

SB 162 by **Stargel (CO-INTRODUCERS) Benacquisto, Flores;** (Similar to CS/H 0059) Offenses Against Unborn Children

CS/CS/SB 226 by **GO, TR, Brandes;** (Similar to CS/CS/CS/H 0599) Public Records/Automated License Plate Recognition Systems Exemption

CS/CS/SB 278 by **RI, HP, Grimsley;** (Compare to CS/H 0323) Pharmacy

490438	A	S	RCS	RC, Latvala	Delete L.42 - 53:	04/02 08:43 PM
468864	A	S	RCS	RC, Latvala	btw L.53 - 54:	04/02 08:43 PM
182652	AA	S	RCS	RC, Latvala	Delete L.5 - 23.	04/02 08:43 PM

CS/SB 292 by **GO, Hays;** (Similar to CS/H 0177) Public Records/Wireless Service Provider/Department of Revenue

CS/SB 366 by **GO, Brandes;** (Identical to CS/CS/H 0643) Public Records/Trade Secrets/Computers

CS/SB 390 by **HP, Hays;** (Similar to CS/H 0419) Public Records/Identifying Information of Personnel of Department of Health

CS/SB 408 by **HP, Braynon (CO-INTRODUCERS) Sobel, Bullard, Gibson, Flores, Garcia;** (Similar to CS/H 0491) Infectious Disease Elimination Pilot Program

SB 516 by **Latvala;** (Similar to H 0399) Public Records/Point-In-Time Count and Survey/Homeless Management Information System

SB 538 by **Latvala (CO-INTRODUCERS) Brandes;** (Similar to CS/CS/H 0421) Public Records/Taxpayer's Email Address

CS/SB 646 by **GO, Montford;** (Identical to H 7121) OGSR/Postsecondary Education Records and Applicant Records

CS/SB 648 by **GO, Montford;** (Identical to H 7119) OGSR/K-12 Education Records

CS/CS/SB 654 by **JU, CM, Clemens (CO-INTRODUCERS) Richter;** (Identical to CS/CS/H 0685) Business Organizations

CS/SB 656 by **GO, Montford;** (Identical to H 7115) OGSR/Active Investigations of Allegations of Testing Impropriety

SB 796 by **Latvala;** (Similar to H 0725) Public Accountancy

SB 996 by **CM;** (Identical to H 7047) OGSR/Scripps Florida Funding Corporation

SB 1664 by **JU;** (Similar to H 7161) Arbitration

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

RULES
Senator Thrasher, Chair
Senator Smith, Vice Chair

MEETING DATE: Wednesday, March 26, 2014
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Thrasher, Chair; Senator Smith, Vice Chair; Senators Benacquisto, Diaz de la Portilla, Galvano, Gardiner, Latvala, Lee, Margolis, Montford, Negron, Richter, Ring, Simmons, and Sobel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 162 Stargel (Similar CS/H 59)	Offenses Against Unborn Children; Citing this act as the "Florida Unborn Victims of Violence Act;" providing a rule of construction that a person who engages in conduct that violates any provision of the Florida Criminal Code or of a criminal offense defined by another statute and causes the death of, or bodily injury to, an unborn child commits a separate offense if such an offense is not otherwise specifically provided for; providing for criminal penalties for such an offense, etc. CJ 11/04/2013 Favorable JU 02/18/2014 Favorable RC 03/26/2014 Favorable	Favorable Yeas 9 Nays 3
2	CS/CS/SB 226 Governmental Oversight and Accountability / Transportation / Brandes (Similar CS/CS/CS/H 599)	Public Records/Automated License Plate Recognition Systems Exemption; Creating a public records exemption for certain images and data obtained through the use of an automated license plate recognition system and personal identifying information of an individual in data generated from such images; providing conditions for disclosure of such images and information, etc. TR 01/09/2014 Fav/CS GO 03/20/2014 Fav/CS RC 03/26/2014 Favorable	Favorable Yeas 12 Nays 0
3	CS/CS/SB 278 Regulated Industries / Health Policy / Grimsley (Compare H 323)	Pharmacy; Increasing the number of registered pharmacy technicians which a licensed pharmacist may supervise; revising the composition of the Board of Pharmacy; requiring written prescriptions for specified controlled substances to be legibly dated in a specified format, etc. HP 03/11/2014 Fav/CS RI 03/20/2014 Fav/CS RC 03/26/2014 Temporarily Postponed	Temporarily Postponed

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 26, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	CS/SB 292 Governmental Oversight and Accountability / Hays (Similar CS/H 177, Compare CS/CS/H 175, Link S 294)	Public Records/Wireless Service Provider/Department of Revenue; Providing an exemption from public records requirements for proprietary confidential business information submitted by a wireless service provider to the Department of Revenue; authorizing the Department of Revenue to share such information with the Secretary of Management Services and the E911 Board; providing for future legislative review and repeal; providing a statement of public necessity, etc. CU 01/14/2014 Favorable GO 03/06/2014 Fav/CS RC 03/26/2014 Favorable	Favorable Yeas 12 Nays 0
5	CS/SB 366 Governmental Oversight and Accountability / Brandes (Identical CS/CS/H 643, Compare CS/CS/H 641, Link CS/CS/S 364)	Public Records/Trade Secrets/Computers; Amending an exemption from public records requirements for data, programs, and supporting documentation that are trade secrets residing or existing internal or external to a computer, computer system, or computer network; expanding the exemption to include such trade secret information residing or existing internal or external to an electronic device; providing for legislative review and repeal of the exemption; providing a statement of public necessity, etc. CU 02/04/2014 Favorable CJ 02/17/2014 Favorable GO 03/20/2014 Fav/CS RC 03/26/2014 Favorable	Favorable Yeas 12 Nays 0
6	CS/SB 390 Health Policy / Hays (Similar CS/H 419)	Public Records/Identifying Information of Personnel of Department of Health; Providing an exemption from public records requirements for certain identifying information of specific current and former personnel of the Department of Health and the spouses and children of such personnel, under specified circumstances; providing for future legislative review and repeal of the exemption under the Open Government Sunset Review Act; providing a statement of public necessity, etc. HP 02/04/2014 Fav/CS GO 03/13/2014 Favorable RC 03/26/2014 Favorable	Favorable Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 26, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	CS/SB 408 Health Policy / Braynon (Similar CS/H 491)	Infectious Disease Elimination Pilot Program; Creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; requiring the Department of Health to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted; prohibiting the collection of participant identifying information, etc. HP 02/04/2014 Fav/CS CJ 02/17/2014 Favorable RC 03/26/2014 Favorable	Favorable Yeas 9 Nays 1
8	SB 516 Latvala (Similar H 399)	Public Records/Point-In-Time Count and Survey/Homeless Management Information System; Creating a public records exemption for individual identifying information of a person contained in a Point-In-Time Count and Survey or data in a Homeless Management Information System; specifying that the exemption does not preclude the release of aggregate information; providing for future review and repeal under the Open Government Sunset Review Act; providing a statement of public necessity, etc. GO 03/20/2014 Favorable RC 03/26/2014 Favorable	Favorable Yeas 11 Nays 0
9	SB 538 Latvala (Identical CS/H 421)	Public Records/Taxpayer's Email Address; Providing an exemption from public records requirements for e-mail addresses obtained by the tax collector for the purpose of electronically sending tax notices or obtaining the consent of the taxpayer to the electronic transmission of tax notices; providing for future review and repeal of the exemption; providing a statement of public necessity, etc. CA 01/14/2014 Favorable GO 03/20/2014 Favorable RC 03/26/2014 Favorable	Favorable Yeas 11 Nays 0
10	CS/SB 646 Governmental Oversight and Accountability / Montford (Identical H 7121)	OGSR/Postsecondary Education Records and Applicant Records; Amending provisions relating to an exemption from public records requirements for postsecondary education records and applicant records; saving the exemption from repeal under the Open Government Sunset Review Act, etc. ED 02/18/2014 Favorable GO 03/20/2014 Fav/CS RC 03/26/2014 Favorable	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

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Wednesday, March 26, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
11	CS/SB 648 Governmental Oversight and Accountability / Montford (Identical H 7119)	OGSR/K-12 Education Records; Amending provisions relating to an exemption from public records requirements for K-12 education records; saving the exemption from repeal under the Open Government Sunset Review Act; deleting provisions to conform, etc. ED 02/18/2014 Favorable GO 03/20/2014 Fav/CS RC 03/26/2014 Favorable	Favorable Yeas 11 Nays 0
12	CS/CS/SB 654 Judiciary / Commerce and Tourism / Clemens (Similar CS/H 685)	Business Organizations; Providing additional exceptions regarding the requirement that limited liability company names be distinguishable from the names of other entities or filings; providing additional exceptions regarding the requirement that corporate names be distinguishable; providing that the amendment of articles of incorporation or the merger, conversion, or share exchange of a social purpose or benefit corporation entitles the shareholders to appraisal rights; establishing requirements for the formation of a social purpose corporation and the formation of a benefit corporation, etc. CM 02/17/2014 Fav/CS JU 03/18/2014 Fav/CS RC 03/26/2014 Favorable	Favorable Yeas 12 Nays 0
13	CS/SB 656 Governmental Oversight and Accountability / Montford (Identical H 7115)	OGSR/Active Investigations of Allegations of Testing Impropriety; Amending provisions relating to an exemption from public records requirements for certain information held by the Department of Education during active investigations of allegations of testing impropriety; saving the exemption from repeal under the Open Government Sunset Review Act, etc. ED 02/18/2014 Favorable GO 03/20/2014 Fav/CS RC 03/26/2014 Favorable	Favorable Yeas 11 Nays 0
14	SB 796 Latvala (Similar H 725)	Public Accountancy; Revising course requirement for certified public accountant license applicant to take the licensure examination; requiring an applicant to be of good moral character in order to take the licensure examination; requiring the Board of Accountancy, when refusing to allow an applicant to take the examination because of a lack of good moral character, to make certain findings and furnish certain evidence and notices to the applicant, etc. RI 03/13/2014 Favorable RC 03/26/2014 Favorable	Favorable Yeas 11 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Rules

Wednesday, March 26, 2014, 4:00 —6:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
15	SB 996 Commerce and Tourism (Identical H 7047)	OGSR/Scripps Florida Funding Corporation; Repealing provisions which provide an exemption from public record and public meeting requirements for certain records and meetings of the Scripps Florida Funding Corporation, etc. GO 03/20/2014 Favorable RC 03/26/2014 Favorable	Favorable Yeas 12 Nays 0
16	SB 1664 Judiciary (Similar H 7161)	Arbitration; Correcting the description of a cross- reference; providing for retroactive application, etc. RC 03/26/2014 Favorable	Favorable Yeas 11 Nays 0

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 Rules

BILL: SB 162

INTRODUCER: Senator Stargel

SUBJECT: Offenses Against Unborn Children

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Cellon</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
2.	<u>Brown</u>	<u>Cibula</u>	<u>JU</u>	Favorable
3.	<u>Cellon</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 162 creates the “Florida Unborn Victims of Violence Act.”

Current law considers certain offenses against pregnant women as separate offenses against a fetus. These offenses are the death of a viable fetus or unborn quick child through DUI manslaughter, vehicular homicide, and the killing of a fetus through an injury to the mother.

This bill creates new criminal offenses by:

- Creating a new, separate offense against an unborn child for criminal conduct causing injuries to or the death of the unborn child.¹
- Providing that a separate offense results from injuries to an unborn child, not just the death of the unborn child as provided under current law in some circumstances.
- Expanding the class of unborn children who may be crime victims to include unborn children at any stage of fetal development, not just those unborn children who have reached the point of viability.²

The bill does not require that an assailant have the intent to injure or kill an unborn child or to know that the woman injured is pregnant.

Under the bill, the punishment for criminal conduct causing injuries to or the death of an unborn child is the same punishment that would apply if the injury or death occurred to the mother of the unborn child. However, the bill provides that the death penalty may not be imposed for an

¹ This change is made in s. 775.021, F.S., which provides the rules of construction governing the criminal code.

² The expansion in the class of unborn children who may be crime victims results from changing existing statutory terms to unborn child from “viable fetus” or “unborn quick child.” These terms are used in several statutes providing criminal penalties for causing the death of a viable fetus or unborn quick child.

offense against an unborn child. As such, an offender may be charged with a penalty up to a life felony, punishable by life imprisonment.³

Consistent with the Federal Unborn Victims of Violence Act, this bill does not permit the prosecution of:

- Any person for conduct relating to an abortion for which the woman or her legal representative gave permission, or for which there was lawfully implied consent;
- Any person giving medical treatment to a pregnant woman or her unborn child; or
- Any woman with respect to her unborn child.

Section 782.071(3), F.S., currently creates a specific right of action for civil damages under tort law for deaths resulting from vehicular homicide, including the death of an unborn quick child. The bill may increase the number of wrongful death claims due to the change to unborn child from unborn quick child in the vehicular homicide law. The change in terminology eliminates the need to prove viability of the fetus or the length of pregnancy.

II. Present Situation:

History of Prenatal Criminal Law

Since at least the 17th century, the common law rule was that only children who were born alive were afforded protections of the criminal law.⁴ This became known as the “born alive rule.” Due to the lack of medical technology at that time, doctors were unable to accurately ascertain the health or condition of an unborn child and therefore testify about whether an assault on the mother was the proximate cause of the death of the fetus.⁵ The born alive rule became the standard in federal cases for crimes against a pregnant mother.⁶

Alternatively, some jurisdictions began adopting the rule that an unborn child is afforded criminal protection as a human being at the time of quickening, defined as the first recognizable movements of the fetus, and appearing temporally from about the 16th to 18th week of pregnancy.⁷

Some jurisdictions base protection of an unborn child at the point at which the fetus is viable.⁸ Viability is considered to be the time at which a fetus can survive outside the womb.⁹ The Massachusetts Supreme Court became the first court to include viable unborn children in the statutory meaning of “person” for purposes of criminal laws.¹⁰

³ Section 775.082(3)(a)3., F.S.

⁴ Joseph L. Falvey, Jr., *Kill an Unborn Child – Go to Jail: The Unborn Victims of Violence Act of 2004 and Military Justice*, 53 NAVAL L. REV. 1, 3 (2006).

⁵ *Id.* at 3-4.

⁶ *Id.* at 5.

⁷ *Id.* at 5.

⁸ *Id.* at 6.

⁹ *Id.* at 6.

¹⁰ *Id.*

Due to the advancement in technology and challenges to the born alive rule, many state legislatures have enacted changes to their criminal laws to penalize crimes perpetrated against unborn children.¹¹

Federal Unborn Victims of Violence Act

The Unborn Victims of Violence Act (UVVA or act), signed into law on April 1, 2004, establishes a separate offense for harming or killing an unborn child during the commission of specified crimes.¹² When Congress enacted the UVVA, 26 states had already passed homicide laws that recognized unborn victims.¹³ Under the act, any person who injures or kills a “child in utero” during the commission of certain specified crimes is guilty of an offense separate from one involving the pregnant woman. Punishment for the separate offense is the same as if the offense had been committed against the pregnant woman.

In addition, the offender does not have to have knowledge of the victim’s pregnant condition or intent to cause the death of or bodily injury to the child in utero. The Act defines the term “child in utero” as “a member of the species homo sapiens, at any stage of development, who is carried in the womb.”¹⁴ The death penalty is not applicable to an offense under the UVVA.¹⁵

The UVVA specifically excludes from application of the Act:

- Persons conducting consensual, legal abortions;
- Persons conducting any medical treatment of the pregnant woman or unborn child; and
- Any woman with respect to her unborn child.¹⁶

The federal law was recently used in a Florida case to prosecute a man who tricked his pregnant girlfriend into taking a drug that caused her to lose their baby. John Andrew Welden pled guilty to federal mail fraud and conspiracy to commit product tampering, and the federal judge sentenced him to almost 14 years in prison.¹⁷

Other State Laws

Currently, 38 states have fetal homicide laws. These states are: Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and

¹¹ *Id.* at 1.

¹² 18 U.S.C. s. 1841(a)(1), provides: “Whoever engages in conduct that ... causes the death of, or bodily injury ... to, a child, who is in utero at the time the conduct takes place, is guilty of a separate offense”

¹³ Alexis Gabrielson and Parker Milender, *Abortion*, 14 *Geo. J. Gender & Law* 213, 232 (2013).

¹⁴ 18 U.S.C. s. 1841(d).

¹⁵ 18 U.S.C. s. 1841(a)(2)(D).

¹⁶ 18 U.S.C. s. 1841(c).

¹⁷ Patty Ryan, *Welden gets nearly 14 years in Tampa abortion pill case*, TAMPA BAY TIMES, Jan. 27, 2014, available at <http://www.tampabay.com/news/courts/criminal/john-andrew-welden-faces-sentencing-in-tampa-abortion-pill-case/2162858>.

Wisconsin. Twenty-three of those 38 states have laws that apply to the earliest stages of pregnancy (“any state of gestation,” “conception,” “fertilization,” or “post-fertilization”).¹⁸

Florida Law

Section 782.09, F.S., holds a criminal defendant accountable for the death of an unborn quick child as if the mother or any other person died as a result of the defendant’s actions. Homicide crimes included in this section are first degree (capital) murder, second degree murder, third degree murder, and manslaughter. For purposes of defining “unborn quick child,” this statute references the definition of “viable fetus” in s. 782.071, F.S. In that statute viability is defined as follows: “a fetus is viable when it becomes capable of meaningful life outside the womb through standard medical measures.”

Section 782.071, F.S., Florida’s vehicular homicide statute, holds a defendant equally accountable for the death of a viable fetus as for the death of the mother or any other person killed as a result of the defendant’s actions.

Section 316.193, F.S., Florida’s driving under the influence law, provides that a defendant who kills an unborn quick child as a result of committing DUI manslaughter is equally as culpable as if he or she killed any other human being. In defining the term “unborn quick child,” the statute references the definition of “viable fetus” in s. 782.071, F.S.

In 1989, the Florida Supreme Court defined the term viability as follows:

Viability under Florida law occurs at that point in time when the fetus becomes capable of meaningful life outside the womb through standard medical measures. Under current standards, this point generally occurs upon completion of the second trimester. [N]o medical evidence exists indicating that technological improvements will move viability forward beyond twenty-three to twenty-four weeks gestation within the foreseeable future due to the anatomic threshold of fetal development.¹⁹

Although Florida law uses the definition of “viable fetus” to define “unborn quick child,” the specific term “unborn quick child” is not defined in statute similarly to how it has been defined by the courts. In *Stokes v. Liberty Mutual Insurance Co.*, the Florida Supreme Court used a medical dictionary definition of the term “quick” in its analysis of a wrongful death claim. This term was defined as follows: “Pregnant with a child the movement of which is felt.”²⁰

III. Effect of Proposed Changes:

This bill creates the “Florida Unborn Victims of Violence Act.”

¹⁸ National Conference of State Legislatures, *Fetal Homicide Laws*, <http://www.ncsl.org/issues-research/health/fetal-homicide-state-laws.aspx>. Last visited February 12, 2014.

¹⁹ *In re T.W.*, 551 So. 2d 1186, 1194 (Fla. 1989).
1194 (internal citation omitted).

²⁰ *Stokes v. Liberty Mutual Insurance Co.*, 213 So. 2d 695, 697 (Fla. 1968), citing *Stedman’s Medical Dictionary* (2nd lawyers’ ed. 1966).

Current law considers certain offenses against pregnant women as separate offenses against a fetus. These offenses are the death of a viable fetus or unborn quick child through DUI manslaughter, vehicular homicide, and the killing of a fetus through an injury to the mother.

This bill creates new criminal offenses by:

- Creating a new, separate offense for criminal conduct causing injuries to or the death of an unborn child.²¹
- Providing that a separate offense results from injuries to an unborn child, not just the death of the unborn child as provided under current law in some circumstances.
- Expanding the class of unborn children who may be crime victims to include unborn children at any stage of fetal development, not just those unborn children who have reached the point of viability.²²

Current law, in statutes authorizing criminal penalties or damages for the death of an unborn child, refer to a fetus in the womb as an “unborn quick child” or a “viable fetus.” Both terms are defined the same, and refer to a fetus that “becomes capable of meaningful life outside the womb through standard medical measures.”²³ The bill changes all references to an “unborn quick child” and a “viable fetus” to that of an “unborn child.” The bill tracks federal UVVA language in defining an unborn child as a member of the species *homo sapiens* at any stage of development.

Current law provides as a separate criminal offense the death of an unborn quick child or viable fetus during the commission of specified criminal offenses. Current offenses which punish an offender for causing the death of an unborn fetus are for DUI manslaughter (s. 316.193(3)(c)3., F.S.), vehicular homicide (s. 782.071, F.S.); and the killing of a fetus through injury to the mother (s. 782.09, F.S.). By changing terms in current law to unborn child, the bill expands the class of unborn children who may be considered to be crime victims. Additionally, the concept of punishing criminal conduct resulting in injuries to or the death of an unborn child at any stage of development will be applied uniformly throughout the statutes.

As intent is not required, this bill potentially expands the number of strict liability offenses. A strict liability offense is defined as an act that does not require *mens rea*, or intent.²⁴ Most crimes require some sort of intent. At common law, all crimes required intent. However, “it was long ago recognized that the legislature has the power to dispense with the element of intent and thereby punish particular acts without regard to the mental attitude of the offender.”²⁵

Under the bill, the punishment for criminal conduct causing injuries to or the death of an unborn child is the same punishment that would apply if the injury or death occurred to the mother of the unborn child. However, the bill provides that the death penalty may not be imposed for an

²¹ This change is made in s. 775.021, F.S., which provides the rules of construction governing the criminal code.

²² The expansion in the class of unborn children who may be crime victims results from changing existing statutory terms to unborn child from “viable fetus” or “unborn quick child.” These terms are used in several statutes providing criminal penalties for causing the death of a viable fetus or unborn quick child.

²³ Section 782.071(2), F.S.

²⁴ Black’s Law Dictionary, 9th ed. (2009).

²⁵ *State v. Oxx*, 417 So. 2d 287, 289 (Fla. 5th DCA 1982).

offense against an unborn child. As such, an offender may be charged with a penalty up to a life felony, punishable by life imprisonment.²⁶

This bill does not permit the prosecution of:

- Any person for conduct relating to an abortion for which the woman or her legal representative gave permission, or for which there was lawfully implied consent;
- Any person giving medical treatment to a pregnant woman or her unborn child; or
- Any woman with respect to her unborn child.

Section 782.071(3), F.S., currently creates a specific right of action for civil damages under tort law for deaths resulting from vehicular homicide, including the death of an unborn quick child. The bill may increase the number of wrongful death claims due to the change to unborn child from unborn quick child in the vehicular homicide law. The change in terminology effectively eliminates the need to prove viability the fetus or the length of pregnancy.

The bill takes effect October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The seminal cases on fetal homicide statutes are *Minnesota v Merrill*²⁷ and *People v. Ford*.²⁸ In *Minnesota v. Merrill*, the defendant brought a challenge before the state supreme court based on a conviction for the death of a fetus through the assault of a pregnant woman. The defendant was convicted in the shooting death of the pregnant woman. The state also charged him under a separate statute for the murder of an unborn child.²⁹

The defendant challenge the state's fetal homicide law on equal protection and vagueness grounds. Under equal protection, the defendant alleged that the state treated the death of a fetus by a third party (himself) differently than the death of a fetus initiated by the

²⁶ Section 775.082(3)(a)3., F.S.

