24 to conclude; amending s. 255.073, F.S.; requiring that
 25 undisputed portions of payment requests be paid within
 26 a specified timeframe; amending s. 255.074, F.S.;
 27 revising the timeframe for a public entity to submit a
 28 payment request to the Chief Financial Officer;
 29 amending s. 255.077, F.S.; requiring that a certain

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30 list include a dollar valuation, as determined by the
 31 contractor as a portion of the contract value, to
 32 complete each item on the list; requiring the public
 33 entity to pay the contractor the remaining contract
 34 balance within a specified timeframe; requiring a
 35 public entity to pay all remaining retainage if the
 36 public entity has not developed a specified list;
 37 amending s. 255.078, F.S.; revising the conditions
 38 that require a public entity to pay or release amounts
 39 subject to certain disputes or claims; amending s.
 40 255.0992, F.S.; revising the definition of the term
 41 "public works project"; providing an effective date.
 42

43 Be It Enacted by the Legislature of the State of Florida:
 44

45 Section 1. Subsection (7) and paragraph (c) of subsection
 46 (8) of section 218.735, Florida Statutes, are amended to read:
 47 218.735 Timely payment for purchases of construction
 48 services.—

49 (7) Each contract for construction services between a local
 50 governmental entity and a contractor must provide for the
 51 development of a single list of items required to render
 52 complete, satisfactory, and acceptable the construction services
 53 purchased by the local governmental entity, which must include a
 54 dollar valuation, as reasonably determined by the contractor as
 55 a portion of the contract value, of the estimated cost to
 56 complete each item on the list.

57 (a) The contract must specify the process for developing
 58 the list, including the responsibilities of the local

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

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governmental entity and the contractor in developing and reviewing the list and a reasonable time for developing the list:

1. For construction projects having an estimated cost of less than \$10 million, within 30 calendar days after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use; or

2. For construction projects having an estimated cost of \$10 million or more, within 30 calendar days, ~~or, if extended by contract, up to 60 calendar days~~ after reaching substantial completion of the construction services purchased as defined in the contract, or, if not defined in the contract, upon reaching beneficial occupancy or use.

The contract must also specify a date for the delivery of the list of items, not to exceed 5 days after the list of items has been developed and reviewed in accordance with the time periods set forth in subparagraphs 1. and 2.

(b) If the contract between the local governmental entity and the contractor relates to the purchase of construction services on more than one building or structure, or involves a multiphased project, the contract must provide for the development of a list of items required to render complete, satisfactory, and acceptable all the construction services purchased pursuant to the contract for each building, structure, or phase of the project within the time limitations provided in paragraph (a).

(c) The final contract completion date must be at least 30

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days after the delivery of the list of items. If the list is not provided to the contractor by the agreed upon date for delivery of the list, the contract time for completion must be extended by the number of days the local governmental entity exceeded the delivery date. Damages may not be assessed against a contractor for failing to complete a project within the time required by the contract, unless the contractor failed to complete the project within the contract period as extended under this paragraph.

(d) The failure to include any corrective work or pending items not yet completed on the list does not alter the responsibility of the contractor to complete all the construction services purchased pursuant to the contract.

(e) Within 20 days after the date the list is created, the local governmental entity must pay the contractor the remaining contract balance that includes all retainage previously withheld by the local governmental entity. The remaining contract balance does not include the estimated costs to complete the items included on the list.

(f) Upon completion of all items on the list, the contractor may submit a payment request for all remaining ~~contract sums~~ retainage withheld by the local governmental entity pursuant to this section. If a good faith dispute exists as to whether one or more items identified on the list have been completed pursuant to the contract, the local governmental entity may continue to withhold up to 150 percent of the total costs to complete such items.

(g) ~~(f)~~ All items that require correction under the contract which ~~and that~~ are identified after the preparation and delivery

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of the list remain the obligation of the contractor as defined by the contract.

~~(h)(g)~~ Warranty items or items not included in the list of items required under paragraph (a) may not affect the final payment of retainage as provided in paragraph (e) ~~this section~~ or as provided in the contract between the contractor and its subcontractors and suppliers.

~~(i)(h)~~ Retainage may not be held by a local governmental entity or a contractor to secure payment of insurance premiums under a consolidated insurance program or series of insurance policies issued to a local governmental entity or a contractor for a project or group of projects, and the final payment of retainage as provided in paragraph (e) ~~this section~~ may not be delayed pending a final audit by the local governmental entity's or contractor's insurance provider.