²⁷ *Minnesota v. Merrill*, 450 N.W. 2d 318 (MN 1990).

²⁸ *People v. Ford*, 581 N.E. 2d 1189 (Ill. 4th DCA 1991).

²⁹ *Id.* at 320.

pregnant woman's decision to abort her pregnancy.³⁰ The Court denied his equal protection claim in asserting that the women's right to privacy in terminating her pregnancy is a constitutionally-protected right.³¹ This right is not extended to the defendant to terminate a woman's pregnancy.

The defendant also brought a vagueness challenge, alleging that the statute failed to give fair warning of the prohibited behavior and encouraged arbitrary and discriminatory enforcement.³² Regarding the issue of fair warning, again the court ruled against the defendant, finding that "the possibility that a female homicide victim of childbearing age may be pregnant is a possibility that an assaulter may not safely exclude."³³ And on the question of arbitrariness, the court held that the "state must prove only that the implanted embryo ... in the ... womb was living, that it had life, and that it has life no longer."³⁴

In *People v. Ford*, a defendant challenged Illinois' fetal homicide statute on equal protection and vagueness grounds.³⁵ The state presented evidence that the defendant physically assaulted a pregnant victim, with the intent to kill her fetus and that the fetus died shortly thereafter.³⁶

The defendant argued that:

- The statute fails to distinguish between viable and nonviable fetuses and is inconsistent with the government recognizing a woman's right to terminate a pregnancy;³⁷ and
- The statute is unconstitutionally vague as the questions of life and death are philosophical and unable to be ascertained with certainty.³⁸

The Illinois Fourth District Court of Appeal found unpersuasive the defendant's argument that a fetal homicide statute is incongruent with a woman's right to abortion, and further, that an assailant causing the death of a fetus and a physician conducting legal abortions are similarly situated in law. The Court reasserted the holding of the *Merrill* court, in citing that case law "protects the woman's right of choice; it does not protect, much less confer on an assailant, a third-party unilateral right to destroy the fetus."³⁹

Regarding defendant's assertion of vagueness, the Court found that a person of ordinary intelligence can reasonably ascertain whether the conduct is lawful under the fetal infanticide law, and that the statute clearly criminalizes the death of a fetus from the time of fertilization, removing any question of a fetus being considered alive only upon birth.⁴⁰

³⁰ *Id.* at 321.

³¹ *Id.* at 321-322.

³² *Id.* at 322.

³³ *Id.* at 323.

³⁴ *Id.* at 324.

³⁵ *People v. Ford*, 581 N.E. 2d 1189 (Ill. 4th DCA 1991).

³⁶ *Id.* at 1191-1195.

³⁷ *Id.* at 1198.

³⁸ *Id.* at 1200.

³⁹ *Id.* at 1199, citing *Minnesota v. Merrill*, 450 N.W. 2d at 322.

⁴⁰ *Id.* at 1201-1202.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The Criminal Justice Impact Conference met on January 30, 2014, and determined that this bill will have an indeterminate impact on prison beds.⁴¹

The Department of Corrections (DOC) concurs that the DOC will have an indeterminate fiscal impact, based on being unable to quantify an increase in prison sentences.⁴²

The Office of the State Courts Administrator (OSCA) indicates that this bill will likely increase judicial workload in that a new criminal count is created, and also that causation of injury by the defendant to a fetus may increase litigation time.⁴³ However, OSCA could not quantify the fiscal impact.

The state may incur costs related to prosecution of fetal homicide or injury cases to the extent that more expert testimony is needed to prove causation between the defendant's actions and injury or death to a fetus. Also, the state may have to incur costs to prove that a victim was pregnant at the time of injury.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 316.193, 435.05, 775.021, 782.071, 782.09, and 921.0022.

⁴¹ Criminal Justice Impact Conference (January 30, 2014).

⁴² Department of Corrections, *2014 Legislative Bill Analysis for SB 162* (October 1, 2014) (on file with the Senate Committee on Judiciary).

⁴³ Office of the State Courts Administrator, *2014 Judicial Impact Statement*, (February 10, 2014) (on file with the Senate Committee on Judiciary).

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 Senators Stargel, Benacquisto, and Flores

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A bill to be entitled

An act relating to offenses against unborn children; providing a short title; amending s. 775.021, F.S.; providing a rule of construction that a person who engages in conduct that violates any provision of the Florida Criminal Code or of a criminal offense defined by another statute and causes the death of, or bodily injury to, an unborn child commits a separate offense if such an offense is not otherwise specifically provided for; providing for criminal penalties for such an offense; specifying that certain types of knowledge or intent are not necessary for such an offense; providing exceptions; providing a definition; amending ss. 316.193, 435.04, 782.071, 782.09, and 921.0022, F.S.; defining and substituting the term "unborn child" for similar terms used in provisions relating to driving under the influence, employment background screening standards, vehicular homicide, the killing of an unborn quick child by injury to the child's mother, and the offense severity ranking chart of the Criminal Punishment Code, respectively; conforming terminology; 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 Unborn Victims of Violence Act."

Section 2. Subsection (5) is added to section 775.021, Florida Statutes, to read:

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775.021 Rules of construction.—

(5) Whoever commits an act that violates any provision of this code or commits a criminal offense defined by another statute and thereby causes the death of, or bodily injury to, an unborn child commits a separate offense if the provision or statute does not otherwise specifically provide a separate offense for such death or injury to an unborn child.

(a) Except as otherwise provided in this subsection, the punishment for a separate offense under this subsection is the same as the punishment provided under this code or other statute for that conduct had the injury or death occurred to the mother of the unborn child.

(b) An offense under this subsection does not require proof that the person engaging in the conduct:

1. Had knowledge or should have had knowledge that the victim of the underlying offense was pregnant; or

2. Intended to cause the death of, or bodily injury to, the unborn child.

(c) Notwithstanding any other provision of law, the death penalty may not be imposed for an offense under this subsection.

(d) This subsection does not permit the prosecution:

1. Of any person for conduct relating to an abortion for which the consent of the pregnant woman, or a person authorized by law to act on her behalf, has been obtained or for which such consent is implied by law;

2. Of any person for any medical treatment of the pregnant woman or her unborn child; or

3. Of any woman with respect to her unborn child.

(e) As used in this subsection, the term "unborn child"

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59 means a member of the species homo sapiens, at any stage of
60 development, who is carried in the womb.

61 Section 3. Subsection (3) of section 316.193, Florida
62 Statutes, is amended to read:

63 316.193 Driving under the influence; penalties.—

64 (3) Any person:

65 (a) Who is in violation of subsection (1);

66 (b) Who operates a vehicle; and

67 (c) Who, by reason of such operation, causes or contributes
68 to causing:

69 1. Damage to the property or person of another commits a
70 misdemeanor of the first degree, punishable as provided in s.
71 775.082 or s. 775.083.

72 2. Serious bodily injury to another, as defined in s.
73 316.1933, commits a felony of the third degree, punishable as
74 provided in s. 775.082, s. 775.083, or s. 775.084.

75 3. The death of any human being or unborn ~~quick~~ child
76 commits DUI manslaughter, and commits:

77 a. A felony of the second degree, punishable as provided in
78 s. 775.082, s. 775.083, or s. 775.084.

79 b. A felony of the first degree, punishable as provided in
80 s. 775.082, s. 775.083, or s. 775.084, if:

81 (I) At the time of the crash, the person knew, or should
82 have known, that the crash occurred; and

83 (II) The person failed to give information and render aid
84 as required by s. 316.062.

85
86 For purposes of this subsection, the ~~definition of the term~~
87 "unborn ~~quick~~ child" has the same meaning as provided in s.

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88 ~~775.021(5) shall be determined in accordance with the definition~~
89 ~~of viable fetus as set forth in s. 782.071.~~ A person who is
90 convicted of DUI manslaughter shall be sentenced to a mandatory
91 minimum term of imprisonment of 4 years.

92 Section 4. Paragraph (g) of subsection (2) of section
93 435.04, Florida Statutes, is amended to read:

94 435.04 Level 2 screening standards.—

95 (2) The security background investigations under this
96 section must ensure that no persons subject to the provisions of
97 this section have been arrested for and are awaiting final
98 disposition of, have been found guilty of, regardless of
99 adjudication, or entered a plea of nolo contendere or guilty to,
100 or have been adjudicated delinquent and the record has not been
101 sealed or expunged for, any offense prohibited under any of the
102 following provisions of state law or similar law of another
103 jurisdiction:

104 (g) Section 782.09, relating to killing of an unborn ~~quick~~
105 child by injury to the mother.

106 Section 5. Section 782.071, Florida Statutes, is amended to
107 read:

108 782.071 Vehicular homicide.—"Vehicular homicide" is the
109 killing of a human being, or the killing of an unborn child a
110 ~~viable fetus~~ by an any injury to the mother, caused by the
111 operation of a motor vehicle by another in a reckless manner
112 likely to cause the death of, or great bodily harm to, another.

113 (1) Vehicular homicide is:

114 (a) A felony of the second degree, punishable as provided
115 in s. 775.082, s. 775.083, or s. 775.084.

116 (b) A felony of the first degree, punishable as provided in

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117 s. 775.082, s. 775.083, or s. 775.084, if:

118 1. At the time of the accident, the person knew, or should
119 have known, that the accident occurred; and

120 2. The person failed to give information and render aid as
121 required by s. 316.062.

122
123 This paragraph does not require that the person knew that the
124 accident resulted in injury or death.

125 (2) For purposes of this section, the term "unborn child"
126 has the same meaning as provided in s. 775.021(5) a fetus is
127 viable when it becomes capable of meaningful life outside the
128 womb through standard medical measures.

129 (3) A right of action for civil damages shall exist under
130 s. 768.19, under all circumstances, for all deaths described in
131 this section.

132 (4) In addition to any other punishment, the court may
133 order the person to serve 120 community service hours in a
134 trauma center or hospital that regularly receives victims of
135 vehicle accidents, under the supervision of a registered nurse,
136 an emergency room physician, or an emergency medical technician
137 pursuant to a voluntary community service program operated by
138 the trauma center or hospital.

139 Section 6. Section 782.09, Florida Statutes, is amended to
140 read:

141 782.09 Killing of unborn ~~quick~~ child by injury to mother.—

142 (1) The unlawful killing of an unborn ~~quick~~ child, by an
143 any injury to the mother of the such child which would be murder
144 if it resulted in the death of the such mother, shall be deemed
145 murder in the same degree as that which would have been

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146 committed against the mother. A ~~Any~~ person, other than the
147 mother, who unlawfully kills an unborn ~~quick~~ child by any injury
148 to the mother:

149 (a) Which would be murder in the first degree constituting
150 a capital felony if it resulted in the mother's death commits
151 murder in the first degree constituting a capital felony,
152 punishable as provided in s. 775.082.

153 (b) Which would be murder in the second degree if it
154 resulted in the mother's death commits murder in the second
155 degree, a felony of the first degree, punishable as provided in
156 s. 775.082, s. 775.083, or s. 775.084.

157 (c) Which would be murder in the third degree if it
158 resulted in the mother's death commits murder in the third
159 degree, a felony of the second degree, punishable as provided in
160 s. 775.082, s. 775.083, or s. 775.084.

161 (2) The unlawful killing of an unborn ~~quick~~ child by any
162 injury to the mother of the such child which would be
163 manslaughter if it resulted in the death of the such mother
164 shall be deemed manslaughter. A person who unlawfully kills an
165 unborn ~~quick~~ child by any injury to the mother which would be
166 manslaughter if it resulted in the mother's death commits
167 manslaughter, a felony of the second degree, punishable as
168 provided in s. 775.082, s. 775.083, or s. 775.084.

169 (3) The death of the mother resulting from the same act or
170 criminal episode that caused the death of the unborn ~~quick~~ child
171 does not bar prosecution under this section.

172 (4) This section does not authorize the prosecution of any
173 person in connection with a termination of pregnancy pursuant to
174 chapter 390.

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175 (5) For purposes of this section, the ~~definition of the~~
 176 term "unborn ~~quick~~ child" has the same meaning as provided in s.
 177 775.021(5) ~~shall be determined in accordance with the definition~~
 178 ~~of viable fetus as set forth in s. 782.071.~~

179 Section 7. Paragraph (g) of subsection (3) of section
 180 921.0022, Florida Statutes, is amended to read:

181 921.0022 Criminal Punishment Code; offense severity ranking
 182 chart.—

183 (3) OFFENSE SEVERITY RANKING CHART

184 (g) LEVEL 7

185

Florida Statute	Felony Degree	Description
316.027(1)(b)	1st	Accident involving death, failure to stop; leaving scene.
316.193(3)(c)2.	3rd	DUI resulting in serious bodily injury.
316.1935(3)(b)	1st	Causing serious bodily injury or death to another person; driving at high speed or with wanton disregard for safety while fleeing or attempting to elude law enforcement officer who is in a patrol

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189 vehicle with siren and
 lights activated.

327.35(3)(c)2. 3rd Vessel BUI resulting in serious bodily injury.

402.319(2) 2nd Misrepresentation and negligence or intentional act resulting in great bodily harm, permanent disfiguration, permanent disability, or death.

409.920 3rd Medicaid provider fraud; \$10,000 or less.

409.920 2nd Medicaid provider fraud; more than \$10,000, but less than \$50,000.

456.065(2) 3rd Practicing a health care profession without a license.

456.065(2) 2nd Practicing a health care profession without a license which results in serious bodily injury.

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	458.327(1)	3rd	Practicing medicine without a license.
196			
	459.013(1)	3rd	Practicing osteopathic medicine without a license.
197			
	460.411(1)	3rd	Practicing chiropractic medicine without a license.
198			
	461.012(1)	3rd	Practicing podiatric medicine without a license.
199			
	462.17	3rd	Practicing naturopathy without a license.
200			
	463.015(1)	3rd	Practicing optometry without a license.
201			
	464.016(1)	3rd	Practicing nursing without a license.
202			
	465.015(2)	3rd	Practicing pharmacy without a license.
203			
	466.026(1)	3rd	Practicing dentistry or dental hygiene without a

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			license.
204			
	467.201	3rd	Practicing midwifery without a license.
205			
	468.366	3rd	Delivering respiratory care services without a license.
206			
	483.828(1)	3rd	Practicing as clinical laboratory personnel without a license.
207			
	483.901(9)	3rd	Practicing medical physics without a license.
208			
	484.013(1)(c)	3rd	Preparing or dispensing optical devices without a prescription.
209			
	484.053	3rd	Dispensing hearing aids without a license.
210			
	494.0018(2)	1st	Conviction of any violation of ss. 494.001-494.0077 in which the total money and property unlawfully obtained exceeded \$50,000 and there

	15-00115-14		2014162__	were five or more victims.
211	560.123(8)(b)1.	3rd		Failure to report currency or payment instruments exceeding \$300 but less than \$20,000 by a money services business.
212	560.125(5)(a)	3rd		Money services business by unauthorized person, currency or payment instruments exceeding \$300 but less than \$20,000.
213	655.50(10)(b)1.	3rd		Failure to report financial transactions exceeding \$300 but less than \$20,000 by financial institution.
214	775.21(10)(a)	3rd		Sexual predator; failure to register; failure to renew <u>driver</u> driver's license or identification card; other registration violations.
215	775.21(10)(b)	3rd		Sexual predator working where children regularly

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216	775.21(10)(g)	3rd		Failure to report or providing false information about a sexual predator; harbor or conceal a sexual predator.
217	782.051(3)	2nd		Attempted felony murder of a person by a person other than the perpetrator or the perpetrator of an attempted felony.
218	782.07(1)	2nd		Killing of a human being by the act, procurement, or culpable negligence of another (manslaughter).
219	782.071	2nd		Killing of a human being or <u>unborn child</u> viable fetus by the operation of a motor vehicle in a reckless manner (vehicular homicide).
220	782.072	2nd		Killing of a human being by the operation of a vessel in a reckless

	15-00115-14		2014162__	manner (vessel homicide).
221	784.045(1)(a)1.	2nd		Aggravated battery; intentionally causing great bodily harm or disfigurement.
222	784.045(1)(a)2.	2nd		Aggravated battery; using deadly weapon.
223	784.045(1)(b)	2nd		Aggravated battery; perpetrator aware victim pregnant.
224	784.048(4)	3rd		Aggravated stalking; violation of injunction or court order.
225	784.048(7)	3rd		Aggravated stalking; violation of court order.
226	784.07(2)(d)	1st		Aggravated battery on law enforcement officer.
227	784.074(1)(a)	1st		Aggravated battery on sexually violent predators facility staff.
228	784.08(2)(a)	1st		Aggravated battery on a

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	15-00115-14		2014162__	person 65 years of age or older.
229	784.081(1)	1st		Aggravated battery on specified official or employee.
230	784.082(1)	1st		Aggravated battery by detained person on visitor or other detainee.
231	784.083(1)	1st		Aggravated battery on code inspector.
232	787.06(3)(a)	1st		Human trafficking using coercion for labor and services.
233	787.06(3)(e)	1st		Human trafficking using coercion for labor and services by the transfer or transport of any individual from outside Florida to within the state.
234	790.07(4)	1st		Specified weapons violation subsequent to previous conviction of s.

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			790.07(1) or (2).	
235	790.16(1)	1st	Discharge of a machine gun under specified circumstances.	
236	790.165(2)	2nd	Manufacture, sell, possess, or deliver hoax bomb.	
237	790.165(3)	2nd	Possessing, displaying, or threatening to use any hoax bomb while committing or attempting to commit a felony.	
238	790.166(3)	2nd	Possessing, selling, using, or attempting to use a hoax weapon of mass destruction.	
239	790.166(4)	2nd	Possessing, displaying, or threatening to use a hoax weapon of mass destruction while committing or attempting to commit a felony.	
240	790.23	1st,PBL	Possession of a firearm by	

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			a person who qualifies for the penalty enhancements provided for in s. 874.04.	
241	794.08(4)	3rd	Female genital mutilation; consent by a parent, guardian, or a person in custodial authority to a victim younger than 18 years of age.	
242	796.03	2nd	Procuring any person under 16 years for prostitution.	
243	800.04(5)(c)1.	2nd	Lewd or lascivious molestation; victim less than 12 years of age; offender less than 18 years.	
244	800.04(5)(c)2.	2nd	Lewd or lascivious molestation; victim 12 years of age or older but less than 16 years; offender 18 years or older.	
245	806.01(2)	2nd	Maliciously damage structure by fire or	

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				explosive.
246	810.02(3)(a)	2nd		Burglary of occupied dwelling; unarmed; no assault or battery.
247	810.02(3)(b)	2nd		Burglary of unoccupied dwelling; unarmed; no assault or battery.
248	810.02(3)(d)	2nd		Burglary of occupied conveyance; unarmed; no assault or battery.
249	810.02(3)(e)	2nd		Burglary of authorized emergency vehicle.
250	812.014(2)(a)1.	1st		Property stolen, valued at \$100,000 or more or a semitrailer deployed by a law enforcement officer; property stolen while causing other property damage; 1st degree grand theft.
251	812.014(2)(b)2.	2nd		Property stolen, cargo valued at less than \$50,000, grand theft in

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				2nd degree.
252	812.014(2)(b)3.	2nd		Property stolen, emergency medical equipment; 2nd degree grand theft.
253	812.014(2)(b)4.	2nd		Property stolen, law enforcement equipment from authorized emergency vehicle.
254	812.0145(2)(a)	1st		Theft from person 65 years of age or older; \$50,000 or more.
255	812.019(2)	1st		Stolen property; initiates, organizes, plans, etc., the theft of property and traffics in stolen property.
256	812.131(2)(a)	2nd		Robbery by sudden snatching.
257	812.133(2)(b)	1st		Carjacking; no firearm, deadly weapon, or other weapon.
258	817.034(4)(a)1.	1st		Communications fraud,

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	15-00115-14		2014162__	
			value greater than	
			\$50,000.	
259	817.234 (8) (a)	2nd	Solicitation of motor	
			vehicle accident victims	
			with intent to defraud.	
260	817.234 (9)	2nd	Organizing, planning, or	
			participating in an	
			intentional motor vehicle	
			collision.	
261	817.234 (11) (c)	1st	Insurance fraud; property	
			value \$100,000 or more.	
262	817.2341	1st	Making false entries of	
	(2) (b) & (3) (b)		material fact or false	
			statements regarding	
			property values relating	
			to the solvency of an	
			insuring entity which are	
			a significant cause of the	
			insolvency of that entity.	
263	817.535 (2) (a)	3rd	Filing false lien or other	
			unauthorized document.	
264	825.102 (3) (b)	2nd	Neglecting an elderly	
			person or disabled adult	

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			causing great bodily harm,	
			disability, or	
			disfigurement.	
265	825.103 (2) (b)	2nd	Exploiting an elderly	
			person or disabled adult	
			and property is valued at	
			\$20,000 or more, but less	
			than \$100,000.	
266	827.03 (2) (b)	2nd	Neglect of a child causing	
			great bodily harm,	
			disability, or	
			disfigurement.	
267	827.04 (3)	3rd	Impregnation of a child	
			under 16 years of age by	
			person 21 years of age or	
			older.	
268	837.05 (2)	3rd	Giving false information	
			about alleged capital	
			felony to a law	
			enforcement officer.	
269	838.015	2nd	Bribery.	
270	838.016	2nd	Unlawful compensation or	
			reward for official	

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				behavior.
271	838.021(3)(a)	2nd		Unlawful harm to a public servant.
272	838.22	2nd		Bid tampering.
273	843.0855(2)	3rd		Impersonation of a public officer or employee.
274	843.0855(3)	3rd		Unlawful simulation of legal process.
275	843.0855(4)	3rd		Intimidation of a public officer or employee.
276	847.0135(3)	3rd		Solicitation of a child, via a computer service, to commit an unlawful sex act.
277	847.0135(4)	2nd		Traveling to meet a minor to commit an unlawful sex act.
278	872.06	2nd		Abuse of a dead human body.
279	874.05(2)(b)	1st		Encouraging or recruiting

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				person under 13 to join a criminal gang; second or subsequent offense.
280	874.10	1st,PBL		Knowingly initiates, organizes, plans, finances, directs, manages, or supervises criminal gang-related activity.
281	893.13(1)(c)1.	1st		Sell, manufacture, or deliver cocaine (or other drug prohibited under s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4.) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
282	893.13(1)(e)1.	1st		Sell, manufacture, or deliver cocaine or other drug prohibited under s. 893.03(1)(a), (1)(b),

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			(1) (d), (2) (a), (2) (b), or (2) (c) 4., within 1,000 feet of property used for religious services or a specified business site.	
283	893.13(4) (a)	1st	Deliver to minor cocaine (or other s. 893.03(1) (a), (1) (b), (1) (d), (2) (a), (2) (b), or (2) (c) 4. drugs).	
284	893.135(1) (a) 1.	1st	Trafficking in cannabis, more than 25 lbs., less than 2,000 lbs.	
285	893.135 (1) (b) 1.a.	1st	Trafficking in cocaine, more than 28 grams, less than 200 grams.	
286	893.135 (1) (c) 1.a.	1st	Trafficking in illegal drugs, more than 4 grams, less than 14 grams.	
287	893.135(1) (d) 1.	1st	Trafficking in phencyclidine, more than 28 grams, less than 200 grams.	
288				

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	893.135(1) (e) 1.	1st	Trafficking in methaqualone, more than 200 grams, less than 5 kilograms.	
289	893.135(1) (f) 1.	1st	Trafficking in amphetamine, more than 14 grams, less than 28 grams.	
290	893.135 (1) (g) 1.a.	1st	Trafficking in flunitrazepam, 4 grams or more, less than 14 grams.	
291	893.135 (1) (h) 1.a.	1st	Trafficking in gamma- hydroxybutyric acid (GHB), 1 kilogram or more, less than 5 kilograms.	
292	893.135 (1) (j) 1.a.	1st	Trafficking in 1,4- Butanediol, 1 kilogram or more, less than 5 kilograms.	
293	893.135 (1) (k) 2.a.	1st	Trafficking in Phenethylamines, 10 grams or more, less than 200 grams.	
294	893.1351(2)	2nd	Possession of place for	

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				trafficking in or manufacturing of controlled substance.
295	896.101(5)(a)	3rd		Money laundering, financial transactions exceeding \$300 but less than \$20,000.
296	896.104(4)(a)1.	3rd		Structuring transactions to evade reporting or registration requirements, financial transactions exceeding \$300 but less than \$20,000.
297	943.0435(4)(c)	2nd		Sexual offender vacating permanent residence; failure to comply with reporting requirements.
298	943.0435(8)	2nd		Sexual offender; remains in state after indicating intent to leave; failure to comply with reporting requirements.
299	943.0435(9)(a)	3rd		Sexual offender; failure to comply with reporting

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				requirements.
300	943.0435(13)	3rd		Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
301	943.0435(14)	3rd		Sexual offender; failure to report and reregister; failure to respond to address verification.
302	944.607(9)	3rd		Sexual offender; failure to comply with reporting requirements.
303	944.607(10)(a)	3rd		Sexual offender; failure to submit to the taking of a digitized photograph.
304	944.607(12)	3rd		Failure to report or providing false information about a sexual offender; harbor or conceal a sexual offender.
305	944.607(13)	3rd		Sexual offender; failure to report and reregister;

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failure to respond to
address verification.