~~(j)(i)~~ If a local governmental entity fails to comply with its responsibilities to develop the list required under paragraph (a) or paragraph (b) within the time limitations provided in paragraph (a), the contractor may submit a payment request for all remaining unpaid contract sums, including retainage withheld by the local governmental entity, and the local governmental entity must pay the contractor all remaining contract sums pursuant to this section; and payment of any remaining undisputed contract amount, less any amount withheld pursuant to the contract for incomplete or uncorrected work, must be paid within 20 business days after receipt of a proper invoice or payment request. If the local governmental entity has provided written notice to the contractor specifying the failure of the contractor to meet contract requirements in the

578-02612-23

2023346c1

development of the list of items to be completed, the local governmental entity must pay the contractor the remaining contract balance that includes retainage previously withheld by the local governmental entity. The remaining contract balance does not include 150 percent of the estimated costs to complete the items that the local governmental entity has included on its version of the list ~~need not pay or process any payment request for retainage if the contractor has, in whole or in part, failed to cooperate with the local governmental entity in the development of the list or to perform its contractual responsibilities, if any, with regard to the development of the list or if paragraph (8)(c) applies.~~

(8)

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

Section 2. Paragraph (a) of subsection (2) of section 218.76, Florida Statutes, is amended to read:

218.76 Improper payment request or invoice; resolution of disputes.—

(2) (a) If a dispute arises between a vendor and a local governmental entity concerning payment of a payment request or an invoice, the dispute must ~~shall~~ be finally determined by the local governmental entity pursuant to a dispute resolution procedure established by the local governmental entity. Such procedure must provide that proceedings to resolve the dispute commence ~~are commenced~~ within 30 ~~45~~ days after the date the

578-02612-23

2023346c1

175 payment request or proper invoice was received by the local
 176 governmental entity and ~~conclude~~ ~~concluded~~ by final decision of
 177 the local governmental entity within ~~45~~ ~~60~~ days after the date
 178 the payment request or proper invoice was received by the local
 179 governmental entity. Such procedures are not subject to chapter
 180 120 and do not constitute an administrative proceeding that
 181 prohibits a court from deciding de novo any action arising out
 182 of the dispute. If the dispute is resolved in favor of the local
 183 governmental entity, interest charges begin to accrue 15 days
 184 after the local governmental entity's final decision. If the
 185 dispute is resolved in favor of the vendor, interest begins to
 186 accrue as of the original date the payment became due.

187 Section 3. Subsection (2) of section 255.073, Florida
 188 Statutes, is amended to read:

189 255.073 Timely payment for purchases of construction
 190 services.—

191 (2) If a public entity disputes a portion of a payment
 192 request, the undisputed portion must be ~~timely~~ paid within the
 193 time required under the contract or within 20 days, whichever is
 194 earlier.

195 Section 4. Subsection (3) of section 255.074, Florida
 196 Statutes, is amended to read:

197 255.074 Procedures for calculation of payment due dates.—

198 (3) A public entity must submit a payment request to the
 199 Chief Financial Officer for payment no later ~~more~~ than 14 ~~20~~
 200 days after receipt of the payment request.

201 Section 5. Present subsections (4) through (8) of section
 202 255.077, Florida Statutes, are redesignated as subsections (5)
 203 through (9), respectively, a new subsection (4) is added to that

578-02612-23

2023346c1

204 section, and subsection (1) and present subsection (8) of that
 205 section are amended, to read:

206 255.077 Project closeout and payment of retainage.—

207 (1) Each contract for construction services between a
 208 public entity and a contractor must provide for the development
 209 of a list of items required to render complete, satisfactory,
 210 and acceptable the construction services purchased by the public
 211 entity. The list must include a dollar valuation, as reasonably
 212 determined by the contractor as a portion of the contract value,
 213 of the estimated cost to complete the items included on the
 214 list. The contract must specify the process for the development
 215 of the list, including responsibilities of the public entity and
 216 the contractor in developing and reviewing the list and a
 217 reasonable time for developing the list, as follows:

218 (a) For construction projects having an estimated cost of
 219 less than \$10 million, within 30 calendar days after reaching
 220 substantial completion of the construction services purchased as
 221 defined in the contract, or, if not defined in the contract,
 222 upon reaching beneficial occupancy or use; or

223 (b) For construction projects having an estimated cost of
 224 \$10 million or more, within 30 calendar days, unless otherwise
 225 extended by contract not to exceed 60 calendar days, after
 226 reaching substantial completion of the construction services
 227 purchased as defined in the contract, or, if not defined in the
 228 contract, upon reaching beneficial occupancy or use.

229 (4) Within 20 days after the date the list is created, the
 230 public entity must pay the contractor the remaining contract
 231 balance that includes all retainage previously withheld by the
 232 public entity. The remaining contract balance does not include

578-02612-23

2023346c1

the costs to complete the items included on the list.