306

985.4815(10)

3rd

Sexual offender; failure
to submit to the taking of
a digitized photograph.

307

985.4815(12)

3rd

Failure to report or
providing false
information about a sexual
offender; harbor or
conceal a sexual offender.

308

985.4815(13)

3rd

Sexual offender; failure
to report and reregister;
failure to respond to
address verification.

309

310

311

Section 8. This act shall take effect October 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

19 March 2014

Meeting Date

Topic Personal Testimony

Bill Number SB 162
(if applicable)

Name Reme Lee

Amendment Barcode _____
(if applicable)

Job Title _____

Address _____

Phone (813) 254-1777

Street

Tampa

FL

City

State

Zip

E-mail gil@sanchezvalencialaw.com

Speaking: For Against Information

Representing Herself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/2014
Meeting Date

Topic _____ Bill Number 162
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291
Street

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR KELLI STARGEL
15th District

COMMITTEES:
Regulated Industries, *Chair*
Appropriations Subcommittee on
General
Government
Appropriations Subcommittee on
Transportation,
Tourism, and Economic Development
Commerce and Tourism
Community Affairs
Education

JOINT COMMITTEE:
Joint Committee on Public Counsel
Oversight

February 18, 2014

The Honorable John Thrasher
Senate Rules Committee, Chair
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chairman Thrasher:

I am respectfully requesting that SB 162, related to *Offenses Against Unborn Children*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
Senator, District 15

Cc: John Phelps/ Staff Director
Tamra Lyon/ AA

REPLY TO:

- 902 S. Florida Avenue, Suite 102, Lakeland, Florida 33803
- 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
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 Rules

BILL: CS/CS/SB 226

INTRODUCER: Governmental Oversight and Accountability Committee; Transportation Committee; and Senator Brandes

SUBJECT: Public Records/Automated License Plate Recognition Systems Exemption

DATE: March 25, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Everette</u>	<u>Eichin</u>	<u>TR</u>	<u>Fav/CS</u>
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	<u>Everette</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 226 creates a public records exemption for all images obtained from an automatic license plate recognition system as well as any personal identifying information in any data generated from images obtained from such a system. This information will be confidential and exempt from public disclosure. CS/CS/SB 226 provides that an agency may release this information to a criminal justice agency in the performance of its official duties. This bill also provides that a person to whom a license plate is registered may also have access to his or her own information, as long as the information is not subject to an active public criminal investigation. This bill also provides for retroactive application.

CS/CS/SB 226 is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

An automated license plate recognition system (ALPRS) uses computerized optical character recognition to extract vehicle license plate information from an image or a sequence of images. It is sometimes also referred to as automated number plate recognition system or automated

licensed reader. The extracted information can be used with or without a database in many applications, such as electronic payment systems (toll payment, parking fee payment), and freeway and arterial monitoring systems for traffic surveillance. The ALPRS uses either a color, black and white, or ultraviolet camera to take images of passing license plates and quickly processes the data under different environmental conditions, such as indoors, outdoors, day or night.

Data obtained from an ALPRS is generally used to check license plates against law enforcement “hot” lists. This captured information (i.e., license plate number, date, time, and location) is collected, matched to personal identifying databases and sometimes pooled into regional sharing systems. As a result, enormous databases may house the location and travel patterns of thousands, if not millions of individual motorists.

As an operational tool for law enforcement, ALPRSs scan the license plates of moving or parked vehicles while either mounted on a moving patrol car or attached to a fixed location, such as a toll plaza or free-standing installation. Though designed to assist law enforcement with day-to-day vehicle violations, an ALPRS may collect and store extensive location information about each vehicle in its field of vision. Photographs captured by an ALPRS may contain more than simply the license plate, and sometimes include a substantial part of a vehicle, its occupants, and its immediate vicinity. Law enforcement can use captured photographs to verify witness descriptions of vehicles and confirm identifying features.

In July 2012, the American Civil Liberties Union (ACLU) sent public records act requests to nearly 600 local and state police departments and other state and federal agencies to obtain information on how these agencies use such information.¹ In response, 26,000 pages were received detailing the use of the technology around the country. The ACLU report found that although police departments typically only have a few of its vehicles equipped with the ALPRSs, they project increased numbers within the next five years. The same report found that law enforcement agencies were increasingly capturing drivers’ locations outside church, the doctor’s office, and school, etc., giving law enforcement and private companies the ability to build detailed pictures of citizens’ lives. In some instances the stored information stretched back months, even years.²

The ACLU recommends the following principles for the use and disclosure of automated license plate recognition systems:

- Law enforcement agencies must place access controls on license plate reader databases. Only agents who have been trained in the departments’ policies governing such databases should be permitted access, and departments should log access records pertaining to the databases.
- People should be able to find out if plate data of vehicles registered to them are contained in a law enforcement agency’s database. They should also be able to access the data. This policy should also apply to disclosure to a third party if the registered vehicle owner consents, or for criminal defendants seeking relevant evidence.

¹ <https://www.aclu.org/alpr> (last visited on Jan. 6, 2014)

² Id.

- Law enforcement agencies should not share license plate reader data with third parties that do not conform to the above retention and access principles, and should be transparent regarding with whom license plate reader data are shared.³

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act⁶ guarantees every person's right to inspect and copy any state or local government public record⁷ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸

Only the Legislature may create an exemption to public records requirements.⁹ Such 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 and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or

³<https://www.aclu.org/files/assets/071613-aclu-alpreport-opt-v05.pdf> (last visited Jan. 7, 2014)

⁴ FLA CONST., art. I, s. 24(a).

⁵ Id.

⁶ Chapter 119, F.S.

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

⁸ Section 119.07(1)(a), F.S.

⁹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

¹⁰ FLA. CONST., art. I, s. 24(c).

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

¹² FLA. CONST., art. I, s. 24(c).

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

substantial amendment, unless the Legislature reenacts the exemption.¹⁴ 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 to meet such public purpose.

Section 119.15(6)(b), F.S. provides that an exemption may be created if it serves an identifiable public purpose and the exemption is tailored to that public purpose. An identifiable public purpose is served if the exemption allows a government entity to effectively perform its duties, protections a person from defamation and if it protects confidential business information.¹⁵

Currently, there are no general public records exemptions for images or data generated by automated license plate recognition systems in the State of Florida.

III. Effect of Proposed Changes:

Section 1 creates a confidential and exempt standard of protection for data generated by automated license plate recognition system. Section 316.0777, F.S., defines “agency” as having the same meaning as in s. 119.011, F.S.,¹⁶ and “automated license plate recognition system” as a system of one or more mobile or fixed high-speed cameras combined with computer algorithms to convert images of license plates into computer-readable data.”

The bill requires that such information may be disclosed under the following conditions:

- By or to a criminal justice agency, as defined in s. 119.011(4), F.S.¹⁷ in performance of the agency’s official duties.

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(1), F.S. provides:

An exemption may be created, revised, or maintained only if it serves an identifiable public purpose, and the exemption may be no broader than is necessary to meet the public purpose it serves. An identifiable public purpose is served if the exemption meets one of the following purposes and the Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption:

1. Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
2. Protects information of a sensitive personal nature concerning individuals, the release of which information would be defamatory to such individuals or cause unwarranted damage to the good name or reputation of such individuals or would jeopardize the safety of such individuals. However, in exemptions under this subparagraph, only information that would identify the individuals may be exempted; or
3. Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information which is used to protect or further a business advantage over those who do not know or use it, the disclosure of which information would injure the affected entity in the marketplace.

¹⁶ Section 119.011(2), F.S. defines an 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.”

¹⁷ Section 119.011(4), F.S., provides that “[c]riminal justice agency” means: (a) Any law enforcement agency, court, or prosecutor; (b) Any other agency charged by law with criminal law enforcement duties; (c) Any agency having custody of criminal intelligence information or criminal investigative information for the purpose of assisting such law enforcement agencies in the conduct of active criminal investigation or prosecution or for the purpose of litigating civil actions under the Racketeer Influenced and Corrupt Organization Act, during the time that such agencies are in possession of criminal intelligence information or criminal investigative information pursuant to their criminal law enforcement duties; or (d) The Department of Corrections.”

- To a license plate registrant requesting his or her own information, as long as it is not related to any ongoing criminal investigation, as defined in s. 119.011(3), F.S.¹⁸

The exemption applies to ALPRS images and data containing or providing personal identifying information, as well as personal identifying information derived from ALPRS data or images. This exemption would apply to personal identifying information held by any agency before, on, or after the passage of this exemption.

The bill further requires, in accordance with s. 119.15, F.S., this section is subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, if it is not saved from repeal through reenactment by the Legislature.

Section 2 provides the public necessity statement for this bill. The public necessity statement provides the release of personal identifying information collected by an ALPRS could enable a third party to track a person's movements and that the disclosure of such information would be an invasion of personal privacy. The public necessity statement also states that the public disclosure of sensitive personal information could be defamatory or jeopardize an individual's safety. Finally, the public necessity statement provides that the harm from public disclosure outweighs any public benefit.

The act will take effect on July 1, 2014.

¹⁸ Section 119.011(3), F.S., provides:

- (a) "Criminal intelligence information" means information with respect to an identifiable person or group of persons collected by a criminal justice agency in an effort to anticipate, prevent, or monitor possible criminal activity.
- (b) "Criminal investigative information" means information with respect to an identifiable person or group of persons compiled by a criminal justice agency in the course of conducting a criminal investigation of a specific act or omission, including, but not limited to, information derived from laboratory tests, reports of investigators or informants, or any type of surveillance.
- (c) "Criminal intelligence information" and "criminal investigative information" shall not include:
1. The time, date, location, and nature of a reported crime.
 2. The name, sex, age, and address of a person arrested or of the victim of a crime except as provided in s. 119.071(2)(h).
 3. The time, date, and location of the incident and of the arrest.
 4. The crime charged.
 5. Documents given or required by law or agency rule to be given to the person arrested, except as provided in s.119.071(2)(h), and, except that the court in a criminal case may order that certain information required by law or agency rule to be given to the person arrested be maintained in a confidential manner and exempt from the provisions of s. 119.07(1) until released at trial if it is found that the release of such information would:
 - a. Be defamatory to the good name of a victim or witness or would jeopardize the safety of such victim or witness; and
 - b. Impair the ability of a state attorney to locate or prosecute a codefendant.
 6. Informations and indictments except as provided in s. 905.26.
- (d) The word "active" shall have the following meaning:
1. Criminal intelligence information shall be considered "active" as long as it is related to intelligence gathering conducted with a reasonable, good faith belief that it will lead to detection of ongoing or reasonably anticipated criminal activities.
 2. Criminal investigative information shall be considered "active" as long as it is related to an ongoing investigation which is continuing with a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.
- In addition, criminal intelligence and criminal investigative information shall be considered "active" while such information is directly related to pending prosecutions or appeals. The word "active" shall not apply to information in cases which are barred from prosecution under the provisions of s. 775.15 or other statute of limitation.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to Department of Highway Safety and Motor Vehicles, it may be difficult for agencies to identify and redact personal identifying information if a public records request is made.

VI. Technical Deficiencies:

According to Department of Highway Safety and Motor Vehicles, automatic license plate recognitions systems which are used for tolls and as red-light cameras may be included in this bill and that this exemption could potentially affect the usage of toll and red-light cameras. The Department of Highway Safety and Motor Vehicles did not provide more detailed information.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 316.0777 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/CS by Governmental Oversight and Accountability on March 20, 2014:

The CS/CS narrows the exemption to personal identifying information in images and data collected by ALPRS. The CS/CS also makes technical changes in the organization of the legislation and in the public necessity statement.

CS by Transportation on January 9, 2014:

The CS differs from the original bill in that it:

- Changes the standard of protection from “exempt” to “confidential and exempt”¹⁹ in order to specify conditions for disclosure.
- Specifies the following conditions under which the confidential and exempt information may be disclosed:
 - For any such information, by or to a criminal justice agency in the performance of its official duties.
 - For any information relating to a license registered to an individual, to such individual. Such information may not be released if it is relevant to an ongoing criminal investigation.

- B. **Amendments:**

None.

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

¹⁹ For an explanation of the difference between the standards, see supra note 9.

By the Committees on Governmental Oversight and Accountability;
and Transportation; and Senator Brandes

585-02892-14

2014226c2

1 A bill to be entitled
2 An act relating to public records; creating s.
3 316.0777, F.S.; providing definitions; creating a
4 public records exemption for certain images and data
5 obtained through the use of an automated license plate
6 recognition system and personal identifying
7 information of an individual in data generated from
8 such images; providing conditions for disclosure of
9 such images and information; providing for retroactive
10 application of the public records exemption; providing
11 for future repeal and legislative review of the
12 exemption under the Open Government Sunset Review Act;
13 providing a statement of public necessity; providing
14 an effective date.

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

17
18 Section 1. Section 316.0777, Florida Statutes, is created
19 to read:

20 316.0777 Automated license plate recognition systems;
21 public records exemption.-

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

23 (a) "Active," "criminal intelligence information," and
24 "criminal investigative information" have the same meanings as
25 provided in s. 119.011(3).

26 (b) "Agency" has the same meaning as provided in s.
27 119.011.

28 (c) "Automated license plate recognition system" means a
29 system of one or more mobile or fixed high-speed cameras

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30 combined with computer algorithms to convert images of license
31 plates into computer-readable data.

32 (d) "Criminal justice agency" has the same meaning as
33 provided in s. 119.011.

34 (2) The following information held by an agency is
35 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
36 of the State Constitution:

37 (a) Images and data containing or providing personal
38 identifying information obtained through the use of an automated
39 license plate recognition system.

40 (b) Personal identifying information of an individual in
41 data generated or resulting from images obtained through the use
42 of an automated license plate recognition system.

43 (3) Such information may be disclosed as follows:

44 (a) Any such information may be disclosed by or to a
45 criminal justice agency in the performance of the criminal
46 justice agency's official duties.

47 (b) Any such information relating to a license plate
48 registered to an individual may be disclosed to the individual,
49 unless such information constitutes active criminal intelligence
50 information or active criminal investigative information.

51 (4) This exemption applies to such information held by an
52 agency before, on, or after the effective date of this
53 exemption.

54 (5) This section is subject to the Open Government Sunset
55 Review Act in accordance with s. 119.15 and shall stand repealed
56 on October 2, 2019, unless reviewed and saved from repeal
57 through reenactment by the Legislature.

58 Section 2. The Legislature finds that it is a public

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59 necessity that images and data containing personal identifying
60 information obtained through the use of an automated license
61 plate recognition system held by an agency and personal
62 identifying information in data generated from such images be
63 made confidential and exempt from s. 119.07(1), Florida
64 Statutes, and s. 24(a), Article I of the State Constitution. The
65 exemption protects sensitive personal information that, if
66 released, could be defamatory to an individual or jeopardize the
67 safety of an individual by allowing a third party to track a
68 person's movements and compile a history on where a person has
69 driven. This exemption is necessary because the public
70 disclosure of such information constitutes an unwarranted
71 invasion into the personal life and privacy of a person. The
72 harm from disclosing such information outweighs any public
73 benefit that can be derived from widespread and unregulated
74 public access to such information.

75 Section 3. This act shall take effect July 1, 2014.



The Florida Senate

Committee Agenda Request

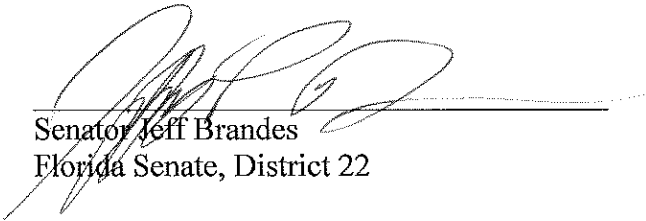
To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 20, 2014

I respectfully request that **Senate Bill # 226**, relating to Public Records / Automated License Plate Readers, be placed on the:

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



Senator Jeff Brandes
Florida Senate, District 22

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 Rules

BILL: CS/CS/CS/SB 278

INTRODUCER: Rules Committee; Regulated Industries Committee; Health Policy Committee; and Senator Grimsley

SUBJECT: Pharmacy

DATE: April 3, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	<u>Fav/CS</u>
2.	<u>Niles</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
3.	<u>Peterson</u>	<u>Phelps</u>	<u>RC</u>	<u>Fav/CS</u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 278 removes the cap of three pharmacy technicians that the Board of Pharmacy (board) may authorize one pharmacist to supervise.

The bill also revises the composition of the board. The number of pharmacists representing both community and institutional class II pharmacies is increased from a minimum of one in each category, to a minimum of two each.

The bill amends s. 465.189, F.S., to authorize pharmacists to administer the meningococcal vaccine under physician protocol and removes the requirement for a pharmacist to have a prescription from a physician to administer the shingles vaccine.

The bill amends s. 456.42, F.S., and s. 863.04(2)(d) by permitting a date on a prescription for a controlled substance listed in ch. 893, F.S., to be in the numeric month/day/year format or the month written out in whole.

The bill removes the requirement that the date required under s. 456.42, F.S., and the written quantity and date required under s. 839.04(2), F.S. must be on the face of the prescription.

The bill amends s. 839.04(2), F.S., by adding the requirement that the notation of the date be legible.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

Pharmacists

Pharmacists are regulated under ch. 465, F.S., the Florida Pharmacy Act (act), by the board within the Department of Health (department). A pharmacist is any person licensed under the act to practice the profession of pharmacy.¹

The practice of professional pharmacy includes:²

- Compounding, dispensing, and consulting related to contents, therapeutic values, and uses of any medicinal drug;
- Consulting related to therapeutic values and interactions of patent or proprietary preparations; and
- Other pharmaceutical services, which include: monitoring, reviewing, or assisting a patient in the management of the patient's drug therapy and communicating with the patient's prescribing health care provider or others, as authorized by the patient, regarding the drug therapy.

A person practicing the profession of pharmacy is not authorized to alter a prescriber's instructions, diagnose or treat any disease, initiate any drug therapy, or practice medicine or osteopathic medicine, unless specifically permitted by law. A pharmacist is authorized to transmit information from persons authorized to prescribe medicinal drugs to their patients.³

To be licensed as a pharmacist, a person must:

- Submit an application form and the required fees.
- Submit satisfactory proof that the applicant is not less than 18 years of age and is a recipient of a degree from an accredited school or college of pharmacy; or is a graduate of a 4-year undergraduate pharmacy program of a school or college of pharmacy located outside the United States, has demonstrated proficiency in English, has passed the Foreign Pharmacy Graduate Equivalency Examination, and has completed a minimum of 500 hours in a supervised work activity program within Florida under the supervision of a pharmacist licensed by the department.
- Submit satisfactory proof that the applicant has completed an internship program, which must not exceed 2,080 hours.
- Successfully complete the licensure examination.⁴

¹ Section 465.003(10), F.S.

² Section 465.003(13), F.S.

³ Section 465.003(13), F.S.

⁴ Section 465.007, F.S. Florida law also allows a pharmacist to obtain a license by endorsement as an alternative to licensure by examination. *See s. 465.0075, F.S.*

Pharmacy Technicians

Florida law authorizes a licensed pharmacist to delegate certain duties, exclusive of acts that constitute the practice of professional pharmacy as defined in s. 465.003(13), F.S., to a pharmacy technician who is registered with the board. All delegated acts must be performed under the direct supervision⁵ of the pharmacist and the pharmacist retains the professional and personal responsibility for the acts.⁶ The acts a registered pharmacy technician may perform include:⁷

- Retrieval of prescription files;
- Data entry;
- Label preparation;
- Counting, weighing, measuring, pouring, and mixing prescription medication or stock legend drugs and controlled substances;
- Initiating communication with a prescribing practitioner or medical staff regarding requests for prescription refill authorization, clarification of missing information on prescriptions, and confirmation of information such as names, medication, and strength; and
- Accepting authorization for prescription renewals.

Pharmacy technicians are prohibited from performing the following acts:⁸

- Receiving new verbal prescriptions or any change in the medication, strength, or directions;
- Interpreting a prescription or medication order for therapeutic acceptability and appropriateness;
- Conducting a final verification of dosage and directions;
- Engaging in prospective drug review;
- Providing patient counseling;
- Monitoring prescription drug usage; and
- Overriding clinical alerts without first notifying the pharmacist.

Any person desiring to become a registered pharmacy technician must register by filing an application with the board. The board must register each applicant who:

- Completes the application form and submits the required fees.
- Is at least 17 years of age.
- Has completed a pharmacy technician training program approved by the board. Approved programs include programs accredited or licensed by specified national organizations, and employer-based programs. Employer-based programs must provide 160 hours of training over a period not to exceed 6 months, limited to employees of the pharmacy, and subject to approval by the board.⁹
- A pharmacy technician who registered prior to January 1, 2011, and who has worked as a pharmacy technician for a minimum of 1,500 hours under the supervision of a licensed pharmacist or received certification as a pharmacy technician by a certification program

⁵ Chapter 465, F.S., does not contain a definition of “direct supervision.” The Rules Committee of the board discussed this issue at its February meeting, but did not take final action. The issue is expected to be on the committee’s agenda again during its April meeting.

⁶ Section 465.014(1), F.S.; Rule 64B16-27.1001(7), F.A.C.

⁷ Rule 64B16-27.420, F.A.C.

⁸ *Id.*

⁹ Rule 64B16-26.351 F.A.C.

accredited by the National Commission for Certifying Agencies is exempt from the requirement to complete an initial training program in order to register.¹⁰

A person who is licensed by the state as a pharmacy intern may be employed as a registered pharmacy technician without registering as a pharmacy technician.¹¹

Pharmacy technicians must complete 20 hours of continuing education in one or more of the following areas during the 24 months prior to renewal:¹²

- Pharmacy technician practice areas and special health.
- Biological, physical, behavioral, and social sciences.
- Legal aspects of health care.
- Management/administration of health care personnel and patient care.
- Teaching/learning process of health care personnel and patients.

The board also recognizes advanced coursework at an accredited educational institution as continuing education.

Pharmacist Supervision

A licensed pharmacist may not supervise more than one registered pharmacy technician, unless otherwise permitted by the guidelines adopted by the board. The board may authorize supervision of a maximum of three pharmacy technicians.¹³

The guidelines require a pharmacist to submit a written request and receive approval by the board before supervising more than one registered pharmacy technician. The board considers the following in determining the pharmacist-to-pharmacy technician ratio:¹⁴

- A brief description of the pharmacy's workflow justifying the request;
- The hours the pharmacy is open; and,
- The number of pharmacists, pharmacy interns, and pharmacy technicians employed.

All registered pharmacy technicians must wear a name badge that identifies them as a pharmacy technician, and verbally identify themselves as such during any communication.¹⁵

At the end of the first quarter of fiscal year 2013-2014, there were 44,492 registered pharmacy technicians, 31,445 pharmacists and 9,179 licensed pharmacies. Of the licensed pharmacies, 4,436 had a ratio of three pharmacy technicians to one pharmacist, and 580 pharmacies had a ratio of two pharmacy technicians to one pharmacist.¹⁶ According to the December 2013 Aggregate Demand Index compiled by the Pharmacy Manpower Project, Inc. (project),¹⁷ Florida

¹⁰ Section 465.014(2), F.S.

¹¹ Section 465.014(5), F.S.

¹² Rule 64B16-26.103(4), F.A.C.

¹³ Section 465.014(1), F.S.

¹⁴ Rule 64B16-27.410, F.A.C.

¹⁵ Rule 64B16-27.420(4), F.A.C.

¹⁶ Florida Dept. of Health, *2014 Agency Legislative Bill Analysis: SB 278* (Nov. 6, 2013).

¹⁷ Members of the Pharmacy Manpower Project, which collects, analyzes, and disseminates data on the supply of licensed pharmacists in the United States, include: the Academy of Managed Care Pharmacy, the American Association of Colleges

has a ranking of 2.33, meaning Florida does not have a shortage of pharmacists. Specifically, the Florida ranking falls between “demand is less than the pharmacist supply available” and “demand is in balance with supply” on the scale used by the project.¹⁸

As of 2009, Florida was among 18 states allowing a maximum 1 to 3 pharmacist-to-pharmacist technician ratio.¹⁹ Seventeen states and the District of Columbia had no ratio limits; eight states allowed a maximum 1 to 2 pharmacist-to-pharmacist technician ratio; seven states allowed a 1 to 4 ratio; and one state allowed a 1 to 1 ratio. More recently, Indiana and Idaho have allowed a 1 to 6 ratio.²⁰ Some states require that higher ratios are contingent on certification or licensure of technicians, or other quality assurance measures.²¹

According to Florida Retail Federation (FRF), pharmacy technicians are trained individuals who assist pharmacists in dispensing medications by doing routine pharmacy tasks such as taking customer phone calls, creating labels, and taking payment for prescriptions. Their role allows pharmacists to delegate specific tasks.²² Valid training programs are listed under rule 64B16-26.351, F.A.C., which also provides for curriculum and provides that alternative programs must be a minimum of 160 hours in length (about one month full time) to six months maximum.

Concerns have been raised in past attempts to remove or alter the three technician cap. According to the Florida Pharmacy Association, pharmacists may have little say in their staffing needs or budget, and increased growth of health care needs can increase potential oversight by the supervising pharmacists who may not be able to accurately and appropriately review multiple technicians who hold no liability themselves.²³

Section 465.004, F.S., establishes the Board of Pharmacy. The board consists of nine members appointed by the Governor and confirmed by the Senate. Seven members of the board must be licensed pharmacists who are residents of this state and engaged in the practice of pharmacy for at least 4 years. Of the pharmacist members, one must be currently engaged in the practice of pharmacy in a community pharmacy, one must be currently engaged in the practice of pharmacy

of Pharmacy, the American College of Apothecaries, the American College of Clinical Pharmacy, the American Pharmaceutical Association, the American Society of Consultant Pharmacists, the American Society of Health-System Pharmacists, the Bureau of Health Professions, the Healthcare Distribution Management Association, the National Association of Chain Drug Stores, the National Community Pharmacists Association, the National Council of State Pharmacy Association Executives, the National Pharmaceutical Association, the Pharmaceutical Research and Manufacturers Association, and the Pharmacy Technicians Certification Board.

¹⁸ Aggregate Demand Index, Supported by Pharmacy Manpower Project Inc., *available at* <http://www.pharmacymanpower.com/about.jsp> (last visited Feb. 20, 2014).

¹⁹ National Association of Chain Drug Stores, *Standardized Pharmacy Technician Education and Training* (May 2009), *available at*: [http://www.nabp.net/events/assets/AnnualMtgTechTrainStd\(Nicholson\).pdf](http://www.nabp.net/events/assets/AnnualMtgTechTrainStd(Nicholson).pdf) (last visited Feb. 20, 2014).

²⁰ Indiana changed its ratio July 2, 2012. *See* Indiana Code, 25-26-13-18. *See also* Idaho Board of Pharmacy Rule 251. Pharmacy Technicians.

²¹ *See* National Association of Boards of Pharmacy: Kansas News: Pharmacy Technician Ratio (2006), <http://www.nabp.net/news/kansas-news-pharmacy-technician-ratio> (Last visited Feb. 20, 2014).

²² Florida Retail Technician, *Pharmacy Technician Ratio Expansion*, (2014) *available at* <http://www.frf.org/index.php/government-affairs/2014-issues/pharmacy/pharmacy-technician-ratio-expansion>.

²³ Conversation with Michael Jackson, Executive Vice President and CEO, Florida Pharmacy Association (March 14, 2014).

in a Class II institutional pharmacy²⁴ or a Modified Class II institutional pharmacy,²⁵ and five must be licensed pharmacists regardless of the type of practice.

Two members must be residents of this state who are not connected to the practice of pharmacy. One member of the board must be at least 60 years old. The members serve four years. Currently, there is one vacancy on the board.²⁶

Written Prescriptions

Section 456.42, F.S., provides that a written prescription for a controlled substance listed under ch. 893, F.S., must have the quantity of the drugs in both textual and written formats and must be dated with the abbreviated month written out on the face of the prescription. It also must be either written on a standardized counterfeit-proof prescription pad or electronically as defined in s. 408.0611, F.S.

Section 893.04, F.S., provides that each written prescription for a controlled substance listed in Schedule II, Schedule III, or Schedule IV must include both a written and a numerical notation of the quantity of the prescription on the face of the prescription and a notation of the date with the abbreviated month written out on the face of the prescription.

Vaccine Administration

Section 465.189, F.S., authorizes a pharmacist to administer the influenza, pneumococcal, and shingles vaccines under the protocol of a licensed physician. The pharmacist must also have a prescription from a physician to administer the shingles vaccine. A pharmacist who administers vaccines must maintain at least \$200,000 in liability insurance and complete a 20-hour certification course in the administration of vaccines and a 3-hour continuing education course biennially, thereafter.

III. Effect of Proposed Changes:

CS/CS/CS/SB 278 removes the cap on the number of pharmacy technicians the board may authorize a pharmacist to supervise. A licensed pharmacist may not supervise more than one technician, but may be able to supervise any number of technicians if permitted by the guidelines of the board.

The bill also revises the composition of the board to increase the number of pharmacists representing community and institutional class II pharmacies from one each to two each. The Governor is directed to make appointments in accordance with the revised composition as members' terms expire or vacancies occur.

²⁴ A Class II institutional pharmacy is an institutional pharmacy which employs the services of a registered pharmacist or pharmacists who, in practicing institutional pharmacy, shall provide dispensing and consulting services on the premises to patients of that institution for use on the premises of that institution. Section 465.019(2)(b), F.S.

²⁵ A Modified Class II institutional pharmacy is a pharmacy in short-term, primary care treatment centers that meet all the requirements for a Class II permit, except space and equipment requirements. Section 465.019(2)(c), F.S.

²⁶ See The Board of Pharmacy, available at <http://floridaspharmacy.gov/the-board/> (Last visited March 18, 2014).

The bill amends s. 465.189, F.S., to authorize pharmacists to administer the meningococcal vaccine under physician protocol and removes the requirement for a pharmacist to have a prescription from a physician to administer the shingles vaccine.

The bill amends s. 456.42, F.S., and s. 863.04(2)(d) F.S., by requiring that a written prescription for a controlled substance listed in ch. 893, F.S., must be dated in the numeric month/day/year format, or with the abbreviated month written out, or the month written out in whole.

The bill removes the requirement that the date required under s. 456.42, F.S., must be on the face of the prescription, and the bill removes the requirement that the written quantity and date under s. 839.04(2), F.S., must be on the face of the prescription.

The bill also amends s. 839.04(2), F.S., by adding the requirement that the notation of the date be legible.

The bill provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Privately-owned pharmacies may experience greater efficiency in operations, resulting in cost savings, by utilizing more pharmacy technicians in their operations. Individuals may be able to obtain meningococcal vaccine more easily and at a lower cost in a pharmacy. Likewise, the shingles vaccine may be more readily available from a pharmacy because the bill removes the requirement for a pharmacist to have a prescription in order to administer the vaccine.

C. Government Sector Impact:

The department will incur non-recurring costs for rulemaking, which current budget authority is adequate to absorb.²⁷ There will also be costs associated with requests made to the board to authorize a ratio greater than 1 to 1, although this cost is indeterminate because it is not possible to project how many pharmacies will make that request.

Like their private sector counterparts, publicly-owned pharmacies may experience greater efficiency in operations, resulting in cost savings, by utilizing more pharmacy technicians in their operations.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 456.42, 465.004, 465.014, 465.189, and 893.04.

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/CS by Rules on April 2, 2014:

The CS further revises the composition of the board to increase the number of representatives of community and institutional pharmacies by one each and provides for the transition in appointments to achieve the new composition.

The CS amends s. 465.189, F.S., to authorize pharmacists to administer the meningococcal vaccine under physician protocol and removes the requirement for a pharmacist to have a prescription from a physician to administer the shingles vaccine.

CS/CS by Regulated Industries on March 20, 2014:

The CS provides under s. 456.42, F.S., and s. 863.04(2)(d), F.S., that a written prescription for a controlled substance listed in ch. 893, F.S., must be dated in the numeric month/day/year format, or with the abbreviated month written out, or the month written out in whole.

The CS removes the requirement that the date required under s. 456.42, F.S., must be on the face of the prescription.

²⁷ Florida Dept. of Health, *2014 Agency Legislative Bill Analysis: SB 278* (Nov. 6, 2013).

The CS removes the requirement that the written quantity and date under s. 839.04(2), F.S., must be on the face of the prescription.

The CS amends s. 839.04(2), F.S., by adding the requirement that the notation of the date be legible.

CS by Health Policy on March 11, 2014:

The CS restores current law regarding the number of pharmacy technicians a pharmacist can supervise without board approval by removing the cap of six proposed by the bill as filed.

The CS restores current law regarding the board's authority to adopt guidelines for determining when a pharmacist may supervise more than one pharmacist.

The CS revises the composition of the board to increase the number of pharmacists representing community and institutional class II pharmacies from one each to three each.

B. Amendments:

None.



490438

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment

Delete lines 42 - 53
and insert:
various pharmacy practice settings. Of the pharmacist members,
two ~~one~~ must be currently engaged in the practice of pharmacy in
a community pharmacy, two ~~one~~ must be currently engaged in the
practice of pharmacy in a Class II institutional pharmacy or a
Modified Class II institutional pharmacy, and three must ~~five~~
~~shall~~ be pharmacists licensed in this state irrespective of
practice setting. The remaining two members must be residents of



490438

12 the state who have never been licensed as pharmacists and who
13 are in no way connected with the practice of the profession of
14 pharmacy. No person may be appointed as a consumer member who is
15 in any way connected with a drug manufacturer or wholesaler. At
16 least one member of the board must be 60 years of age or older.
17 The Governor shall appoint members to the board in accordance
18 with this subsection as members' terms expire or as a vacancy
19 occurs until the composition of the board complies with the
20 requirements of this subsection.



468864

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

Senate Amendment (with title amendment)

Between lines 53 and 54

insert:

Section 3. Paragraph (a) of subsection (6) of section 465.009, Florida Statutes, is amended to read:

465.009 Continuing professional pharmaceutical education.-

(6) Notwithstanding subsections (1)-(5):

(a) Each pharmacist certified to administer a vaccine or epinephrine autoinjection under s. 465.189 must complete a 3-hour continuing education course, which is ~~shall be~~ offered by a



468864

12 statewide professional association of physicians in this state
13 accredited to provide educational activities designated for the
14 American Medical Association Physician's Recognition Award (AMA
15 PRA) Category I credit, on the safe and effective administration
16 of vaccines and epinephrine autoinjection as part of biennial
17 relicensure or recertification. This course may be offered in a
18 distance-learning format and must be included in the 30 hours of
19 continuing professional pharmaceutical education specified in
20 subsection (1). Effective October 1, 2014, the continuing
21 education course required by this paragraph shall be increased
22 to a 4-hour course and must include a component on the safe and
23 effective administration of the meningococcal vaccine.

24 Section 4. Subsections (1) and (2) of section 465.189,
25 Florida Statutes, are amended to read:

26 465.189 Administration of vaccines and epinephrine
27 autoinjection.—

28 (1) In accordance with guidelines of the Centers for
29 Disease Control and Prevention for each recommended immunization
30 or vaccine, a pharmacist may administer the following vaccines
31 to an adult within the framework of an established protocol
32 under a supervising physician licensed under chapter 458 or
33 chapter 459:

- 34 (a) Influenza vaccine.
- 35 (b) Pneumococcal vaccine.
- 36 (c) Meningococcal vaccine.
- 37 (d) Shingles vaccine.

38 ~~(2) In accordance with guidelines of the Centers for~~
39 ~~Disease Control and Prevention, a pharmacist may administer the~~
40 ~~shingles vaccine within the framework of an established protocol~~



468864

41 ~~and pursuant to a written or electronic prescription issued to~~
42 ~~the patient by a physician licensed under chapter 458 or chapter~~
43 ~~459.~~

44
45 ===== T I T L E A M E N D M E N T =====

46 And the title is amended as follows:

47 Delete line 6

48 and insert:

49 the Board of Pharmacy; amending s. 465.009, F.S.;

50 revising continuing professional pharmaceutical

51 education requirements for certain pharmacists;

52 amending s. 465.189, F.S.; authorizing pharmacists to

53 administer meningococcal and shingles vaccines under

54 certain circumstances; amending ss. 456.42 and 893.04,



182652

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/02/2014	.	
	.	
	.	
	.	

The Committee on Rules (Latvala) recommended the following:

1 **Senate Amendment to Amendment (468864) (with title**
2 **amendment)**

3
4 Delete lines 5 - 23.

5
6 ===== T I T L E A M E N D M E N T =====

7 And the title is amended as follows:

8 Delete lines 49 - 51

9 and insert:

10 the Board of Pharmacy;

By the Committees on Regulated Industries; and Health Policy;
and Senator Grimsley

580-02895-14

2014278c2

1 A bill to be entitled
2 An act relating to pharmacy; amending s. 465.014,
3 F.S.; increasing the number of registered pharmacy
4 technicians which a licensed pharmacist may supervise;
5 amending s. 465.004, F.S.; revising the composition of
6 the Board of Pharmacy; amending ss. 456.42 and 893.04,
7 F.S.; requiring written prescriptions for specified
8 controlled substances to be legibly dated in a
9 specified format; providing an effective date.

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

11 Section 1. Subsection (1) of section 465.014, Florida
12 Statutes, is amended to read:

13 465.014 Pharmacy technician.—

14 (1) A person other than a licensed pharmacist or pharmacy
15 intern may not engage in the practice of the profession of
16 pharmacy, except that a licensed pharmacist may delegate to
17 pharmacy technicians who are registered pursuant to this section
18 those duties, tasks, and functions that do not fall within the
19 purview of s. 465.003(13). All such delegated acts must ~~shall~~ be
20 performed under the direct supervision of a licensed pharmacist
21 who ~~is shall be~~ responsible for all such acts performed by
22 persons under his or her supervision. A ~~pharmacy~~ registered
23 pharmacy technician, under the supervision of a pharmacist, may
24 initiate or receive communications with a practitioner or his or
25 her agent, on behalf of a patient, regarding refill
26 authorization requests. A licensed pharmacist may not supervise
27 more than one registered pharmacy technician unless otherwise
28
29

Page 1 of 4

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

580-02895-14

2014278c2

30 permitted by the guidelines adopted by the board. The board
31 shall establish guidelines to be followed by licensees or
32 permittees in determining the circumstances under which a
33 licensed pharmacist may supervise more than one ~~but not more~~
34 ~~than three~~ pharmacy technician technicians.

35 Section 2. Subsection (2) of section 465.004, Florida
36 Statutes, is amended to read:

37 465.004 Board of Pharmacy.—

38 (2) Seven members of the board must be licensed pharmacists
39 who are residents of this state and who have been engaged in the
40 practice of the profession of pharmacy in this state for at
41 least 4 years and, to the extent practicable, represent the
42 various pharmacy practice settings. Of the pharmacist members,
43 three ~~one~~ must be currently engaged in the practice of pharmacy
44 in a community pharmacy, three ~~one~~ must be currently engaged in
45 the practice of pharmacy in a Class II institutional pharmacy or
46 a Modified Class II institutional pharmacy, and one ~~five~~ shall
47 be a pharmacist ~~pharmacists~~ licensed in this state irrespective
48 of practice setting. The remaining two members must be residents
49 of the state who have never been licensed as pharmacists and who
50 are in no way connected with the practice of the profession of
51 pharmacy. No person may be appointed as a consumer member who is
52 in any way connected with a drug manufacturer or wholesaler. At
53 least one member of the board must be 60 years of age or older.

54 Section 3. Subsection (2) of section 456.42, Florida
55 Statutes, is amended to read:

56 456.42 Written prescriptions for medicinal drugs.—

57 (2) A written prescription for a controlled substance
58 listed in chapter 893 must have the quantity of the drug

Page 2 of 4

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

580-02895-14

2014278c2

59 prescribed in both textual and numerical formats, must be dated
 60 in numeric month/day/year format, or with the abbreviated month
 61 written out, or the month written out in whole ~~on the face of~~
 62 ~~the prescription~~, and must be either written on a standardized
 63 counterfeit-proof prescription pad produced by a vendor approved
 64 by the department or electronically prescribed as that term is
 65 used in s. 408.0611. As a condition of being an approved vendor,
 66 a prescription pad vendor must submit a monthly report to the
 67 department that ~~which~~, at a minimum, documents the number of
 68 prescription pads sold and identifies the purchasers. The
 69 department may, by rule, require the reporting of additional
 70 information.

71 Section 4. Paragraph (d) of subsection (2) of section
 72 893.04, Florida Statutes, is amended to read:

73 893.04 Pharmacist and practitioner.—

74 (2)

75 (d) Each written prescription prescribed by a practitioner
 76 in this state for a controlled substance listed in Schedule II,
 77 Schedule III, or Schedule IV must include both a written and a
 78 numerical notation of the quantity of the controlled substance
 79 ~~prescribed on the face of the prescription~~ and a legible
 80 notation of the date in numeric month/day/year format, or, with
 81 the abbreviated month written out, or the month written out in
 82 whole ~~on the face of the prescription~~. A pharmacist may, upon
 83 verification by the prescriber, document any information
 84 required by this paragraph. If the prescriber is not available
 85 to verify a prescription, the pharmacist may dispense the
 86 controlled substance but may insist that the person to whom the
 87 controlled substance is dispensed provide valid photographic

Page 3 of 4

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

580-02895-14

2014278c2

88 identification. If a prescription includes a numerical notation
 89 of the quantity of the controlled substance or date, but does
 90 not include the quantity or date written out in textual format,
 91 the pharmacist may dispense the controlled substance without
 92 verification by the prescriber of the quantity or date if the
 93 pharmacy previously dispensed another prescription for the
 94 person to whom the prescription was written.

95 Section 5. This act shall take effect July 1, 2014.

Page 4 of 4

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

Did not speak -
bill was TPD

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic Pharmacy Tech

Bill Number 278
(if applicable)

Name Dr. Jonathan Hickman

Amendment Barcode _____
(if applicable)

Job Title Pharmacist

Address 8314 Univeress Dr

Phone 904-655-6385

^{Street}
Tallahassee Fl 32312
_{City} _{State} _{Zip}

E-mail DrJimH1@aol.com

Speaking: For Against Information

Representing Walgreens

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

Did not speak -
bill was TP'd

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/2014

Meeting Date

Topic PHARMACY TECHNICIANS

Bill Number 278
(if applicable)

Name MICHAEL JACKSON

Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE VICE PRESIDENT & CEO

Address 610 N. ADAMS ST

Phone 850 222-2400

TALLAHASSEE FL 32301
City State Zip

E-mail MJACKSON@PHARMVIEW.COM

Speaking: For Against Information

Representing FLORIDA PHARMACY ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

Did not speak -
bill was TP'd

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/2014

Meeting Date

Topic Pharmacy Technician Ratio

Bill Number 278
(if applicable)

Name Natalie Ciccone

Amendment Barcode _____
(if applicable)

Job Title Pharm. D. Candidate (Pharmacy student intern)

Address 541 SE Woods Edge Trail

Phone 845-721-5683

Street

Stuart
City

FL
State

34997
Zip

E-mail NRCLRx@gmail.com

Speaking: For Against Information

Representing Myself

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

Did not speak -
bill was TP'd

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

3/26/14
Meeting Date

Topic Pharmacy Technician Supervision

Bill Number CS/CS/SB 278
(if applicable)

Name Larry Gonzalez

Amendment Barcode _____
(if applicable)

Job Title General Counsel, FSHP*

Address 223 S. Garden St.