~~(9)(a)~~ If a public entity fails to comply with its responsibilities to develop the list required under subsection (1) or subsection (2), as defined in the contract, within the time limitations provided in subsection (1), the contractor may submit a payment request for all remaining retainage withheld by the public entity pursuant to s. 255.078 and the public entity must pay the contractor all remaining retainage previously withheld within 20 days after receipt of the payment request.

The public entity is not required to ~~need not~~ pay or process any payment request for retainage if the contractor has, ~~in whole or in part,~~ failed to cooperate with the public entity in the development of the list or failed to perform its contractual responsibilities, if any, with regard to the development of the list or if s. 255.078(3) applies.

Section 6. Subsection (3) of section 255.078, Florida Statutes, is amended to read:

255.078 Public construction retainage.—

(3) This section and s. 255.077 do not require the public entity to pay or release any amounts that are the subject of a good faith dispute or, the subject of a claim brought pursuant to s. 255.05, ~~or otherwise the subject of a claim or demand by the public entity or contractor.~~

Section 7. Paragraph (b) of subsection (1) of section 255.0992, Florida Statutes, is amended to read:

255.0992 Public works projects; prohibited governmental actions.—

(1) As used in this section, the term:

(b) "Public works project" means an activity exceeding

578-02612-23

2023346c1

\$350,000 ~~\$1 million~~ in value that is paid for with any local or state-appropriated funds and that ~~which~~ consists of the construction, maintenance, repair, renovation, remodeling, or improvement of a building, road, street, sewer, storm drain, water system, site development, irrigation system, reclamation project, gas or electrical distribution system, gas or electrical substation, or other facility, project, or portion thereof ~~that is~~ owned in whole or in part by any political subdivision.

Section 8. This act shall take effect July 1, 2023.

2260

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

I, Cord Byrd, Secretary of State,
do hereby certify that

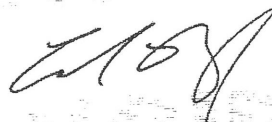
Cord Byrd

is duly appointed

**Secretary,
Department of State**

for a term beginning on the Third day of January, A.D., 2023, to
serve at the pleasure of the Governor and is subject to be
confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Fifth day of January, A.D., 2023.*



Secretary of State



RON DeSANTIS
GOVERNOR

RECEIVED

2023 JAN 13 AM 11:41

DIVISION OF ELECTIONS
TALLAHASSEE, FL

January 3, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

This letter is to notify the Department of State of your reappointment as Secretary of the Department of State, subject to confirmation by the Senate, under the provisions of Section 20.10, Florida Statutes. This appointment is effective January 3, 2023, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to read "Ron DeSantis", with a stylized flourish at the end.

Ron DeSantis
Governor

RD/ca

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

STATE OF FLORIDA

County of Leon

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

Secretary of State

(Title of Office)

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

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

[Signature]
Signature

Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 26th day of January, 2023.

Dawn Reichmuth

Signature of Officer Administering Oath or of Notary Public

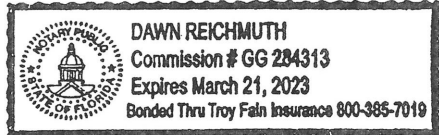
Dawn Reichmuth

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR

Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

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

Mailing Address: ☐ Home ☒ Office

500 S. Bronough St
Street or Post Office Box

Tall, FL 32399
City, State, Zip Code

James C. Byrd, Jr.
Print Name

[Signature]
Signature

CERTIFICATION

STATE OF FLORIDA

COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared _____,

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



Signature of Applicant-Affiant

Sworn to and subscribed before me this 25th day of January, 2023.

Dawn Reichmuth

Signature of Notary Public-State of Florida

Dawn Reichmuth

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

My commission expires: 3-21-23

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)



The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Cord Byrd

Secretary of State

NOTICE OF HEARING

TO: Secretary Cord Byrd

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, March 29, 2023, in the Mallory Horne Committee Room, 37 Senate Building, commencing at 8:30 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 24th day of March, 2023

Committee on Governmental Oversight and
Accountability



Senator Bryan Avila
As Chair and by authority of the committee

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

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

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

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

WITNESS'S NAME: Cord Byrd

ANSWER: "I do."

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

COMMITTEE NAME: Governmental Oversight & Accountability

DATE: March 29, 2023

THE FLORIDA SENATE

COMMITTEE WITNESS OATH

CHAIR:

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

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

WITNESS'S NAME: Buddy Jacobs

ANSWER: "Yes Sir."