Phone 850-222-0465

Tallahassee FL 32301
City State Zip

E-mail lgonz@earthlink.net

Speaking: For Against Information

Representing Florida Society of Health-System Pharmacists

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

Did not speak -
bill was TP'd

THE FLORIDA SENATE

APPEARANCE RECORD

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

3 126 2014
Meeting Date

Topic _____

Bill Number 278
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street
SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Rules

BILL: CS/SB 292

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Hays

SUBJECT: Public Records/Prepaid Wireless E911 Fee

DATE: March 25, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	CU	Favorable
2.	Kim	McVaney	GO	Fav/CS
3.	Caldwell	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 292 expands an existing public records exemption for information contained in tax returns, reports, and other documents that retail sellers of wireless communications services and devices provide to the Department of Revenue when remitting prepaid wireless E911 fees collected from customers. This bill makes proprietary confidential business information provided to the E911 Board of Directors, the Technology Program within the Department of Management Services, or to the Department of Revenue as agent of the E911 Board, confidential and exempt from public disclosure.

The exemptions are subject to the Open Government Sunset Review Act and will repeal on October 2, 2019, unless reviewed and reenacted by the Legislature. The bill contains a public necessity statement as required by the Florida Constitution. Because this bill expands a public records exemption, it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage.

II. Present Situation:

Florida's Public Records Law

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ 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 provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ 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 to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Taxpayer Records Provided to the Department of Revenue

The Department of Revenue is currently not authorized to share information with the E911 Board, nor is the Department of Revenue authorized to share information related to E911 revenue with the Department of Management Services.¹³

Proprietary Confidential Business Information submitted to the E911 Board or the Technology Program

Section 365.174, F.S. provides that the proprietary confidential business information submitted by a provider to the E911 Board or to the Technology Program within the Department of Management Services is confidential and exempt from public disclosure.¹⁴ This section also provides that propriety confidential business information includes information about customers, usage and capacity data, technological information and trade secrets.

III. Effect of Proposed Changes:

Pursuant to s. 365.172(8), F.S., communications service providers collect E911 fees from customers who remit monthly payments and, in turn, remit those fees to the E911 Board. Until July 1, 2013, E911 fees were not assessed on or collected if an end user's service was a prepaid calling arrangement which included prepaid calling cards and prepaid wireless services sold by retailers.¹⁵ At issue was the complexity of collecting and remitting E911 fees by retailers who were not communications service providers. SB 294, the substantive bill related to this bill, creates a mechanism for collection of the E911 fees from retailers. This bill makes the information that is submitted to the Department of Revenue confidential and exempt from public record disclosure and allows the Department of Revenue, the E911 Board, and the Technology Program within the Department of Management Services to share those records.

Section 1 provides that all proprietary confidential business information submitted by a provider to the E911 Board, to the Technology Program within the Department of Management Services, or to the Department of Revenue as an agent of the E911 Board is confidential and exempt from public disclosure. This section provides that the exemption stands repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature through the Open Government Sunset Review Act.

Section 2 provides the legislative finding of public necessity that the disclosure of any confidential proprietary business information contained in returns, reports, accounts, or declarations received by the Department of Revenue or submitted to the E911 Board, the Technology Program within the Department of Management Services, or the Department of Revenue as an agent of the Board would adversely affect the business interests of prepaid wireless service providers or sellers who provide the information by harming them in the market

¹³ Section 213.053(8)(q), F.S., provides that the Department of Revenue is limited to providing information related to ss 175.111 and 185.09, F.S. to the Department of Management Services.

¹⁴ Section 365.174(1) provides that statistical abstracts that do not contain information which identifies subscribers or revenue attributable to a provider can be released.

¹⁵ S. 365.172(8)(a)3.

place and impair competition in the communications industry.¹⁶ The public necessity statement also provides that the disclosure of data that reveals the business interests of prepaid wireless service providers or sellers creates a competitive disadvantage and an unfair advantage for their competitors who can use the information to impair full and fair competition and impede competition in the wireless marketplace to the disadvantage of consumers of wireless service. Finally, the public necessity statement provides that the public and private harm resulting in the disclosure of the information significantly outweighs any public benefit derived from the disclosure and ability of the public to scrutinize or monitor agency action is not diminished by nondisclosure of the information.

Section 3 provides that the bill is effective at the same time that SB 294, or similar legislation, takes effect.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The Florida Constitution provides that only the Legislature may create an exemption to the right of access to public records.¹⁷ Such an exemption must be created by general law, be passed by a two-thirds vote of each house of the Legislature, provide a statement of public necessity, and be as narrowly drafted as possible to accomplish the stated public necessity.¹⁸

Because this bill expands an existing public records exemption,¹⁹ it requires a two-thirds vote of the members present and voting in each house of the Legislature for passage. This bill includes a public necessity statement and is narrowly tailored.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁶ Article I, Section 24(c) of the Florida Constitution requires that when a new public records exemption is enacted, a public necessity statement justifying the exemption must be included.

¹⁷ Art. I, s. 24(c) of the State Constitution.

¹⁸ *Id.*

¹⁹ S. 365.174, F.S.

B. Private Sector Impact:

Prepaid wireless providers and sellers may be more willing to provide proprietary confidential business information to the Department of Revenue, the E911 Board, and the Technology Program within the Department of Management Services with the exemption in place.

C. Government Sector Impact:

The ability of the Department of Revenue, the E911 Board, or the Technology Program within the Department of Management Services to share confidential information may improve effectiveness and efficiency in the administration of the prepaid wireless E911 fees.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 365.174 of the Florida Statutes.

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

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

CS by Governmental Oversight and Accountability on March 6, 2014:

The CS removes a redundant public records exemption expansion for the Department of Revenue under s. 213.053, F.S. The CS also inserts a missing bill number so that CS/SB 292 will take effect at the same time as SB 294.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Hays

585-02221-14

2014292c1

1 A bill to be entitled
2 An act relating to public records; amending s.
3 365.174, F.S.; providing an exemption from public
4 records requirements for proprietary confidential
5 business information submitted by a wireless service
6 provider to the Department of Revenue; authorizing the
7 Department of Revenue to share such information with
8 the Secretary of Management Services and the E911
9 Board; providing for future legislative review and
10 repeal; providing a statement of public necessity;
11 providing a contingent effective date.
12
13 Be It Enacted by the Legislature of the State of Florida:
14
15 Section 1. Section 365.174, Florida Statutes, is amended to
16 read:
17 365.174 Proprietary confidential business information.—
18 (1) (a) All proprietary confidential business information
19 submitted by a provider to the board or the office, ~~including~~
20 ~~the name and billing or service addresses of service~~
21 ~~subscribers, and trade secrets as defined by s. 812.081,~~ is
22 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
23 of the State Constitution.
24 (b) Statistical abstracts of information collected by the
25 board or the office may be released or published, but only in a
26 manner that does not identify or allow identification of
27 subscribers or their service numbers or of revenues attributable
28 to any provider.
29 (2) (a) All proprietary confidential business information

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30 submitted by a provider to the Department of Revenue, as an
31 agent of the board, is confidential and exempt from s. 119.07(1)
32 and s. 24(a), Art. I of the State Constitution.
33 (b) The Department of Revenue may provide information
34 relative to s. 365.172(9) to the Secretary of Management
35 Services, or his or her authorized agent, or to the E911 Board
36 established in s. 365.172(5) for use in the conduct of the
37 official business of the Department of Management Services or
38 the E911 Board.
39 (c) This subsection is subject to the Open Government
40 Sunset Review Act in accordance with s. 119.15 and shall stand
41 repealed on October 2, 2019, unless reviewed and saved from
42 repeal through reenactment by the Legislature.
43 (3) ~~(2)~~ As used in this section, the term "proprietary
44 confidential business information" means customer lists,
45 customer numbers, individual or aggregate customer data by
46 location, usage and capacity data, network facilities used to
47 serve subscribers, technology descriptions, technical
48 information, or trade secrets, including trade secrets as
49 defined in s. 812.081, and the actual or developmental costs of
50 E911 systems that are developed, produced, or received
51 internally by a provider or by a provider's employees,
52 directors, officers, or agents.
53 Section 2. The Legislature finds that it is a public
54 necessity that proprietary confidential business information
55 submitted by a prepaid wireless service provider to the
56 Department of Revenue, as an agent of the E911 Board, be made
57 confidential and exempt from s. 119.07(1), Florida Statutes, and
58 s. 24(a), Article I of the State Constitution. The disclosure of

Page 2 of 3

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585-02221-14

2014292c1

59 such information would adversely affect the business interests
60 of prepaid wireless service providers providing the information
61 by harming them in the marketplace and would impair competition
62 in the communications industry. Disclosure of data that reveals
63 the business interests of prepaid wireless service providers
64 creates a competitive disadvantage and an unfair advantage for
65 their competitors. Competitors can use such information to
66 impair full and fair competition and impede competition in the
67 wireless marketplace to the disadvantage of consumers of
68 wireless services. Thus, the public and private harm in
69 disclosing this information significantly outweighs any public
70 benefit derived from disclosure, and the ability of the public
71 to scrutinize or monitor agency action is not diminished by
72 nondisclosure of this information.

73 Section 3. This act shall take effect on the same date that
74 SB 294 or similar legislation takes effect, if such legislation
75 is adopted in the same legislative session or an extension
76 thereof and becomes a law.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26

Meeting Date

Topic 911

Bill Number SB 292
(if applicable)

Name JIM SMITH

Amendment Barcode _____
(if applicable)

Job Title DIRECTOR

Address 315 S CALHOUN ST

Phone 212 5901

Street

TALLAHASSEE 32301

E-mail James.Smith@CenturyLink.com

City

State

Zip

Speaking: For Against Information

Representing CENTURY LINK

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic E911 Records

Bill Number 292
(if applicable)

Name Troy McNichols

Amendment Barcode _____
(if applicable)

Job Title AT&T External Affairs

Address 12152 Research Pkwy #130

Phone 407 492 8934

Orlando FL 32806
City State Zip

E-mail tm913x@att.com

Speaking: For Against Information

Representing AT&T

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

SENATOR ALAN HAYS
11th District

MEMORANDUM

To: Senator John Thrasher, Chair
Committee on Rules
CC: John B. Phelps, Staff Director
Tamra Lyon, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to Agenda SB 292 – Public Records/Prepaid Wireless E911 Fee

Date: March 6, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
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 Rules

BILL: CS/SB 366

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Brandes

SUBJECT: Public Records/Trade Secrets/Computers

DATE: March 25, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.	Cellon	Cannon	CJ	Favorable
3.	Kim	McVaney	GO	Fav/CS
4.	Wiehle	Phelps	RC	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 366 expands an existing public records exemption for data, programs, or supporting documentation that contain trade secrets as defined in s. 812.081, F.S., reside or exist internal or external to a computer, computer system, or computer network, and are held by an agency. This bill is the public records companion to CS/CS/SB 364, which provides criminal penalties for computer related crimes.

The exemption is subject to the Open Government Sunset Review Act and will automatically repeal on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a statement of public necessity as required by the Florida Constitution.

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

II. Present Situation:

Florida's Public Records Law

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ 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 provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ 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 to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

The Act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary to meet such public purpose.¹³ 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 governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁴

The Act also requires specified questions to be considered during the review process.¹⁵

Offenses Against Intellectual Property- Public Records Exemption

Section 815.04(3), F.S, makes data, programs, or supporting documentation that are a trade secret as defined in s. 812.081, F.S., reside or exist internal or external to a computer, computer system, or computer network, and are held by an agency as defined in chapter 119, confidential and exempt from the provisions of s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution. A person who willfully, knowingly, and without authorization discloses or takes such information commits an offense against intellectual property.

III. Effect of Proposed Changes:

CS/SB 366 is a public records bill linked to CS/CS/SB 364, which addresses computer crimes. CS/CS/SB 364 amends the law on computer related crimes by expanding terminology and creating additional offenses, including crimes related to electronic devices.¹⁶

¹³ Section 119.15(6)(b), F.S.

¹⁴ *Id.*

¹⁵ Section 119.15(6)(a), F.S. provides specified questions which the Legislature must consider:

- 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?

¹⁶ Appropriations Subcommittee on Criminal and Civil Justice Pre-Meeting Analysis, filed on March 11, 2014. The Summary section of the Analysis states:

CS/CS/SB 364 recognizes that advancements in technology have led to an increase in computer related crimes while greatly extending their reach. CS/CS/SB 364 addresses this increase in computer crimes by updating and expanding terminology used to define these crimes and creating additional offenses. Three crimes are added to "offenses against users of computer networks and electronic devices" including: Audio and video surveillance of an individual without that individual's knowledge by accessing any inherent feature or component of a computer, computer system, computer network, or electronic devices;

CS/SB 366 expands an existing public records exemption for computer related crimes to include electronic devices. CS/SB 366 is subject to the Open Government Sunset Review Act. This bill will stand repealed on October 2, 2019, unless reviewed and saved through reenactment by the Legislature prior to that date.

CS/SB 366 contains a finding of public necessity for this exemption. The public necessity statement provides:

that it is a public necessity that trade secrets and intellectual property be protected from disclosure by persons gaining unauthorized access into computer networks and electronic devices. Trade secrets and intellectual property are already afforded public records exemptions because of the immense importance of this type of proprietary information to the economic competition between this state and other states and nations. As technology continues to evolve, it is important that the existing public records exemption for trade secrets and intellectual property expand accordingly to encompass new technology used in association with sensitive trade secrets and intellectual property. Thus the Legislature declares that it is a public necessity that data, programs, and supporting documentation that are trade secrets, are held by an agency and reside or exist internal or external to a computer, computer system, computer network, or electronic device be confidential and exempt from the requirements of s. 119.07(1), F.S., and s. 24(a), Article I of the State Constitution.

The bill takes effect on the same date that CS/CS/SB 364 or similar legislation takes effect, if such legislation is adopted in the same legislative session or an extension thereof and becomes a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

The Florida Constitution provides that every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with

Intentionally interrupting the transmittal of data to or from, or gaining unauthorized access to a computer, computer system, computer network, or electronic device belonging to a mode of public or private transit; and
 Disrupting a computer, computer system, computer network, or electronic device that affects medical equipment used in the direct administration of medical care or treatment to a person.
 "Offenses against public utilities" are created in the bill and two additional crimes are created, including:
 Gaining access to a computer, computer system, computer network, or electronic device owned, operated, or used by a public utility while knowing that such access is unauthorized, a third degree felony; and
 Physically tampering with, inserting software into, or otherwise transmitting commands or electronic communications to a computer, computer system, computer network, or electronic device which cause a disruption in any service delivered by a public utility, a second degree felony.

respect to records exempted pursuant to this section or specifically made confidential by this Constitution.¹⁷ However, the Legislature may provide for the exemption of records from these requirements by general law passed by a two-thirds vote of each house, provided that such law shall state with specificity the public necessity justifying the exemption and shall be no broader than necessary to accomplish the stated purpose of the law.¹⁸ Such laws may contain only exemptions from these requirements and must relate to one subject.¹⁹

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Those persons who have trade secrets contained in documents held by agencies on computers and electronic devices will be better protected.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 815.04 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS makes technical changes and adds a missing bill number in Section 3.

¹⁷ Art. I, s. 24(c) of the State Constitution.

¹⁸ *Id.*

¹⁹ *Id.*

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 Governmental Oversight and Accountability;
and Senator Brandes

585-02893-14

2014366c1

A bill to be entitled

An act relating to public records; amending s. 815.04, F.S.; amending an exemption from public records requirements for data, programs, and supporting documentation that are trade secrets residing or existing internal or external to a computer, computer system, or computer network; expanding the exemption to include such trade secret information residing or existing internal or external to an electronic device; providing for legislative review and repeal of the exemption; providing a statement of public necessity; providing a contingent effective date.

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

Section 1. Subsection (3) of section 815.04, Florida Statutes, is amended to read:

815.04 Offenses against intellectual property; public records exemption.—

(3) (a) Data, programs, or supporting documentation that which is a trade secret as defined in s. 812.081, that is held by an agency as defined in chapter 119, and that which resides or exists internal or external to a computer, computer system, ~~or computer network, or electronic device which is held by an agency as defined in chapter 119~~ is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

(b) Whoever willfully, knowingly, and without authorization discloses or takes data, programs, or supporting documentation

Page 1 of 3

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which is a trade secret as defined in s. 812.081 or is confidential as provided by law residing or existing internal or external to a computer, computer system, or computer network commits an offense against intellectual property.

(c) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that data, programs, or supporting documentation that is a trade secret as defined in s. 812.081, Florida Statutes, that is held by an agency as defined in chapter 119, Florida Statutes, and that resides or exists internal or external to an electronic device be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution. The public release of such data, programs, and supporting documentation would negatively impact the business interests of those providing an agency such trade secrets by damaging the business in the marketplace. Without the public records exemption, those entities and individuals disclosing such trade secrets would hesitate to cooperate with that agency, which would impair the effective and efficient administration of governmental functions. Thus, the public and private harm in disclosing data, programs, or supporting documentation that is a trade secret, and that resides or exists internal or external to an electronic device, significantly outweighs any public benefit derived from disclosure, and the public's ability to scrutinize and monitor agency action is not diminished by the nondisclosure of such trade secrets.

Page 2 of 3

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585-02893-14

2014366c1

59 Section 3. This act shall take effect on the same date that
60 SB 364 or similar legislation takes effect, if such legislation
61 is adopted in the same legislative session or an extension
62 thereof and becomes a law.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/201

Meeting Date

Topic _____

Bill Number 366
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

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E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



The Florida Senate

Committee Agenda Request

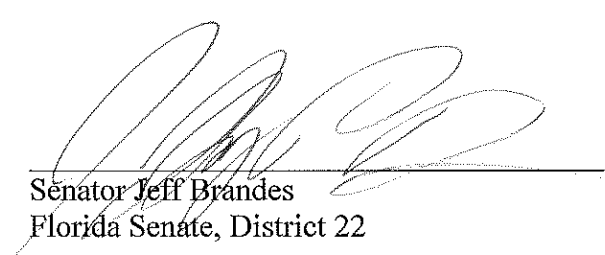
To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 20, 2014

I respectfully request that **Senate Bill # 366**, relating to Public Records / Trade Secrets / Computers, be placed on the:

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



Senator Jeff Brandes
Florida Senate, District 22

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 Rules

BILL: CS/SB 390

INTRODUCER: Health Policy Committee and Senator Hays

SUBJECT: Public Records/Identifying Information of Personnel of Department of Health

DATE: March 25, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Peterson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 390 creates a public records exemption for certain personal identification and location information of the Department of Health (DOH) personnel, their spouses, and children. The exemption applies to records of personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints against health care practitioners, or the inspection of health care practitioners or health care facilities.

The exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill contains a public necessity statement as required by the Florida Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records Laws

The Florida Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or

employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.²

The Florida Statutes also specify conditions under which public access must be provided to government records. The Public Records Act³ guarantees every person's right to inspect and copy any state or local government public record⁴ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ 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 provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly-created or substantially-amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2 of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹ 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 to meet such public purpose.¹²

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

³ Chapter 119, F.S.

⁴ Section 119.011(12), F.S., defines "public records" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)). *But see* s. 11.0431, F.S. (Providing public access to records of the Senate and the House of Representatives, subject to specified exemptions.)

⁵ Section 119.07(1)(a), F.S.

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see* Attorney General Opinion 85-62, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹¹ Section 119.15(3), F.S.

¹² Section 119.15(6)(b), F.S.

Public Records Exemptions for Agency Personnel Identification and Location Information

Current law provides public records exemptions for identification and location information of certain current or former agency personnel and their spouses and children.¹³ Categories of personnel covered by these exemptions include:

- Law enforcement, including correctional, and specified investigatory personnel;¹⁴
- Firefighters;¹⁵
- Justices and judges;¹⁶
- Local and statewide prosecuting attorneys;¹⁷
- Magistrates, administrative law judges, and child support hearing officers;¹⁸
- Local government agency and water management district human resources administrators;¹⁹
- Code enforcement officers;²⁰
- Guardians ad litem;²¹
- Specified Department of Juvenile Justice personnel;²²
- Public defenders and criminal conflict and civil regional counsel;²³
- Investigators or inspectors of the Department of Business and Professional Regulation;²⁴ and,
- County tax collectors.²⁵

Although the types of exempt information vary, the following information is exempt²⁶ from public records requirements for all personnel listed above:

- Home addresses and telephone numbers²⁷ of the named personnel;
- Home addresses, telephone numbers, and places of employment of the spouses and their children; and,
- Names and locations of schools and day care facilities attended by their children.

¹³ See s. 119.071(4)(d), F.S.

¹⁴ See s. 119.071(4)(d)2.a., F.S.

¹⁵ See s. 119.071(4)(d)2.b., F.S.

¹⁶ See s. 119.071(4)(d)2.c., F.S.

¹⁷ See s. 119.071(4)(d)2.d., F.S.

¹⁸ See s. 119.071(4)(d)2.e., F.S. This exemption applies only if the magistrate, administrative law judge, or child support hearing officer provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public.

¹⁹ See s. 119.071(4)(d)2.f., F.S.

²⁰ See s. 119.071(4)(d)2.g., F.S.

²¹ See s. 119.071(4)(d)2.h., F.S. This exemption applies only if the guardian ad litem provides a written statement that he or she has made reasonable efforts to protect such information from being accessible through other means available to the public. A guardian ad litem may be a public employee, volunteer, or contract or appointed attorney. See s. 39.820(1), F.S.

²² See s. 119.071(4)(d)2.i., F.S.

²³ See s. 119.071(4)(d)2.j., F.S.

²⁴ See s. 119.071(4)(d)2.k., F.S.

²⁵ See s. 119.071(4)(d)2.l., F.S.

²⁶ See *supra* note 6.

²⁷ The term “telephone numbers” includes home, personal cellular, and personal pager telephone numbers, and telephone numbers associated with personal communications devices. See s. 119.071(4)(d)1., F.S.

If exempt information is held by an agency²⁸ that is not the employer of the protected person, he or she must submit a written request to that agency to maintain the public records exemption.²⁹

Department of Health

Regulation of Professions

The DOH is responsible for licensing and regulating health care practitioners in order to preserve the health, safety, and welfare of the public.³⁰ Practitioner regulation is conducted by the Division of Medical Quality (MQA) Assurance and includes the following professions:

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

²⁸ 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.

²⁹ Section 119.071(4)(d)3., F.S.

³⁰ Section 20.43(1)(g), F.S.

The following facilities are also regulated or inspected by MQA:³¹

- Body Piercing Establishments (s. 381.0075, F.S.)
- Brain and Spinal Cord Injury Programs (ss. 381.739 - 381.79, F.S.)
- Counterfeit-proof Prescription Vendors (s. 456.42(2), F.S.)
- Dental Laboratories (ch. 466, F.S.)
- Electrology Facilities (ch. 478, F.S.)
- Electrolysis Training Programs (ch. 478, F.S.)
- EMS Education Programs (ch. 401, F.S.)
- EMS Vehicle Permittees (ch. 401, F.S.)
- Environmental Testing Laboratories (s. 403.0625, F.S.)
- Massage Establishments (ch. 480, F.S.)
- Massage Schools (ch. 480, F.S.)
- Nursing Education Programs (ch. 464, F.S.)
- Office Surgery Sites (ch. 458 and ch. 459, F.S.)
- Optical Establishments (part I of ch. 484, F.S.)
- Pain Management Clinics (ch. 458 and ch. 459, F.S.)
- Pharmacies (ch. 465, F.S.)
- Trauma Centers (part II of ch. 395, F.S.)

As part of its enforcement responsibilities, the DOH investigates complaints against health care practitioners. It must investigate any complaint that is written, signed by the complainant,³² and legally sufficient,³³ and may initiate an investigation if it believes a violation of law or rule has occurred. Such an investigation may result in an administrative case against the health care practitioner's license.³⁴ The DOH also has a duty to notify the proper prosecuting authority when there is a criminal violation of any statute related to the practice of a profession regulated by the DOH.³⁵

The Consumer Services Unit (CSU) is the central intake for all complaints. The CSU includes investigators and analysts assigned to specific professions. Staff reviews each complaint for

³¹ Other entities regulated by the DOH, although not the MQA, include tanning facilities, X-ray sites, and radioactive materials users, among others.

³² The DOH may investigate an anonymous complaint or a complaint by a confidential informant if the alleged violation of law or rule is substantial and the DOH has reason to believe, after preliminary inquiry, that the violations alleged in the complaint are true. *See* s. 456.073(1), F.S.

³³ A complaint is legally sufficient if it contains ultimate facts that show a violation of ch. 456, F.S., of any of the practice acts relating to the professions regulated by the DOH, or of any rule adopted by the DOH or one of its regulatory boards has occurred. *See* s. 456.073(1), F.S.

³⁴ Upon completion of an investigation, the DOH must submit a report to the probable cause panel of the appropriate regulatory board. *See* s. 456.073(2), F.S. If the probable cause panel finds that probable cause exists, it must direct the DOH to file a formal administrative complaint against the licensee. If the DOH declines to prosecute the complaint because it finds that probable cause has been improvidently found by the panel, the regulatory board may still pursue and prosecute an administrative complaint. *See* s. 456.073(4), F.S.

³⁵ Section 456.066, F.S.

possible violations of laws and rules and forwards only those complaints that are legally sufficient for investigation.³⁶

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

- Obtaining medical records, documentation, and evidence related to the complaint;
- Locating and interviewing the complainant, the patient, the subject, and any witnesses;
- Drafting and serving subpoenas for necessary information; and
- Drafting the investigative report.

The ISU also conducts health care facility inspections required before beginning practice and on a periodic basis.³⁷

Disability Determinations

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

Applications for Social Security disability benefits are filed at the claimant's local SSA field office or online. The application is forwarded to the DDD for development, assessment, and determination of medical eligibility in accordance with Social Security regulations. All relevant medical evidence is procured from the claimant's medical sources. If the medical evidence is insufficient for a determination, the DDD will arrange for a consultative examination targeted to the claimant's alleged disability. The claimant is also contacted for detailed information on activities of daily living, clarification of symptoms, work history, and other pertinent information. After the claim file is documented and a determination of medical eligibility is made, DDD prepares and releases notification of denial to the claimant, or the claim file is returned to the SSA for a final determination of technical (non-medical) eligibility and processing for any benefits due the claimant.³⁸

Personal Identification and Location Information of DOH Personnel

Currently, the personal identification and location information of current or former employees or contractors³⁹ of the DOH whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the DOH, and that of their spouses and children, is not exempt from public

³⁶ Fla. Dept. of Health, *Consumer Services*, <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/consumer-services.html> (last visited Dec. 17, 2013).

³⁷ Fla. Dept. of Health, *Investigative Services Unit Brochure*, available at <http://www.floridahealth.gov/licensing-and-regulation/enforcement/admin-complaint-process/documents/isu-brochure.pdf> (last visited Dec. 13, 2013).

³⁸ E-mail from Rhonda J. Wilson, Director, Division of Disability Determinations, Fla. Dept. of Health, to Bryan Wendel, Fla. Dept. of Health (Feb. 3, 2014) (on file with the Senate Health Policy Committee).

³⁹ Section 456.009(2), F.S., authorizes the DOH to contract with outside counsel and outside personnel for the investigation and prosecution of complaints.

records requirements, unless the information is subject to another exemption, e.g. former law enforcement officers.

III. Effect of Proposed Changes:

The bill expands the current public records exemptions for identification and location information of certain agency personnel to include current and former DOH personnel whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health care practitioners or health care facilities licensed by the DOH, and their spouses and children.⁴⁰ The bill makes the following information exempt from public records requirements:

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

The bill provides that the exemption may be maintained only if the DOH personnel have made reasonable efforts to protect such information from being accessible through other means available to the public.

The exemption is subject to an existing general requirement that if exempt information is held by an agency that is not the employer of the protected agency personnel, then the protected agency personnel must submit to that agency a written request to maintain the public records exemption.

The bill provides for repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill provides a public necessity statement, which is required by the Florida Constitution. Specifically, the statement indicates that the exemption is needed to protect the covered personnel from potential risk of harm resulting when individuals who are subject to investigation or inspection react negatively to an adverse outcome or decision.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁴⁰ The personal identifying information of approximately 1,296 current or former DOH personnel and that of their families would be exempt. E-mail from Bryan Wendel, Fla. Dept. of Health, (Feb. 4, 2014) (on file with the Senate Health Policy Committee).

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

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting in each house of the Legislature for passage of a newly-created or expanded public records or public meetings exemption. Because this bill creates a new public records exemption, it requires a two-thirds vote for passage.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly-created or expanded public records or public meetings exemption. This bill creates a new public records exemption; therefore, it includes a public necessity statement.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 390 may create a minimal fiscal impact on agencies, due to training staff on the new public records exemption and additional administrative costs to comply with the new public records exemption.

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 Health Policy on February 4, 2014:

The CS expands the exemption to include personnel of the Department of Health whose duties include, or result in, the adjudication of eligibility for social security disability benefits.

- 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 Health Policy; and Senator Hays

588-01647-14

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1 A bill to be entitled
 2 An act relating to public records; amending s.
 3 119.071, F.S.; providing an exemption from public
 4 records requirements for certain identifying
 5 information of specific current and former personnel
 6 of the Department of Health and the spouses and
 7 children of such personnel, under specified
 8 circumstances; providing for future legislative review
 9 and repeal of the exemption under the Open Government
 10 Sunset Review Act; providing a statement of public
 11 necessity; providing an effective date.
 12
 13 Be It Enacted by the Legislature of the State of Florida:
 14
 15 Section 1. Paragraph (d) of subsection (4) of section
 16 119.071, Florida Statutes, is amended to read:
 17 119.071 General exemptions from inspection or copying of
 18 public records.—
 19 (4) AGENCY PERSONNEL INFORMATION.—
 20 (d)1. For purposes of this paragraph, the term “telephone
 21 numbers” includes home telephone numbers, personal cellular
 22 telephone numbers, personal pager telephone numbers, and
 23 telephone numbers associated with personal communications
 24 devices.
 25 2.a.(I) The home addresses, telephone numbers, social
 26 security numbers, dates of birth, and photographs of active or
 27 former sworn or civilian law enforcement personnel, including
 28 correctional and correctional probation officers, personnel of
 29 the Department of Children and Families whose duties include the

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30 investigation of abuse, neglect, exploitation, fraud, theft, or
 31 other criminal activities, personnel of the Department of Health
 32 whose duties are to support the investigation of child abuse or
 33 neglect, and personnel of the Department of Revenue or local
 34 governments whose responsibilities include revenue collection
 35 and enforcement or child support enforcement; the home
 36 addresses, telephone numbers, social security numbers,
 37 photographs, dates of birth, and places of employment of the
 38 spouses and children of such personnel; and the names and
 39 locations of schools and day care facilities attended by the
 40 children of such personnel are exempt from s. 119.07(1).
 41 (II) The names of the spouses and children of active or
 42 former sworn or civilian law enforcement personnel and the other
 43 specified agency personnel identified in sub-sub-subparagraph
 44 (I) are exempt from s. 119.07(1) and s. 24(a), Art. I of the
 45 State Constitution.
 46 (III) Sub-sub-subparagraph (II) is subject to the Open
 47 Government Sunset Review Act in accordance with s. 119.15, and
 48 shall stand repealed on October 2, 2018, unless reviewed and
 49 saved from repeal through reenactment by the Legislature.
 50 b. The home addresses, telephone numbers, dates of birth,
 51 and photographs of firefighters certified in compliance with s.
 52 633.408; the home addresses, telephone numbers, photographs,
 53 dates of birth, and places of employment of the spouses and
 54 children of such firefighters; and the names and locations of
 55 schools and day care facilities attended by the children of such
 56 firefighters are exempt from s. 119.07(1).
 57 c. The home addresses, dates of birth, and telephone
 58 numbers of current or former justices of the Supreme Court,

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59 district court of appeal judges, circuit court judges, and
 60 county court judges; the home addresses, telephone numbers,
 61 dates of birth, and places of employment of the spouses and
 62 children of current or former justices and judges; and the names
 63 and locations of schools and day care facilities attended by the
 64 children of current or former justices and judges are exempt
 65 from s. 119.07(1).

66 d.(I) The home addresses, telephone numbers, social
 67 security numbers, dates of birth, and photographs of current or
 68 former state attorneys, assistant state attorneys, statewide
 69 prosecutors, or assistant statewide prosecutors; the home
 70 addresses, telephone numbers, social security numbers,
 71 photographs, dates of birth, and places of employment of the
 72 spouses and children of current or former state attorneys,
 73 assistant state attorneys, statewide prosecutors, or assistant
 74 statewide prosecutors; and the names and locations of schools
 75 and day care facilities attended by the children of current or
 76 former state attorneys, assistant state attorneys, statewide
 77 prosecutors, or assistant statewide prosecutors are exempt from
 78 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

79 (II) The names of the spouses and children of current or
 80 former state attorneys, assistant state attorneys, statewide
 81 prosecutors, or assistant statewide prosecutors are exempt from
 82 s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

83 (III) Sub-sub-subparagraph (II) is subject to the Open
 84 Government Sunset Review Act in accordance with s. 119.15, and
 85 shall stand repealed on October 2, 2018, unless reviewed and
 86 saved from repeal through reenactment by the Legislature.

87 e. The home addresses, dates of birth, and telephone

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88 numbers of general magistrates, special magistrates, judges of
 89 compensation claims, administrative law judges of the Division
 90 of Administrative Hearings, and child support enforcement
 91 hearing officers; the home addresses, telephone numbers, dates
 92 of birth, and places of employment of the spouses and children
 93 of general magistrates, special magistrates, judges of
 94 compensation claims, administrative law judges of the Division
 95 of Administrative Hearings, and child support enforcement
 96 hearing officers; and the names and locations of schools and day
 97 care facilities attended by the children of general magistrates,
 98 special magistrates, judges of compensation claims,
 99 administrative law judges of the Division of Administrative
 100 Hearings, and child support enforcement hearing officers are
 101 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 102 Constitution if the general magistrate, special magistrate,
 103 judge of compensation claims, administrative law judge of the
 104 Division of Administrative Hearings, or child support hearing
 105 officer provides a written statement that the general
 106 magistrate, special magistrate, judge of compensation claims,
 107 administrative law judge of the Division of Administrative
 108 Hearings, or child support hearing officer has made reasonable
 109 efforts to protect such information from being accessible
 110 through other means available to the public.

111 f. The home addresses, telephone numbers, dates of birth,
 112 and photographs of current or former human resource, labor
 113 relations, or employee relations directors, assistant directors,
 114 managers, or assistant managers of any local government agency
 115 or water management district whose duties include hiring and
 116 firing employees, labor contract negotiation, administration, or

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117 other personnel-related duties; the names, home addresses,
 118 telephone numbers, dates of birth, and places of employment of
 119 the spouses and children of such personnel; and the names and
 120 locations of schools and day care facilities attended by the
 121 children of such personnel are exempt from s. 119.07(1) and s.
 122 24(a), Art. I of the State Constitution.

123 g. The home addresses, telephone numbers, dates of birth,
 124 and photographs of current or former code enforcement officers;
 125 the names, home addresses, telephone numbers, dates of birth,
 126 and places of employment of the spouses and children of such
 127 personnel; and the names and locations of schools and day care
 128 facilities attended by the children of such personnel are exempt
 129 from s. 119.07(1) and s. 24(a), Art. I of the State
 130 Constitution.

131 h. The home addresses, telephone numbers, places of
 132 employment, dates of birth, and photographs of current or former
 133 guardians ad litem, as defined in s. 39.820; the names, home
 134 addresses, telephone numbers, dates of birth, and places of
 135 employment of the spouses and children of such persons; and the
 136 names and locations of schools and day care facilities attended
 137 by the children of such persons are exempt from s. 119.07(1) and
 138 s. 24(a), Art. I of the State Constitution, if the guardian ad
 139 litem provides a written statement that the guardian ad litem
 140 has made reasonable efforts to protect such information from
 141 being accessible through other means available to the public.

142 i. The home addresses, telephone numbers, dates of birth,
 143 and photographs of current or former juvenile probation
 144 officers, juvenile probation supervisors, detention
 145 superintendents, assistant detention superintendents, juvenile

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146 justice detention officers I and II, juvenile justice detention
 147 officer supervisors, juvenile justice residential officers,
 148 juvenile justice residential officer supervisors I and II,
 149 juvenile justice counselors, juvenile justice counselor
 150 supervisors, human services counselor administrators, senior
 151 human services counselor administrators, rehabilitation
 152 therapists, and social services counselors of the Department of
 153 Juvenile Justice; the names, home addresses, telephone numbers,
 154 dates of birth, and places of employment of spouses and children
 155 of such personnel; and the names and locations of schools and
 156 day care facilities attended by the children of such personnel
 157 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 158 Constitution.

159 j. The home addresses, telephone numbers, dates of birth,
 160 and photographs of current or former public defenders, assistant
 161 public defenders, criminal conflict and civil regional counsel,
 162 and assistant criminal conflict and civil regional counsel; the
 163 home addresses, telephone numbers, dates of birth, and places of
 164 employment of the spouses and children of such defenders or
 165 counsel; and the names and locations of schools and day care
 166 facilities attended by the children of such defenders or counsel
 167 are exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 168 Constitution.

169 k. The home addresses, telephone numbers, and photographs
 170 of current or former investigators or inspectors of the
 171 Department of Business and Professional Regulation; the names,
 172 home addresses, telephone numbers, and places of employment of
 173 the spouses and children of such current or former investigators
 174 and inspectors; and the names and locations of schools and day

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175 care facilities attended by the children of such current or
 176 former investigators and inspectors are exempt from s. 119.07(1)
 177 and s. 24(a), Art. I of the State Constitution if the
 178 investigator or inspector has made reasonable efforts to protect
 179 such information from being accessible through other means
 180 available to the public. This sub-subparagraph is subject to the
 181 Open Government Sunset Review Act in accordance with s. 119.15
 182 and shall stand repealed on October 2, 2017, unless reviewed and
 183 saved from repeal through reenactment by the Legislature.

184 1. The home addresses and telephone numbers of county tax
 185 collectors; the names, home addresses, telephone numbers, and
 186 places of employment of the spouses and children of such tax
 187 collectors; and the names and locations of schools and day care
 188 facilities attended by the children of such tax collectors are
 189 exempt from s. 119.07(1) and s. 24(a), Art. I of the State
 190 Constitution if the county tax collector has made reasonable
 191 efforts to protect such information from being accessible
 192 through other means available to the public. This sub-
 193 subparagraph is subject to the Open Government Sunset Review Act
 194 in accordance with s. 119.15 and shall stand repealed on October
 195 2, 2017, unless reviewed and saved from repeal through
 196 reenactment by the Legislature.

197 m. The home addresses, telephone numbers, dates of birth,
 198 and photographs of current or former personnel of the Department
 199 of Health whose duties include, or result in, the determination
 200 or adjudication of eligibility for social security disability
 201 benefits, the investigation or prosecution of complaints filed
 202 against health care practitioners, or the inspection of health
 203 care practitioners or health care facilities licensed by the

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204 Department of Health; the names, home addresses, telephone
 205 numbers, dates of birth, and places of employment of the spouses
 206 and children of such personnel; and the names and locations of
 207 schools and day care facilities attended by the children of such
 208 personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of
 209 the State Constitution if the personnel have made reasonable
 210 efforts to protect such information from being accessible
 211 through other means available to the public. This sub-
 212 paragraph is subject to the Open Government Sunset Review Act
 213 in accordance with s. 119.15 and shall stand repealed on October
 214 2, 2019, unless reviewed and saved from repeal through
 215 reenactment by the Legislature.

216 3. An agency that is the custodian of the information
 217 specified in subparagraph 2. and that is not the employer of the
 218 officer, employee, justice, judge, or other person specified in
 219 subparagraph 2. shall maintain the exempt status of that
 220 information only if the officer, employee, justice, judge, other
 221 person, or employing agency of the designated employee submits a
 222 written request for maintenance of the exemption to the
 223 custodial agency.

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

227 5. Except as otherwise expressly provided in this
 228 paragraph, this paragraph is subject to the Open Government
 229 Sunset Review Act in accordance with s. 119.15, and shall stand
 230 repealed on October 2, 2017, unless reviewed and saved from
 231 repeal through reenactment by the Legislature.

232 Section 2. The Legislature finds that it is a public

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233 necessity that the home addresses, telephone numbers, dates of
234 birth, and photographs of current or former personnel of the
235 Department of Health whose duties include, or result in, the
236 determination or adjudication of eligibility for social security
237 disability benefits, the investigation or prosecution of
238 complaints filed against health care practitioners, or the
239 inspection of health care practitioners or health care
240 facilities licensed by the Department of Health; that the names,
241 home addresses, telephone numbers, dates of birth, and places of
242 employment of the spouses and children of such personnel; and
243 that the names and locations of schools and day care facilities
244 attended by the children of such personnel be made exempt from
245 public record requirements. The Legislature finds that the
246 release of such identifying and location information might place
247 these current or former personnel of the Department of Health
248 and their family members in danger of physical and emotional
249 harm from disgruntled individuals who have contentious reactions
250 to actions carried out by such personnel of the Department of
251 Health, or whose business or professional practices have come
252 under the scrutiny of investigators and inspectors of the
253 Department of Health. The Legislature further finds that the
254 harm that may result from the release of such personal
255 identifying and location information outweighs any public
256 benefit that may be derived from the disclosure of the
257 information.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-26-14

Meeting Date

Topic Pub. Rec. / Dept. of Health

Bill Number 390
(if applicable)

Name Paul Runk

Amendment Barcode _____
(if applicable)

Job Title Deputy Director of Leg. Planning

Address 2585 Merchants Row Blvd.

Phone 850-245-4006

Tallahassee FL 32399
City State Zip

E-mail paul.runk@flhealth.gov

Speaking: For Against Information

Representing Dept. of Health

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/2014

Meeting Date

Topic _____

Bill Number 390
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and Civil Justice
Banking and Insurance
Commerce and Tourism

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Co-Chair*
Joint Legislative Auditing Committee
Joint Legislative Budget Commission

SENATOR ALAN HAYS
11th District

MEMORANDUM

To: Senator John Thrasher, Chair
Rules Committee
CC: John B. Phelps, Staff Director
Tamra Lyon, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 390 – Public Records/Identifying Information of Personnel of Department of Health

Date: March 13, 2014

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in cursive script that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 110, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
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 Rules

BILL: CS/SB 408

INTRODUCER: Health Policy Committee and Senators Braynon and Sobel

SUBJECT: Needle and Syringe Exchange Pilot Program

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Peterson</u>	<u>Stovall</u>	<u>HP</u>	Fav/CS
2.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	Favorable
3.	<u>Peterson</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 408 creates the “Miami-Dade Infectious Disease Elimination Act (IDEA).” The IDEA requires the Department of Health (DOH) to establish a needle and syringe exchange pilot program in Miami-Dade County to prevent the transmission of HIV/AIDS, viral hepatitis, and other blood-borne diseases. The bill specifies the duties of the pilot program. The pilot program must be funded through private grants and donations.

The bill specifies that possession, distribution, or exchange of needles or syringes through the pilot program is not a violation of criminal law; however, possession or redistribution of syringes or needles outside of the program by staff, volunteers, or participants remains a violation subject to criminal prosecution.

The pilot program expires on July 1, 2019, or, if operated by a designee, 5 years after the entity is designated, and requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Legislature that includes data on the pilot program and a recommendation on whether the pilot program should continue.

II. Present Situation:

Syringe Exchange Programs

In the mid-1980s, the National Institute on Drug Abuse (NIDA) undertook a research program to develop, implement, and evaluate the effectiveness of intervention strategies to reduce risk behaviors and prevent the spread of human immunodeficiency virus/acquired immunodeficiency syndrome (HIV/AIDS), particularly among injection drug users (IDUs), their sexual partners, and offspring. The studies found that comprehensive strategies—in the absence of a vaccine or cure for AIDS—are the most cost effective and reliable approaches to prevent new blood-borne infections. The strategies NIDA recommends are community-based outreach, drug abuse treatment, and sterile syringe access programs, including syringe exchange programs (SEPs).^{1,2} In general, these strategies are referred to as harm reduction.

Syringe exchange programs provide free sterile syringes and collect used syringes from IDUs to reduce transmission of blood-borne pathogens, including HIV, hepatitis B virus, and hepatitis C virus (HCV). In addition, the programs help to:

- Increase the number of drug users who enter and remain in available treatment programs;
- Disseminate HIV risk reduction information and referrals for HIV testing and counseling and drug treatment;
- Reduce injection frequency and needle-sharing behaviors;
- Reduce the number of contaminated syringes in circulation in a community; and³
- Increase the availability of sterile needles, thereby reducing the risk that new infections will spread.⁴

¹ This analysis uses the terminology SEP, interchangeably with the term “needle exchange program” (NEP).

² National Institute of Drug Abuse, National Institutes of Health, U.S. Department of Health and Human Services, *Principles of HIV Prevention in Drug-Using Populations: A Research-Based Guide* (March 2002), available at [http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20\(17\).pdf](http://www.nhts.net/media/Principles%20of%20HIV%20Prevention%20(17).pdf) (last visited Feb. 11, 2014). See also World Health Organization, *Treatment of injecting drug users with HIV/AIDS: promoting access and optimizing service delivery* (2006), available at http://www.who.int/substance_abuse/publications/treatment_idus_hiv_aids.pdf (last visited Feb. 11, 2014); Centers for Disease Control, *Integrated Prevention Services for HIV Infection, Viral Hepatitis, Sexually Transmitted Diseases, and Tuberculosis for Persons Who Use Drugs Illicitly: Summary Guidance from CDC and the U.S. Department of Health and Human Services* (Nov. 12, 2012), available at <http://www.cdc.gov/mmwr/preview/mmwrhtml/rr6105a1.htm> (last visited Feb. 11, 2014); World Health Organization, United Nations Office on Drugs and Crime, and UNAIDS, *WHO, UNODC, UNAIDS Technical Guide for Countries to Set Targets for Universal Access to HIV Prevention, Treatment and Care for Injecting Drug Users*, 10 – 26 (2012 Revision), available at http://apps.who.int/iris/bitstream/10665/77969/1/9789241504379_eng.pdf (last visited Feb. 11, 2014); Institute of Medicine of the National Academies, *Preventing HIV Infection Among Injecting Drug Users in High Risk Countries* (September 2006), available at <http://iom.edu/Reports/2006/Preventing-HIV-Infection-among-Injecting-Drug-Users-in-High-Risk-Countries-An-Assessment-of-the-Evidence.aspx> (last visited Feb. 11, 2014).