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

COMMITTEE NAME: Governmental Oversight & Accountability

DATE: March 29, 2023

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Cord Byrd
Confirmation

Bill Number or Topic

Secretary of State

Amendment Barcode (if applicable)

3/29/23

Meeting Date

Oversight

Committee

Name

Buddy JACOBS

Phone

904-261-3693

Address

961687 Gateway Blvd.

Street

Email

Buddy@JSWFlorida.com

Fernandina Beach FLA.

City

State

Zip

Speaking:



For



Against



Information

OR

Waive Speaking:



In Support



Against

PLEASE CHECK ONE OF THE FOLLOWING:



I am appearing without
compensation or sponsorship.



I am a registered lobbyist,
representing:



I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

1425

**STATE OF FLORIDA
DEPARTMENT OF STATE**

Division of Elections

I, Cord Byrd, Secretary of State,
do hereby certify that

Pedro Allende

is duly appointed

Secretary,

Department of Management Services

for a term beginning on the Twenty-Sixth day of January, A.D.,
2023, to serve at the pleasure of the Governor and is subject to
be confirmed by the Senate during the next regular session of the
Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Twenty-Third day of February, A.D., 2023.*



Secretary of State



RON DESANTIS
GOVERNOR

RECEIVED

2023 FEB -2 PM 2:15

DIVISION OF ELECTIONS
TALLAHASSEE, FL

January 26, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised I have made the following reappointment under the provisions of Section 20.22, Florida Statutes:

Mr. Pedro Allende

as Secretary of the Florida Department of Management Services, subject to confirmation by the Senate. This appointment is effective January 26, 2023, for a term ending at the pleasure of the Governor.

Sincerely,

A handwritten signature in black ink, appearing to be "R. DeSantis", written over a horizontal line.

Ron DeSantis
Governor

RD/ch

HAND DELIVERED

OATH OF OFFICE

(Art. II, § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

County of Leon

2023 FEB 22 PM 2:20

DIVISION OF ELECTIONS
TALLAHASSEE, FL

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

Secretary of Margaret Services
(Title of Office)

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

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

[Signature]
Signature

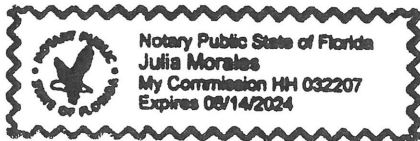
Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 2nd day of February, 2023.

Julia Morales
Signature of Officer Administering Oath or of Notary Public

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

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

Mailing Address: ☐ Home ☒ Office

Street or Post Office Box

Peter Allen
Print Name

City, State, Zip Code

[Signature]
Signature

HAND DELIVERED

CERTIFICATION

RECEIVED

2023 FEB 22 PM 2:21

DIVISION OF ELECTIONS
TALLAHASSEE, FL

STATE OF FLORIDA

COUNTY OF Leon

Before me, the undersigned Notary Public of Florida, personally appeared

Pedro Adela

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

[Signature]

Signature of Applicant-Affiant

Sworn to and subscribed before me this 2nd day of February, 2023.

Julia Morales

Signature of Notary Public-State of Florida



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

My commission expires: 8/14/2024

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____

(seal)

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Pedro M. Allende

Secretary of Management Services

NOTICE OF HEARING

TO: Mr. Pedro M. Allende

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, March 29, 2023, in the Mallory Horne Committee Room, 37 Senate Building, commencing at 8:30 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 24th day of March, 2023

Committee on Governmental Oversight and
Accountability



Senator Bryan Avila
As Chair and by authority of the committee

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

03/29/2023

Meeting Date

Governmental Oversight and Accountability

Committee

The Florida Senate

APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Confirmation

Bill Number or Topic

Amendment Barcode (if applicable)

Name **Pedro Allende**

Phone **(850)756-0156**

Address **4050 Esplanade Way**

Email **Pedro.Allende@dms.fl.gov**

Street

Tallahassee

FL

32399

City

State

Zip

Speaking: ☐ For ☐ Against ☒ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☐ I am appearing without
compensation or sponsorship.

☒ I am a registered lobbyist,
representing:

DMS

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

30

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

I, Cord Byrd, Secretary of State,
do hereby certify that

Brian Newman

is duly appointed

**Director and Chief Judge,
Division of Administrative Hearings**

for a term beginning on the Seventeenth day of January, A.D.,
2023, to serve at the pleasure of the Administration Commission
and is subject to be confirmed by the Senate during the next
regular session of the Legislature.