³ Researchers from the University of Miami recently found that IDUs in Miami—a city without an SEP—were 34 times more likely to dispose of a used syringe in a public location than were IDUs in San Francisco—a city with multiple SEPs. Tookes, HE, Kral, AH, Wenger, LD, Cardenas, GA, Martinez, AN, Sherman, RL, Pereyra, M, Forrest, DW, LalLota, M, Metsch, LR. “A comparison of syringe disposal practices among injection drug users in a city with versus a city without needle and syringe programs.” *Drug and Alcohol Dependence*, June 2012, Vol. 123, Issue 1, pp 255-259, available at <http://www.ncbi.nlm.nih.gov/pubmed/22209091> (last visited Feb. 11, 2014).

⁴ National Institute of Drug Abuse, *supra* note 2, at 18. See also U.S. Department of Health and Human Services, David Satcher, MD, Assistant Secretary for Health and Surgeon General, *Evidence-based findings on the efficacy of syringe exchange programs: an analysis of the scientific research completed since April 1998* (March 17, 2000), available at

The first sanctioned SEP began in Amsterdam, the Netherlands, in 1984. The first sanctioned program to operate in North America originated in Tacoma, Washington in 1988. Programs have since developed throughout the United States.⁵ As of July 2013, thirty states, plus the District of Columbia and Puerto Rico, have a combined total of 214 SEPs.⁶

In 1988, Congress enacted a ban on the use of federal funds for SEPs. The ban remained in place until 2009, but was reinstated again at the end of 2011 as part of the omnibus spending bill that continued operations of the federal government through 2012.

Intravenous Drug Use in Florida

The majority of Florida counties with high rates of persons living with HIV/AIDS (PLWHA) with an IDU-associated risk through 2012 are primarily in the southeast or central part of the state.⁷ Researchers from the University of Miami recently estimated that there are more than 10,000 IDUs in Miami and that one in five of these IDUs are HIV positive and one in three are HCV positive.⁸ The DOH estimates that 50 - 90 percent of HIV-infected IUDs are also co-infected with HCV.⁹

The chart below contains data from 2012 of 11 counties with the highest incidence of PLWHA with an IDU-associated risk.¹⁰

County	Total PLWHA Cases	Total IDU	Percent IDU
Miami-Dade	25,544	3,274	13%
Broward	16,593	2,103	13%
Palm Beach	7,769	1,484	19%

<http://home.mchsi.com/~apclc/8fedstudies2.pdf> (last visited Feb. 11, 2014). In his report the Surgeon General noted, “The data indicate that the presence of a syringe exchange program does not increase the use of illegal drugs among participants in syringe exchange programs, and in many cases, a decrease in injection frequency has been observed among those attending these programs.” World Health Organization, *Effectiveness of Sterile Needle and Syringe Programming in Reducing HIV/AIDS Among Injecting Drug Users* (2004) 28 – 29, available at <http://www.who.int/hiv/pub/idu/pubidu/en/> (last visited Feb. 11, 2014) (Concluding specifically that injecting paraphernalia legislation is a barrier to effective HIV control among IDUs).

⁵ Sandra D. Lane, R.N., Ph.D., M.P.H., *Needle Exchange: A Brief History, a Publication from The Kaiser Forums*, available at <http://hpcpsdi.rutgers.edu/facilitator/SAP/downloads/articles%20and%20data/History+of+Needle+Exchange.pdf> (last visited Feb. 11, 2014).

⁶ North American Syringe Exchange Network, *Syringe Exchange Program Coverage in the United States* (July 2013), available at [http://www.amfar.org/uploadedFiles/amfarorg/Articles/In The Community/2013/July%202013%20SEP%20Map%20.pdf](http://www.amfar.org/uploadedFiles/amfarorg/Articles/In%20The%20Community/2013/July%202013%20SEP%20Map%20.pdf) (last visited Feb. 11, 2014).

⁷ Florida Department of Health, *HIV Infection Among Those with an Injection Drug Use-Associated Risk, Florida, 2012* (PowerPoint slide) (Revised Sept. 17, 2013), available at [http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/ documents/HIV-AIDS-slide%20sets/IDU_2012.pdf](http://www.floridahealth.gov/diseases-and-conditions/aids/surveillance/documents/HIV-AIDS-slide%20sets/IDU_2012.pdf) (last visited Feb. 11, 2014). The PowerPoint reflects data as of June 30, 2013.

⁸ Tookes et al., *supra* note 3.

⁹ Florida Department of Health, *HIV Disease and Hepatitis C Virus (HCV) Co-Infection – Florida, 2011* (Revised Dec. 11, 2012) (on file with the Senate Health Policy Committee).

¹⁰ *Supra* note 7.

County	Total PLWHA Cases	Total IDU	Percent IDU
Orange	7,149	1,291	18%
Hillsborough	5,898	1,144	19%
Duval	5,372	1,009	19%
Pinellas	3,564	723	20%
Lee	1,677	305	18%
St. Lucie	1,508	302	20%
Volusia	1,358	324	24%
Brevard	1,256	268	21%
STATE TOTAL	98,291	17,289	18%

Among those with HIV, drug users have been found to experience significant barriers to accessing care. Specifically, they receive HIV care at lower rates than other populations; have greater difficulty accessing treatment and being prescribed medications, and even when treatment is available, may fail to connect with the health care system due to mistrust, fear of prosecution, stigmatization, and a chaotic lifestyle; and may be discriminated against in the system due to the perception that they will not adhere to a medication regimen or that HIV has been self-inflicted, and thus treatment is not deserved.¹¹

Florida Comprehensive Drug Abuse Prevention and Control Act

The term drug paraphernalia is defined as all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, transporting, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of ch. 893, F.S., or s. 877.111, F.S.¹²

Section 893.147, F.S., regulates the use or possession of drug paraphernalia. Currently, it is unlawful for any person to use, or to possess with intent to use, drug paraphernalia:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this chapter; or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this chapter.

Any person who violates this provision commits a first degree misdemeanor.¹³

¹¹ World Health Organization, *Treatment of injecting drug users with HIV/AIDS: promoting access and optimizing service delivery*, p. 1 (2006), available at http://www.who.int/substance_abuse/publications/treatment_idus_hiv_aids.pdf (last visited Feb 11, 2014).

¹² Section 893.145, F.S.

¹³ A first degree misdemeanor is punishable by up to one-year imprisonment in a county jail, a fine of up to \$1,000, or both. See ss. 775.082 and 775.083, F.S.

This section of law also provides that it is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used:

- To plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, or conceal a controlled substance in violation of this act, or
- To inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act.

Any person who violates this provision commits a third degree felony.¹⁴

A court, jury, or other authority, when determining in a criminal case whether an object constitutes drug paraphernalia, must consider specified facts surrounding the connection between the item and the individual arrested for possessing drug paraphernalia. A court or jury is required to consider a number of factors (in addition to other logically relevant factors) in determining whether an object is drug paraphernalia, such as proximity of the object in time and space to a controlled substance, the existence of residue of controlled substances on the object, and expert testimony concerning its use.¹⁵

III. Effect of Proposed Changes:

Section 1 names the act the “Miami-Dade Infectious Disease Elimination Act (IDEA).”

Section 2 adds a new subsection to s. 381.0038, F.S., which requires the DOH to establish a sterile needle and syringe exchange pilot program in Miami-Dade County. The pilot program is created to prevent the transmission of the HIV/AIDS and other blood-borne diseases by offering free exchange of clean, unused needles and hypodermic syringes for used needles and hypodermic syringes in a one-for-one exchange. The pilot program must be administered by the DOH or its designee. The bill identifies the entities that the DOH is authorized to designate to operate the program at a fixed location or through a mobile health unit:

- A licensed hospital;
- A licensed health care clinic;
- A substance abuse treatment program;
- An HIV or AIDS service organization; or
- Another nonprofit entity designated by the DOH.

The program must do all of the following:

- Provide for maximum security of exchange sites and equipment, including: an accounting of the number of needles and syringes in use and in storage; safe disposal of returned needles;

¹⁴ A third degree felony is punishable by up to 5 years in state prison, a fine not to exceed \$5,000, or both. *See* ss. 775.082 and 775.083, F.S.

¹⁵ Section 893.146, F.S.

and any other measure that may be required to control the use and dispersal of sterile needles and syringes.

- Strive for one-to-one exchange (one sterile needle and syringe unit for each used one).
- Make available the following: educational materials; HIV counseling and testing; referral services to provide education regarding HIV/AIDS and viral hepatitis transmission; and drug use prevention and treatment.

The program must be funded through grants and donations from private resources and funds, without the use of state funds.

The possession, distribution, or exchange of needles or syringes as part of a pilot SEP established by the DOH or its designee is not a violation of ch. 893, F.S., or any other law. However, a SEP staff member, volunteer, or participant is not immune from criminal prosecution for possessing needles or syringes that are not part of the exchange pilot program or for redistributing needles or syringes if acting outside the program.

The pilot program must collect data regarding the following: number of participants served; the number of needles and syringes exchanged and distributed; the number of participants entering drug counseling and treatment; the number of participants receiving HIV/AIDS or viral hepatitis testing; and demographic profiles of participants served. However, no personal identifying information may be collected from a participant for any purpose.

The pilot program expires on July 1, 2019, or, if operated by a designee, 5 years after the entity is designated. Six months before the pilot program expires, the OPPAGA must submit a report to the Legislature that includes the collected data and a recommendation on whether the pilot program should continue.

Section 3 adds a severability clause, which provides that if any provision of this act or its application to a person is invalid, the invalidity would not affect other provisions or applications of the act which can be given effect without the invalid provision, and the provisions of this act are severable.

Section 4 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

The private sector would benefit from any cost savings resulting from avoided treatment costs, consistent with the discussion below, in proportion to its share of covered costs.

C. Government Sector Impact:

The DOH indicates that an exchange program site will be required to obtain a permit as a sharps collection program under Chapter 64E-16, F.A.C. The DOH anticipates that permitting costs can be absorbed by current resources.

Currently, no data exist to estimate the potential fiscal impact of the pilot program. However, the CDC indicates that HIV prevention interventions, such as syringe exchange programs, are intended to prevent infection in people who are HIV-negative. Such programs can be evaluated to determine the number of infections prevented that would have otherwise occurred had the intervention not been provided.

The lifetime treatment cost of an HIV infection can be used as a conservative threshold value for the cost of averting one infection. Currently, the lifetime treatment cost of an HIV infection is estimated at \$379,668 (in 2010 dollars), therefore a prevention intervention is deemed cost-saving if its cost-effectiveness ratio (cost of the intervention/number of infections averted) is less than \$379,668 per infection averted.¹⁶

The State of Florida pays for HIV/AIDS treatment through Medicaid, the AIDS Drug Assistance Program, and the AIDS Insurance Continuation Program, among others. If 10 percent of the reported PLWHA with an IDU-associated risk living in Miami-Dade County had avoided infection, this would represent a savings in treatment costs of approximately \$124 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 381.0038 of the Florida Statutes.

¹⁶ Centers for Disease Control, *HIV Cost-effectiveness* <http://www.cdc.gov/hiv/prevention/ongoing/costeffectiveness/> (last visited Feb. 11, 2014).

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 Health Policy on February 4, 2014:

The CS adds a short title and modifies the program repeal date to be either July 1, 2019, or, if operated by a designee, 5 years from the date the entity is designated.

- B. **Amendments:**

None.

By the Committee on Health Policy; and Senators Braynon, Sobel,
Bullard, Gibson, Flores, and Garcia

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1 A bill to be entitled
2 An act relating to an infectious disease elimination
3 pilot program; creating the "Miami-Dade Infectious
4 Disease Elimination Act (IDEA)"; amending s. 381.0038,
5 F.S.; requiring the Department of Health to establish
6 a sterile needle and syringe exchange pilot program in
7 Miami-Dade County; providing for administration of the
8 pilot program by the department or a designee;
9 establishing pilot program criteria; providing that
10 the distribution of needles and syringes under the
11 pilot program is not a violation of the Florida
12 Comprehensive Drug Abuse Prevention and Control Act or
13 any other law; providing conditions under which a
14 pilot program staff member or participant may be
15 prosecuted; prohibiting the collection of participant
16 identifying information; providing for the pilot
17 program to be funded through private grants and
18 donations; providing for expiration of the pilot
19 program; requiring the Office of Program Policy
20 Analysis and Government Accountability to submit a
21 report and recommendations regarding the pilot program
22 to the Legislature; providing rulemaking authority;
23 providing for severability; providing an effective
24 date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. This act may be cited as the "Miami-Dade
29 Infectious Disease Elimination Act (IDEA)."

Page 1 of 6

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

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30 Section 2. Section 381.0038, Florida Statutes, is amended
31 to read:

32 381.0038 Education; sterile needle and syringe exchange
33 pilot program.—The Department of Health shall establish a
34 program to educate the public about the threat of acquired
35 immune deficiency syndrome and a sterile needle and syringe
36 exchange pilot program.

37 (1) The acquired immune deficiency syndrome education
38 program shall:

39 (a) Be designed to reach all segments of Florida's
40 population;

41 (b) Contain special components designed to reach non-
42 English-speaking and other minority groups within the state;

43 (c) Impart knowledge to the public about methods of
44 transmission of acquired immune deficiency syndrome and methods
45 of prevention;

46 (d) Educate the public about transmission risks in social,
47 employment, and educational situations;

48 (e) Educate health care workers and health facility
49 employees about methods of transmission and prevention in their
50 unique workplace environments;

51 (f) Contain special components designed to reach persons
52 who may frequently engage in behaviors placing them at a high
53 risk for acquiring acquired immune deficiency syndrome;

54 (g) Provide information and consultation to state agencies
55 to educate all state employees; ~~and~~

56 (h) Provide information and consultation to state and local
57 agencies to educate law enforcement and correctional personnel
58 and inmates;—

Page 2 of 6

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

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59 (i) Provide information and consultation to local
60 governments to educate local government employees;~~-~~

61 (j) Make information available to private employers and
62 encourage them to distribute this information to their
63 employees;~~-~~

64 (k) Contain special components which emphasize appropriate
65 behavior and attitude change; ~~and-~~

66 (l) Contain components that include information about
67 domestic violence and the risk factors associated with domestic
68 violence and AIDS.

69 (2) The education program designed by the Department of
70 Health shall use ~~utilize~~ all forms of the media and shall place
71 emphasis on the design of educational materials that can be used
72 by businesses, schools, and health care providers in the regular
73 course of their business.

74 (3) The department may contract with other persons in the
75 design, development, and distribution of the components of the
76 education program.

77 (4) The department shall establish a sterile needle and
78 syringe exchange pilot program in Miami-Dade County. The pilot
79 program shall be administered by the department or the
80 department's designee. The department may designate one of the
81 following entities to operate the pilot program at a fixed
82 location or through a mobile health unit: a hospital licensed
83 under chapter 395, a health care clinic licensed under part X of
84 chapter 400, a substance abuse treatment program, an HIV or AIDS
85 service organization, or another nonprofit entity designated by
86 the department. The pilot program shall offer the free exchange
87 of clean, unused needles and hypodermic syringes for used

Page 3 of 6

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

588-01648-14

2014408c1

88 needles and hypodermic syringes as a means to prevent the
89 transmission of HIV, AIDS, viral hepatitis, or other blood-borne
90 diseases among intravenous drug users and their sexual partners
91 and offspring.

92 (a) The pilot program shall:

93 1. Provide for maximum security of exchange sites and
94 equipment, including an accounting of the number of needles and
95 syringes in use, the number of needles and syringes in storage,
96 safe disposal of returned needles, and any other measure that
97 may be required to control the use and dispersal of sterile
98 needles and syringes.

99 2. Strive for a one-to-one exchange, whereby the
100 participant shall receive one sterile needle and syringe unit in
101 exchange for each used one.

102 3. Make available educational materials; HIV counseling and
103 testing; referral services to provide education regarding HIV,
104 AIDS, and viral hepatitis transmission; and drug-abuse
105 prevention and treatment.

106 (b) Notwithstanding any other provision of law, the
107 possession, distribution, or exchange of needles or syringes as
108 part of the pilot program established by the department or the
109 department's designee is not a violation of any part of chapter
110 893 or any other law.

111 (c) A pilot program staff member, volunteer, or participant
112 is not immune from criminal prosecution for:

113 1. The possession of needles or syringes that are not a
114 part of the pilot program; or

115 2. Redistribution of needles or syringes in any form, if
116 acting outside the pilot program.

Page 4 of 6

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

588-01648-14

2014408c1

117 (d) The pilot program shall collect data for annual and
 118 final reporting purposes, which shall include information on the
 119 number of participants served, the number of needles and
 120 syringes exchanged and distributed, the demographic profiles of
 121 the participants served, the number of participants entering
 122 drug counseling and treatment, the number of participants
 123 receiving HIV, AIDS, or viral hepatitis testing, and other data
 124 deemed necessary for the pilot program. However, personal
 125 identifying information may not be collected from a participant
 126 for any purpose.

127 (e) State funds may not be used to operate the pilot
 128 program. The pilot program shall be funded through grants and
 129 donations from private resources and funds.

130 (f) The pilot program shall expire July 1, 2019, or, if
 131 operated by a designee, five years after the entity is
 132 designated. Six months before the pilot program expires, the
 133 Office of Program Policy Analysis and Government Accountability
 134 shall submit a report to the President of the Senate and the
 135 Speaker of the House of Representatives that includes the data
 136 collection requirements established in this subsection; the
 137 rates of HIV, AIDS, viral hepatitis, or other blood-borne
 138 diseases before the pilot program began and every subsequent
 139 year thereafter; and a recommendation on whether to continue the
 140 pilot program.

141 (g) The department may adopt and develop rules to
 142 administer this subsection.

143 Section 3. If any provision of this act or its application
 144 to any person or circumstance is held invalid, the invalidity
 145 does not affect other provisions or applications of the act that

Page 5 of 6

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

588-01648-14

2014408c1

146 can be given effect without the invalid provision or
 147 application, and to this end the provisions of this act are
 148 severable.

149 Section 4. This act shall take effect July 1, 2014.

Page 6 of 6

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

THE FLORIDA SENATE
APPEARANCE RECORD

WAIVE TIME IN SUPPORT

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

03/26/14

Meeting Date

Topic INFECTIOUS DISEASE ELIMINATION PILOT PROGRAM Bill Number SB 408
(if applicable)

Name STEPHEN R. WINN Amendment Barcode _____
(if applicable)

Job Title EXECUTIVE DIRECTOR OF THE FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Address 2007 APALACHEE PARKWAY Phone (850) 878-7364
Street

TALLAHASSEE FL 32301
City State Zip

E-mail _____

Speaking: For Against Information

Representing THE FLORIDA OSTEOPATHIC MEDICAL ASSOCIATION

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/26/2014

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

Meeting Date

Topic Infectious Disease Elimination

Bill Number 408

Name Jesse Fry

Amendment Barcode none (if applicable)

Job Title

Address 641 E College Ave #2

Phone (850) 339-6395

Tallahassee FL 32301

E-mail jesse_fry@comcast.net

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

Representing Florida HIV/AIDS Advocacy Network

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14
Meeting Date

Topic Miam. - Dade Infectious Disease Elimination Bill Number SB 408
(if applicable)

Name Chanelle Diaz Amendment Barcode _____
(if applicable)

Job Title University of Miami medical student

Address 5050 NW 7th St Phone _____
Street

Miami FL 33126 E-mail _____
City State Zip

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-20-14

Meeting Date

Topic Infectious disease Elimination Act Pld. Progn. Bill Number 408
(if applicable)

Name Michelle Jacquis Amendment Barcode _____
(if applicable)

Job Title _____

Address PO BOX 10269 Phone 850-251-2288

Tallahassee, FL 32302
Street City State Zip

E-mail _____

Speaking: For Against Information * wave in support *

Representing FL Medical Association

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic Miami Infectious Disease Elimination Act

Bill Number 408
(if applicable)

Name Hansel Tookes

Amendment Barcode _____
(if applicable)

Job Title medical student

Address 475 Brickell Ave

Phone _____

Street

Miami

FL

33131

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing self

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-26-14

Meeting Date

Topic Infectious Disease Elimination Act

Bill Number 408
(if applicable)

Name Chris Fisher

Amendment Barcode _____
(if applicable)

Job Title FL Advocacy & Policy Coordinator

Address 5 Sinclair Circle

Phone 850-224-1401

Street

Indianantic FL 32903

City

State

Zip

E-mail christinepfisher@aol.com

Speaking: For Against Information

Representing The AIDS Institute &

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-26-14

Meeting Date

Topic Infect + DISEASE ELIMINATION

Bill Number SB 408
(if applicable)

Name Martha DeCastro

Amendment Barcode _____
(if applicable)

Job Title Vice President for Nursing

Address 306 E College Ave
Street

Phone (850) 222 9800

TLH FL 32301
City State Zip

E-mail martha@fha.org

Speaking: For Against Information

Representing Florida Hospital Assoc

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/2014

Meeting Date

Topic _____

Bill Number 408
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/20/11)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic Infectious Disease Elimination

Bill Number 408

Name Bill Ekwall

Amendment Barcode NONE (if applicable)

Job Title Division Chief Tall. Fire Dept.

Address 911 EASTENWOOD DR. 32312

Phone 850-933-6057

Street

TALL. FL.

32312

City

State

Zip

E-mail

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

Representing TALL FIRE DEPARTMENT

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/26/14

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

Meeting Date

Topic

Infectious Disease Elimination

Bill Number

408

Name

Kathryn Gohlke

Amendment Barcode

none

(if applicable)

(if applicable)

Job Title

Lieutenant

Address

911 Easterwood DR

Phone

Street

Tallahassee, FL

32311

E-mail

City

State

Zip

Speaking:

For

Against

Information

Representing

TALLAHASSEE FIRE DEPARTMENT

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14
Meeting Date

Topic Pilot Program

Bill Number 408
(if applicable)

Name Jim Magill

Amendment Barcode _____
(if applicable)

Job Title Lobbyist

Address 101 N. Monroe St. Suite 1090
Street
TALLAHASSEE, FL 32301
City State Zip

Phone 850-681-0411

E-mail JMAGILL@FOULGERWHI.FL

Speaking: For Against Information

Representing USF Health

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

✓
COMMITTEES:
Regulated Industries, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on General
Government
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Health Policy

SENATOR OSCAR BRAYNON II

Democratic Whip
36th District

March 6, 2014

Senator John Thrasher, Chair
Committee on Rules,
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Thrasher:

This letter is to request that CS/SB 408, relating to *Infectious Disease Elimination Pilot Program* be placed on the agenda of the next scheduled meeting. CS/SB 408 has passed its first two committees of reference.