*Given under my hand and the Great Seal of the
State of Florida, at Tallahassee, the Capital, this
the Seventh day of February, A.D., 2023.*



Secretary of State



RON DeSANTIS
GOVERNOR

RECEIVED
DEPARTMENT OF STATE

2023 JAN 20 AM 10:02

DIVISION OF ELECTIONS
TALLAHASSEE, FL

January 17, 2023

Secretary Cord Byrd
Department of State
R.A. Gray Building, Room 316
500 South Bronough Street
Tallahassee, Florida 32399-0250

Dear Secretary Byrd:

Please be advised that in accordance with Section 120.65, Florida Statutes, on January 17, 2023, the Florida Administration Commission voted to approve the appointment of Brian Newman as Florida's Chief Administrative Law Judge, subject to confirmation by the Florida Senate. This appointment is effective January 17, 2023, for a term ending at the pleasure of the Governor.

Sincerely,

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

Ron DeSantis
Governor

RD/ca

HAND DELIVERED

OATH OF OFFICE

(Art. II. § 5(b), Fla. Const.)

RECEIVED

STATE OF FLORIDA

County of Leon

2023 JAN 26 PM 1:35

DIVISION OF ELECTIONS
TALLAHASSEE, FL

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

Director and Chief Judge of the Division of Administrative Hearings

(Title of Office)

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

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

[Signature]
Signature

Sworn to and subscribed before me by means of ☒ physical presence or
online notarization, this 25th day of January, 2023.

[Signature]

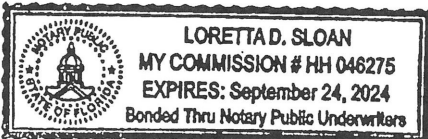
Signature of Officer Administering Oath or of Notary Public

Loretta D. Sloan

Print, Type, or Stamp Commissioned Name of Notary Public

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



ACCEPTANCE

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

Mailing Address: ☐ Home ☒ Office

1230 Apalachee Parkway

Street or Post Office Box

Tallahassee, FL 32399-3060

City, State, Zip Code

Brian A. Newman

Print Name

[Signature]
Signature

HAND DELIVERED

RECEIVED

CERTIFICATION


STATE OF FLORIDA
COUNTY OF Leon

2023 JAN 26 PM 1:35

DIVISION OF ELECTIONS
TALLAHASSEE, FL

Before me, the undersigned Notary Public of Florida, personally appeared
Brian Allan Newman,

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


Signature of Applicant-Affiant

Sworn to and subscribed before me this 25th day of January, 2023.


Signature of Notary Public-State of Florida

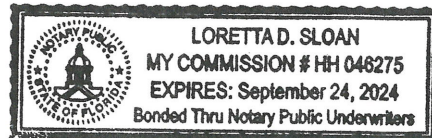
Loretta D. Sloan

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

My commission expires: September 24, 2024

Personally Known ☒ OR Produced Identification ☐

Type of Identification Produced _____



(seal)

The Florida Senate
Committee Notice Of Hearing

IN THE FLORIDA SENATE
TALLAHASSEE, FLORIDA

IN RE: Executive Appointment of

Brian Newman

Director and Chief Judge, Division of Administrative Hearings

NOTICE OF HEARING

TO: Judge Brian Newman

YOU ARE HEREBY NOTIFIED that the Committee on Governmental Oversight and Accountability of the Florida Senate will conduct a hearing on your executive appointment on Wednesday, March 29, 2023, in the Mallory Horne Committee Room, 37 Senate Building, commencing at 8:30 a.m., pursuant to Rule 12.7(1) of the Rules of the Florida Senate.

Please be present at the time of the hearing.
DATED this the 24th day of March, 2023

Committee on Governmental Oversight and
Accountability



Senator Bryan Avila
As Chair and by authority of the committee

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

The Florida Senate
APPEARANCE RECORD

Deliver both copies of this form to
Senate professional staff conducting the meeting

Confirmation (Chief Judge)
Bill Number or Topic

3/29/23
Meeting Date

Governor Wright
Committee

Amendment Barcode (if applicable)

Name BRIAN NEWMAN

Phone 850-510-6651

Address 1230 Apalachee Parkway
Street

Email brian.newman@DEATH.Stat.Fl.us

Tallahassee FL 32301
City State Zip

Speaking: ☐ For ☐ Against ☒ Information

OR

Waive Speaking: ☐ In Support ☐ Against

PLEASE CHECK ONE OF THE FOLLOWING:

☒ I am appearing without
compensation or sponsorship.

☐ I am a registered lobbyist,
representing:

☐ I am not a lobbyist, but received
something of value for my appearance
(travel, meals, lodging, etc.),
sponsored by:

While it is a tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this hearing. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard. If you have questions about registering to lobby please see Fla. Stat. §11.045 and Joint Rule 1. [2020-2022 Joint Rules.pdf \(flsenate.gov\)](#)

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

S-001 (08/10/2021)

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Senate Governmental Oversight and Accountability Committee

Judge:

Started: 3/29/2023 8:32:02 AM

Ends: 3/29/2023 10:54:10 AM

Length: 02:22:09

8:32:01 AM Meeting called to order, roll call
8:32:14 AM Quorum is present
8:32:20 AM Chair Avila makes opening remarks
8:33:01 AM Tab 3, SB 948- Public Records/ Department of State Electronically Filed Records by Senator Grall
8:33:09 AM Chair Avila recognizes Senator Grall
8:33:11 AM Senator Grall explains the bill
8:34:29 AM Senator Grall waives close
8:34:54 AM Roll call on SB 948
8:34:55 AM Chair Avila reports bill
8:34:58 AM Tab 2, SB 946- Public Records/ Department of State Electronically Filed Records by Senator Grall
8:34:59 AM Chair recognizes Senator Grall
8:35:14 AM Senator Grall explains the bill
8:35:24 AM Amendment 338162
8:35:44 AM Senator Grall explains the amendment
8:35:55 AM Senator Grall waives close
8:36:04 AM Chair Avila reports the amendment
8:36:13 AM Roll call on CS/SB 946
8:36:56 AM Chair Avila reports the bill
8:36:59 AM Tab 9, SB 7020- Public Records/ Mobile Suspicious Activity Reporting Tool by Education
8:37:03 AM Chair Avila recognizes Senator Collins
8:37:09 AM Senator Collins explains the bill
8:38:04 AM Amendment 683188
8:38:10 AM Senator Collins explains the amendment
8:38:46 AM Senator Collins waives close
8:38:56 AM Chair Avila reports the amendment
8:39:19 AM Senator Collins waives close
8:39:24 AM Roll call on CS/SB 7020
8:39:32 AM Chair Avila reports the bill
8:39:40 AM Tab 10, SB 7022- OGSR/ Marjory Stoneman Douglas High School Public Safety Commission by Education
8:39:52 AM Chair Avila recognizes Senator Collins
8:39:59 AM Senator Collins explains the bill
8:40:41 AM Senator Collins waives close
8:40:45 AM Roll call on SB 7022
8:41:11 AM Tab 6, SB 7000- OGSR/ Current or Former Public Guardians by Children and Families
8:41:18 AM Chair Avila recognizes Senator Garcia
8:41:23 AM Senator Garcia explains the bill
8:42:22 AM Senator Garcia waives close
8:42:33 AM Roll call on SB 7000
8:42:48 AM Tab 4, SB 1094- Death Benefits for Active Duty Servicemembers by Criminal Justice
8:43:08 AM Chair Avila recognizes Senator Martin
8:43:16 AM Senator Martin explains the bill
8:44:01 AM Amendment 267962
8:44:12 AM Senator Martin explains the amendment
8:44:39 AM Senator Martin waives close
8:44:45 AM Chair Avila reports the amendment
8:44:50 AM Chair Avila reads appearance cards waiving
8:45:11 AM Senator Martin waives close
8:45:19 AM Roll call on CS/SB 1094
8:45:30 AM Tab 8, SB 7012- OGSR/ Victim of an Incident of Mass Violence by Criminal Justice
8:46:05 AM Chair Avila recognizes Senator Martin
8:46:08 AM Senator Martin explains the bill

8:46:50 AM Senator Martin waives close
8:46:54 AM Roll call on SB 7012
8:47:12 AM Chair Avila reports the bill
8:47:16 AM Tab 5, SB 1670- Deferred Retirement Option Program by Senator Broxson
8:47:27 AM Chair Avila recognizes Senator Albritton
8:47:33 AM Senator Albritton explains the bill
8:48:41 AM Chair Avila reads appearance cards waiving
8:49:10 AM Senator Albritton waives close
8:49:16 AM Roll call on SB 1670
8:49:27 AM Chair Avila reports the bill
8:49:41 AM Tab 1, CS/SB 552- Public Records/ Broadband Opportunity Program by Senator Hooper
8:49:46 AM Chair Avila recognizes Senator Hooper
8:49:52 AM Senator Hooper explains the bill
8:51:08 AM Chair Avila reads appearance cards waiving
8:51:21 AM Senator Hooper waives close
8:51:26 AM Roll call on CS/SB 552
8:51:41 AM Chair Avila reports the bill
8:52:40 AM Tab 15, Director and Chief Judge- Division of Administrative Hearings
8:53:09 AM Chair Avila swears in Judge Newman
8:53:19 AM Judge Newman addresses the committee
8:54:50 AM Senator Hooper moves to recommend the confirmation of Judge Newman
8:55:03 AM Roll call on Judge Newman confirmation
8:55:17 AM Chair Avila confirms Judge Brian Newman
8:55:41 AM Tab 13, Secretary of State
8:56:07 AM Chair Avila swears in Cord Byrd
8:56:17 AM Secretary Byrd addresses the committee
9:05:13 AM Questions:
9:05:17 AM Senator Polsky
9:05:38 AM Secretary Byrd
9:08:39 AM Senator Polsky
9:08:50 AM Secretary Byrd
9:10:13 AM Senator Davis
9:11:06 AM Secretary Byrd
9:13:25 AM Senator Davis
9:13:55 AM Secretary Byrd
9:15:04 AM Senator Davis
9:15:42 AM Secretary Byrd
9:16:23 AM Senator Davis
9:17:11 AM Secretary Byrd
9:20:10 AM Senator Davis
9:20:25 AM Secretary Byrd
9:20:37 AM Senator Davis
9:20:45 AM Secretary Byrd
9:21:47 AM Senator Davis
9:22:09 AM Secretary Byrd
9:22:53 AM Senator Davis
9:23:00 AM Secretary Byrd
9:23:20 AM Senator Davis
9:24:06 AM Secretary Byrd
9:25:12 AM Senator Davis
9:25:31 AM Secretary Byrd
9:26:58 AM Senator Davis
9:27:48 AM Secretary Byrd
9:28:59 AM Senator Davis
9:29:37 AM Secretary Byrd
9:30:05 AM Senator Davis
9:30:47 AM Secretary Byrd
9:32:30 AM Senator Davis
9:33:02 AM Secretary Byrd
9:34:35 AM Senator Davis
9:34:58 AM Secretary Byrd
9:36:28 AM Senator Davis

9:37:05 AM	Secretary Byrd
9:38:57 AM	Senator Davis
9:39:54 AM	Secretary Byrd
9:41:02 AM	Senator Rouson
9:43:01 AM	Secretary Byrd
9:43:46 AM	Senator Rouson
9:44:28 AM	Secretary Byrd
9:45:56 AM	Senator Rouson
9:46:19 AM	Secretary Byrd
9:47:00 AM	Chair Avila recognizes public testimony:
9:47:37 AM	Buddy Jacobs
9:50:41 AM	Senator Wright moves to recommend the confirmation of Cord Byrd for Secretary of State
9:51:03 AM	Roll call
9:51:13 AM	Chair Avila reports the confirmation of Secretary Cord Byrd
9:51:26 AM	Tab 11, SB 1708- Cybersecurity by Senator DiCeglie
9:51:44 AM	Chair Avila recognizes Senator DiCeglie
9:51:55 AM	Senator DiCeglie explains the bill
9:53:23 AM	Amendment 793268
9:53:32 AM	Senator DiCeglie explains the amendment
9:53:49 AM	Chair Avila recognizes public testimony:
9:54:15 AM	Bill Cotterall, Florida Justice Association
9:55:36 AM	Senator DiCeglie waives close
9:55:44 AM	Chair Avila reports the amendment
9:56:01 AM	Chair Avila reads appearance cards waiving
9:56:26 AM	Senator DiCeglie waives close
9:56:32 AM	Roll call on CS/SB 1708
9:56:46 AM	Chair Avila reports the bill
9:56:53 AM	Tab 12, CS/SB 346
9:56:58 AM	Chair Avila recognizes Senator DiCeglie
9:57:05 AM	Senator DiCeglie explains the bill
9:57:27 AM	Delete-all Amendment 570730
9:57:33 AM	Senator DiCeglie explains the amendment
9:58:36 AM	Amendment 782452 to Delete-all Amendment 570730
9:58:43 AM	Senator DiCeglie explains the amendment to the amendment
9:59:12 AM	Senator DiCeglie waives close
9:59:34 AM	Chair Avila reports the amendment to the amendment
9:59:58 AM	Questions:
10:00:02 AM	Senator Polsky
10:00:23 AM	Senator DiCeglie
10:01:24 AM	Senator Polsky
10:01:52 AM	Senator DiCeglie
10:03:39 AM	Senator Davis
10:05:00 AM	Senator DiCeglie
10:05:54 AM	Senator Davis
10:06:20 AM	Senator DiCeglie
10:07:36 AM	Chair Avila recognizes public testimony:
10:07:51 AM	Carol Bowen, Associated Builders and Contractors of Florida
10:09:47 AM	Jeff Scala, Florida Association of Counties
10:10:26 AM	Kari Hebrank, NUCA of Florida
10:11:54 AM	Jess McCarty, Miami-Dade County
10:12:35 AM	Senator DiCeglie waives close on the Delete-all Amendment as amended
10:12:46 AM	Chair Avila reports the Delete-all Amendment as amended
10:13:22 AM	Chair Avila recognizes public testimony:
10:13:37 AM	Jeff Branch, Florida League of Cities
10:13:55 AM	Daniel Munilla
10:14:23 AM	Elizabeth Gilliam, Dudley Professional Services
10:14:52 AM	Chair Avila reads appearance cards waiving:
10:15:34 AM	Debate:
10:15:35 AM	Senator Polsky
10:17:10 AM	Senator DiCeglie closes on the bill
10:17:35 AM	Roll call on CS/CS/SB 346
10:17:55 AM	Chair Avila reports the bill

10:18:00 AM Tab 7, SB 7004- OGSR/ Written Valuations of Surplus Lands by Senator Rodriguez
10:18:24 AM Chair Avila recognizes Senator Rodriguez
10:18:32 AM Senator Rodriguez explains the bill
10:18:58 AM Senator Rodriguez waives close
10:19:06 AM Roll call on SB 7004
10:19:12 AM Chair Avila reports the bill
10:19:28 AM Chair Avila receives permission from President Passidomo under rule 2.10(2) to extend the committee meeting until 11 a.m.
10:20:00 AM Tab 14, Senate Confirmation for Secretary of Management Services
10:20:23 AM Chair Avila swears in Pedro Allende
10:20:30 AM Secretary Allende addresses the committee
10:28:15 AM Questions:
10:28:21 AM Senator Wright
10:29:01 AM Pedro Allende
10:29:36 AM Senator Wright
10:29:57 AM Pedro Allende
10:30:27 AM Senator Wright
10:30:38 AM Pedro Allende
10:30:42 AM Senator Wright
10:30:56 AM Pedro Allende
10:31:01 AM Senator Wright
10:31:16 AM Pedro Allende
10:31:38 AM Senator Wright
10:32:09 AM Pedro Allende
10:32:19 AM Senator Wright
10:32:31 AM Pedro Allende
10:32:36 AM Senator Wright
10:32:47 AM Pedro Allende
10:33:30 AM Senator Wright
10:33:36 AM Pedro Allende
10:33:47 AM Senator Wright
10:34:01 AM Pedro Allende
10:34:21 AM Senator Wright
10:34:37 AM Pedro Allende
10:34:46 AM Senator Wright
10:35:10 AM Pedro Allende
10:35:17 AM Senator Wright
10:35:27 AM Pedro Allende
10:35:34 AM Senator Wright
10:35:38 AM Pedro Allende
10:35:45 AM Senator Wright
10:36:13 AM Pedro Allende
10:36:41 AM Senator Wright
10:36:54 AM Pedro Allende
10:37:22 AM Senator Wright
10:37:26 AM Pedro Allende
10:38:05 AM Senator Wright
10:38:16 AM Pedro Allende
10:38:30 AM Senator Wright
10:38:33 AM Pedro Allende
10:38:52 AM Senator Wright
10:39:10 AM Pedro Allende
10:39:34 AM Senator Wright
10:39:42 AM Pedro Allende
10:40:11 AM Senator Wright
10:40:27 AM Pedro Allende
10:40:42 AM Senator Wright
10:41:18 AM Pedro Allende
10:41:26 AM Senator Wright
10:41:48 AM Pedro Allende
10:42:15 AM Senator Wright
10:43:18 AM Pedro Allende

10:43:34 AM Senator Wright
10:43:42 AM Pedro Allende
10:44:06 AM Senator Wright
10:44:16 AM Senator Polsky
10:44:57 AM Pedro Allende
10:46:14 AM Senator Polsky
10:46:20 AM Pedro Allende
10:46:24 AM Senator Polsky
10:46:42 AM Pedro Allende
10:47:12 AM Senator Davis
10:47:27 AM Pedro Allende
10:47:38 AM Senator Davis
10:47:51 AM Pedro Allende
10:48:08 AM Senator Davis
10:48:26 AM Pedro Allende
10:48:57 AM Senator Davis
10:49:37 AM Pedro Allende
10:50:02 AM Senator Davis
10:50:37 AM Pedro Allende
10:50:58 AM Senator Davis
10:51:23 AM Pedro Allende
10:51:58 AM Senator Albritton moves to recommend the confirmation of Pedro Allende
10:52:12 AM Roll call
10:52:20 AM Chair Avila reports the confirmation
10:52:42 AM Senator Wright moves to record missed votes
10:52:56 AM Senator Rodriguez moves to record missed votes
10:53:18 AM Senator Rouson moves to record missed votes
10:53:32 AM Senator Davis moves to record missed votes
10:53:40 AM Seeing no objection, the Senators' motions are adopted
10:53:54 AM Meeting adjourned