CS/SB 408 Creating the "Miami-Dade Infectious Disease Elimination Act (IDEA)"; requiring the Department of Health to establish a sterile needle and syringe exchange pilot program in Miami-Dade County; providing that the distribution of needles and syringes under the pilot program is not a violation of the Florida Comprehensive Drug Abuse Prevention and Control Act or any other law; providing conditions under which a pilot program staff member or participant may be prosecuted; prohibiting the collection of participant identifying information, etc.

Thank you for consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Oscar Braynon II".

Senator Braynon
District 36

cc. *John B. Phelps, Staff Director,*
Tamra Lyon, Committee Administrative Assistant

REPLY TO:

- 606 NW 183rd Street, Miami Gardens, Florida 33169 (305) 654-7150 FAX: (305) 654-7152
- 213 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5036

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
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 Rules

BILL: SB 516

INTRODUCER: Senator Latvala

SUBJECT: Public Records/Point-In-Time Count and Survey/Homeless Management Information System

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	<u>Favorable</u>
2.	<u>Kim</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

I. Summary:

SB 516 creates a public records exemption for information contained within a Point-In-Time Count or in a Homeless Management Information System (HMIS) that could directly or indirectly identify a specific person, be manipulated to identify a specific person, or be linked with other available information to identify a specific person. This information would be held exempt from public disclosure. The bill does not preclude the release of information in the aggregate contained within a Point-In-Time Count or Homeless Management System that does not disclose individual identifying information of a person.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature. In addition, the bill provides a statement of public necessity as required by the State Constitution.

Because this bill creates a new public records exemption, a two-thirds vote of the members present and voting in each house of the Legislature is required for passage.

II. Present Situation:

Public Records and Open Meetings Requirements

The Florida Constitution specifies public records and open meetings requirements. It provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.¹ The records of the legislative, executive, and judicial branches are specifically included.² The Florida Constitution also requires all meetings of any collegial public body of the executive branch of state government or of any local government, at which official acts are to be

¹ FLA. CONST., art. I, s. 24(a).

² *Id.*

taken or at which public business of such body is to be transacted or discussed, to be open and noticed to the public.³

In addition to the Florida Constitution, the Florida Statutes specify conditions under which public access must be provided to government records and meetings. The Public Records Act⁴ guarantees every person's right to inspect and copy any state or local government public record⁵ at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁶ The Sunshine Law⁷ requires all meetings of any board or commission of any state or local agency or authority at which official acts are to be taken to be noticed and open to the public.⁸

Only the Legislature may create an exemption to public records or open meetings requirements.⁹ Such 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 and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.¹²

³ FLA. CONST., art. I, s. 24(b).

⁴ Chapter 119, F.S.

⁵ Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." Section 119.011(2), F.S., defines "agency" to mean 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." The Public Records Act does not apply to legislative or judicial records (*see Locke v. Hawkes*, 595 So.2d 32 (Fla. 1992)).

⁶ Section 119.07(1), F.S.

⁷ Section 286.011, F.S.

⁸ Section 286.011(1)-(2), F.S. The Sunshine Law does not apply to the Legislature; rather, open meetings requirements for the Legislature are set out in Art. III, s. 4(e) of the Florida Constitution. That section requires the rules of procedure of each house to provide that:

- All legislative committee and subcommittee meetings of each house and of joint conference committee meetings must be open and noticed to the public; and
- All prearranged gatherings, between more than two members of the Legislature, or between the Governor, the President of the Senate, or the Speaker of the House of Representatives, the purpose of which is to agree upon or to take formal legislative action, must be reasonably open to the public.

⁹ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and exempt*. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

¹⁰ FLA. CONST., art. I, s. 24(c).

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

¹² FLA. CONST., art. I, s. 24(c).

Open Government Sunset Review Act

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹³ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹⁴

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 to meet such public purpose.¹⁵ 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 governmental program, which administration would be significantly impaired without the exemption;
- It protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- It protects trade or business secrets.¹⁶

The Act also requires specified questions to be considered during the review process.¹⁷

If, in reenacting an exemption that will repeal, the exemption is expanded, then a public necessity statement and a two-thirds vote for passage are required.¹⁸ If the exemption is reenacted with grammatical or stylistic changes that do not expand the exemption, if the exemption is narrowed, or if an exception to the exemption is created, then a public necessity statement and a two-thirds vote for passage are *not* required.

¹³ Section 119.15, F.S. An exemption is substantially amended if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records (s. 119.15(4)(b), F.S.). The requirements of the Act do not apply to an exemption that is required by federal law or that applies solely to the Legislature or the State Court System (s. 119.15(2), F.S.).

¹⁴ Section 119.15(3), F.S.

¹⁵ Section 119.15(6)(b), F.S.

¹⁶ *Id.*

¹⁷ 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?

¹⁸ FLA. CONST., art. I, s. 24(c). An existing exemption may be treated as a new exemption if the exemption is expanded to cover additional records (s. 119.15(4), F.S.).

Homeless Continuums of Care in Florida

A Continuums of Care (CoC) provides emergency, transitional, and permanent housing and services to address the various needs of the homeless and those at risk of homelessness.¹⁹ The purpose of a CoC is to help communities or regions envision, plan, and implement comprehensive and long-term solutions in a community or region.²⁰

The Department of Children and Families (DCF) interacts with the state's 28 CoCs through the Office of Homelessness (Office), which serves as the state's central point of contact on homelessness. The Office is responsible for coordinating resources and programs across all levels of government, and with private providers that serve the homeless. It also manages targeted state grants to support the implementation of local homeless service CoC plans.²¹ The Office has recognized and designated local entities to serve as lead agencies for local planning efforts to create homeless assistance CoC systems. The Office has made these designations in consultation with the local homeless coalitions and the Florida offices of the U.S. Department of Housing and Urban Development (HUD). The development of a local CoC plan is a prerequisite to applying for federal housing grants through HUD.

CoCs and Point-In-Time Count Surveys

HUD requires that CoCs conduct an annual count of the homeless persons who are sheltered in emergency shelters, transitional housing, and safe havens on a single night called a Point-In-Time Count Survey.²² Further, HUD requires CoCs to conduct a count of the unsheltered homeless population every other year on odd numbered years. For 2013, the state's 28 CoCs carried out both the sheltered and unsheltered counts. The goal is to produce an unduplicated, statistically reliable count and estimate of the homeless in the community.²³

The intent is to identify those men, women, and children who meet HUD's definition of a homeless person. This is limited to:

- Those living in a publicly or privately operated shelter providing temporary living arrangements;
- Those persons whose primary nighttime residence is a public or private place not intended to be used as an accommodation for human beings, such as a car, park, abandoned building, or camping ground;
- A person who is exiting from an institution, where he or she lived for 90 days or less, and who was otherwise homeless immediately prior to entering that institution;
- A person who is fleeing from a domestic violence situation; or

¹⁹ Section 420.624(1), F.S.

²⁰ Section 420.624(2), F.S.

²¹ *Homelessness*; Florida Department of Children and Families; (can be found at: <http://www.myflfamilies.com/service-programs/homelessness>) last accessed on February 8, 2014.

²² Sample surveys are located at <https://www.onecpd.info/resource/1699/homeless-pit-count-survey-sample/> and <https://www.onecpd.info/resource/1698/homeless-pit-count-survey-domestic-violence-form-sample>. The surveys request personal information such as a person's name, date of birth, social security number, race, marital status, disability (including personal health information) and veteran status. The identities of an individual's children are also requested.

²³ *2013 Report*; Florida Council on Homelessness; (can be found at: <http://www.dcf.state.fl.us/programs/homelessness/docs/2013CouncilReport.pdf>) last accessed on February 8, 2014.

- A person who will lose their primary nighttime residence within 14 days, no subsequent dwelling has been found, and the individual lacks the resources to obtain permanent housing.²⁴

For the 28 CoC planning areas reporting in 2013, the total number of sheltered and unsheltered homeless persons was 45,364. The 2012 number of homeless persons was 54,972 for these 28 planning areas.²⁵

Point-In-Time Surveys and Homeless Management Information Systems

Data collected through these Point-In-Time Surveys and during other counts is managed through a Homeless Management Information System (HMIS), a software application designed to record and store client-level information on the characteristics and service needs of homeless persons. An HMIS is typically a web-based software application that homeless assistance providers use to coordinate care, manage their operations, and better serve their clients.²⁶ The HUD Homelessness Data Exchange allows local homeless Continuums of Care (CoC)²⁷ to submit data directly from their local HMIS to HUD.²⁸

III. Effect of Proposed Changes:

The bill creates a public records exemption for individual identifying information of persons contained in a Point-In-Time Count and Survey or data within an HMIS. This information would be exempt from public disclosure. The bill defines “individual identifying information” as information that identifies a specific person either directly or indirectly, can be manipulated to identify a specific person, or can be linked with other available information to identify specific a person.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that the exemption is necessary to protect the homeless from discrimination and ridicule, which could make them reluctant to seek assistance. Public knowledge of their identities could make people at greater risk of injury, as many of the homeless were survivors of domestic violence or suffer from mental illness or substance abuse. Finally, the public necessity statement provides that public disclosure of individual identifying information could lead to identity theft and fraud.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and saved from repeal by the Legislature.

²⁴ Id.

²⁵ Id.

²⁶ *Homeless Assistance*; U.S. Department of Housing and Urban Development; (can be found at: http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/homeless) last accessed on February 8, 2014

²⁷ For more detailed information, see 24 CFR Section 578, or the Interim Final Rule on Homeless Emergency Assistance and Rapid Transition to Housing in Federal Register Volume 77, number 147, July 31, 2012. The interim rule became effective August 30, 2012.

²⁸ *Homelessness Data Exchange*; U.S. Department of Housing and Urban Development; (can be found at: <http://www.hudhdx.info/>) last accessed on February 8, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement

Article I, s. 24(c) of the Florida Constitution requires a newly created or expanded public records or open meetings exemption to pass by a two-thirds vote of the members present and voting in each house. This bill creates a new public records exemption; therefore, a two-thirds vote is required.

Public Necessity Statement

Article I, s. 24(c) of the Florida Constitution requires a bill creating a public records exemption to contain a public necessity statement. This bill includes a public necessity statement.

Breadth of Exemption

Article I, s. 24(c) of the Florida Constitution requires a newly created exemption to be no broader than necessary to accomplish the stated purpose of the law. This bill creates a public records exemption for individual identifying information in Point-in-Time Count and Survey data and HMIS databases, which is sufficiently narrowly tailored to meet this requirement.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None

C. Government Sector Impact:

Agencies will have to redact information for future public records requests, which may expend agency resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 420.6231 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 Latvala

20-00281A-14

2014516__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 420.6231, F.S.; creating a public records exemption
 4 for individual identifying information of a person
 5 contained in a Point-In-Time Count and Survey or data
 6 in a Homeless Management Information System; defining
 7 the term "individual identifying information";
 8 providing for retroactive application of the
 9 exemption; specifying that the exemption does not
 10 preclude the release of aggregate information;
 11 providing for future review and repeal under the Open
 12 Government Sunset Review Act; providing a statement of
 13 public necessity; providing an effective date.

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

16 Section 1. Section 420.6231, Florida Statutes, is created
 17 to read:

18 420.6231 Individual identifying information in specified
 19 homelessness surveys and databases; public records exemption.-

20 (1) As used in this section, "individual identifying
 21 information" means information that directly or indirectly
 22 identifies a specific person, can be manipulated to identify a
 23 specific person, or can be linked with other available
 24 information to identify a specific person.

25 (2) Individual identifying information of a person
 26 contained in a Point-In-Time Count and Survey or data in a
 27 Homeless Management Information System collected pursuant to 42
 28 U.S.C. chapter 119, subchapter IV, and related regulations
 29

Page 1 of 3

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

20-00281A-14

2014516__

30 provided in 24 C.F.R. part 91, is exempt from s. 119.07(1) and
 31 s. 24(a), Art. I of the State Constitution. This exemption
 32 applies to such information held before, on, or after the
 33 effective date of this section.

34 (3) This section does not preclude the release in the
 35 aggregate of information from a Point-In-Time Count and Survey
 36 or data in a Homeless Management Information System which does
 37 not disclose individual identifying information of a person.

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

42 Section 2. The Legislature finds that it is a public
 43 necessity that individual identifying information of a person
 44 contained in a Point-In-Time Count and Survey or data in a
 45 Homeless Management Information System collected pursuant to 42
 46 U.S.C. chapter 119, subchapter IV, and related regulations
 47 provided in 24 C.F.R. part 91, be made exempt from public
 48 records requirements. Pursuant to 42 U.S.C. s. 11363, the
 49 Secretary of Housing and Urban Development is required to
 50 instruct service providers not to disclose personally
 51 identifying information about any client for purposes of the
 52 Homeless Management Information System, which includes Point-In-
 53 Time Count and Survey information. The public release of such
 54 sensitive information could lead to discrimination against or
 55 ridicule of such individuals and could make them reluctant to
 56 seek assistance for themselves or their family members. The
 57 public release of such information may put affected individuals
 58 at greater risk of injury as a significant proportion of such

Page 2 of 3

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

20-00281A-14

2014516__

59 individuals are survivors of domestic violence or suffer from
60 mental illness or substance abuse. Additionally, public access
61 to such information may put affected individuals at a heightened
62 risk for fraud and identity theft. The harm from disclosing such
63 information outweighs any public benefit that can be derived
64 from widespread and unfettered access to such information. This
65 exemption is narrowly drawn so that aggregate information that
66 does not disclose individual identifying information of a person
67 from the Point-In-Time Count and Survey and data in a Homeless
68 Management Information System collected pursuant to 42 U.S.C.
69 chapter 119, subchapter IV, and related regulations provided in
70 24 C.F.R. part 91, may be disclosed.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

Meeting Date _____

Topic SB 516 - Point-in-time Court Bill Number SB 516
Name Chelsea d'Hemecourt (Dem-a-court) Amendment Barcode _____
(if applicable)
(if applicable)

Job Title Lobbyist

Address 205 South Adams St. Phone 954-557-0016
Street TLH, FL 32301 E-mail ??
City *State* *Zip*

Speaking: For Against Information

Representing Florida Coalition for the Homeless

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/2014
Meeting Date

Topic _____ Bill Number 516
(if applicable)

Name BRIAN PITTS Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH Phone 727-897-9291

Street
SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

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

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Ethics and Elections, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA
20th District

March 20, 2014

The Honorable Senator John Thrasher, Chair
Senate Committee on Rules
402 Senate
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

I respectfully request that my bill SB 516/Public Records/Point-In-Time Count and Survey/Homeless Management Information System be placed on the agenda of the Committee on Rules at the earliest possible time. The bill was favorably referred from the Senate Committee on Governmental Oversight & Accountability on March 20, 2014.

Information collected for the Point-In-Time Count and Survey for the Homeless Management Information System requires personal data on homeless individuals. This bill will protect the identity of vulnerable homeless Floridians from being accessed by the public.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

Cc: John Phelps, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:

- 28133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.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 Rules

BILL: SB 538

INTRODUCER: Senators Latvala and Brandes

SUBJECT: Public Records/Taxpayer's Email Address

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Stearns</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
2.	<u>Kim</u>	<u>McVaney</u>	<u>GO</u>	Favorable
3.	<u>Stearns</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 538 creates an exemption from the public records laws for e-mail addresses of taxpayers held by tax collectors for the purposes of e-mailing tax notices or obtaining permission from the taxpayer to do so. Current law does not provide an exemption for e-mail addresses held for such purposes. This bill makes those e-mail addresses confidential and exempt from the public records disclosure laws.

The bill provides for repeal of the exemption on October 2, 2019, unless reviewed and reenacted by the Legislature. It also provides a statement of public necessity as required by the State Constitution.

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

II. Present Situation:

Public Records Status of E-mail Addresses; Agency Website Notice

Under Florida law, e-mail addresses are public records.¹ Agency² websites that use e-mail are required to post a notice to users making them aware of this fact and advising them not to send

¹ Section 119.011(12), F.S., defines "public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency." See Attorney General Opinion 96-34, May 15, 1996.

² 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."

e-mail to the agency if they do not want their e-mail address released in response to a public records request.³

Public Records Laws

The State Constitution provides every person the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or of persons acting on their behalf.⁴ The records of the legislative, executive, and judicial branches are specifically included.⁵

Only the Legislature may create an exemption to public records requirements.⁶ Such an exemption must be created by general law and must specifically state the public necessity justifying the exemption.⁷ 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 provisions⁸ and must pass by a two-thirds vote of the members present and voting in each house of the Legislature.⁹

The Open Government Sunset Review Act (the Act) prescribes a legislative review process for newly created or substantially amended public records or open meetings exemptions.¹⁰ It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.¹¹

Notices of Taxation

Tax collectors may send notices of taxation to taxpayers by e-mail in two situations: (1) if the taxpayer has applied to participate in a prepayment installment plan,¹² or (2) if the tax collector has received express consent from the taxpayer to do so.¹³

To be able to e-mail a tax notice to a taxpayer, a tax collector must first have the taxpayer's email address on file.

³ Section 668.6076, F.S.

⁴ FLA. CONST., art. I, s. 24(a).

⁵ *Id.*

⁶ FLA. CONST., art. I, s. 24(c). There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances (*see WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991)). If the Legislature designates a record as confidential and exempt from public disclosure, such record may not be released, by the custodian of public records, to anyone other than the persons or entities specifically designated in the statutory exemption (*see Attorney General Opinion 85-62*, August 1, 1985).

⁷ FLA. CONST., art. I, s. 24(c).

⁸ The bill may, however, contain multiple exemptions that relate to one subject.

⁹ FLA. CONST., art. I, s. 24(c).

¹⁰ Section 119.15, F.S.

¹¹ Section 119.15(3), F.S.

¹² Section 197.222(3), F.S.

¹³ Sections 197.322(3), 197.343, and 197.344(1), F.S.

III. Effect of Proposed Changes:

This bill makes taxpayer e-mail addresses confidential and exempt from the public records laws if the e-mail addresses are held by tax collectors specifically for the purposes of:

- Sending a quarterly tax notice for prepayment of estimated taxes under s. 197.222(3), F.S., to the taxpayer;
- Obtaining the taxpayer's consent to send the tax notice described in s. 197.322(3), F.S.;
- Sending an additional tax notice or delinquent tax notice to the taxpayer under s. 197.343, F.S.; or
- Sending a tax notice to a designated third party, mortgagee, or vendee as provided under s. 197.344(1), F.S.

However, taxpayer e-mail addresses provided to a tax collector via the tax collector's website for purposes other than those listed above are not exempt from the public records laws.

This bill provides that the exemption is subject to the Open Government Sunset Review Act and will stand repealed on October 2, 2019, unless reviewed and reenacted by the Legislature.

The bill provides a statement of public necessity as required by the State Constitution. The public necessity statement provides that a person's email address, when combined with their personal identifying information, exposes people to identity theft, taxpayer scams and invasive contacts.

The bill provides that the exemption will take effect on July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Vote Requirement

Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for taxpayer e-mail addresses held by a tax collector; thus, it requires a two-thirds vote for final passage.

Public Necessity Statement

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

Breadth of Exemption

Article I, s. 24(c) of the State Constitution requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law. The bill provides that a tax payer's e-mail address is confidential and exempt in four specific instances. The exemption does not appear to be in conflict with the constitutional requirement that the exemption be no broader than necessary to accomplish its purpose.

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

None.

B. Private Sector Impact:

The bill likely would benefit taxpayers by reducing their exposure to economic harm from tax related fraud, identity theft or spam e-mail.

C. Government Sector Impact:

The bill may impact tax collectors, because staff responsible for complying with public record requests could require additional training related to expansion of the public record exemption. In addition, tax collectors could incur costs associated with redacting confidential and exempt information prior to releasing a record. The costs, however, would be absorbed, as they are part of the day-to-day responsibilities of the staff of the tax collectors.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 197.3225 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 Latvala

20-00502-14

2014538__

1 A bill to be entitled
 2 An act relating to public records; creating s.
 3 197.3225, F.S.; providing an exemption from public
 4 records requirements for e-mail addresses obtained by
 5 the tax collector for the purpose of electronically
 6 sending tax notices or obtaining the consent of the
 7 taxpayer to the electronic transmission of tax
 8 notices; providing for future review and repeal of the
 9 exemption; providing a statement of public necessity;
 10 providing an effective date.

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

12 Section 1. Section 197.3225, Florida Statutes, is created
 13 to read:

14 197.3225 Confidentiality of e-mail addresses.—

15 (1) Notwithstanding s. 668.6076, a taxpayer's e-mail
 16 address held by a tax collector for the following purposes is
 17 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
 18 of the State Constitution:

19 (a) Sending a quarterly tax notice for prepayment of
 20 estimated taxes under s. 197.222(3) to the taxpayer.

21 (b) Obtaining the taxpayer's consent to send the tax notice
 22 described in s. 197.322(3).

23 (c) Sending an additional tax notice or delinquent tax
 24 notice to the taxpayer under s. 197.343.

25 (d) Sending a tax notice to a designated third party,
 26 mortgagee, or vendee as provided under s. 197.344(1).

27 (2) An e-mail address provided by a taxpayer to the tax
 28
 29

Page 1 of 3

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20-00502-14

2014538__

30 collector via the tax collector's website or other
 31 correspondence for a purpose other than those listed in
 32 subsection (1) is not exempt from the state's public record law
 33 pursuant to s. 668.6076.

34 (3) This section is subject to the Open Government Sunset
 35 Review Act in accordance with s. 119.15 and shall stand repealed
 36 on October 2, 2019, unless reviewed and saved from repeal
 37 through reenactment by the Legislature.

38 Section 2. The Legislature finds that it is a public
 39 necessity that the e-mail address of a taxpayer which is held by
 40 the tax collector for the purpose of sending a tax notice or
 41 obtaining the consent of the taxpayer to the electronic
 42 transmission of a tax notice be made confidential and exempt
 43 from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of
 44 the State Constitution. E-mail rather than traditional postal
 45 mail is increasingly used as a means for communicating and
 46 conducting business, including official state business such as
 47 the payment of taxes. In order to carry out business
 48 electronically with the tax collector, the taxpayer must report
 49 his or her personal e-mail address. Under current law, e-mail
 50 addresses are public records available to anyone for any
 51 purpose. However, such addresses are unique to the individual
 52 and, when combined with other personal identifying information,
 53 can be used for identity theft, taxpayer scams, and other
 54 invasive contacts. The public availability of personal e-mail
 55 addresses invites and exacerbates thriving and well-documented
 56 criminal activities putting property owners at increased risk of
 57 harm. Such harm could be significantly curtailed by allowing the
 58 tax collector to remove the availability of taxpayer e-mail

Page 2 of 3

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20-00502-14

2014538__

59 addresses.

60 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14
Meeting Date

Topic Fraud Protection - Taxpayer email addresses

Bill Number SB 538
(if applicable)

Name Carole Jean Jordan

Amendment Barcode _____
(if applicable)

Job Title Tax Collector - Indian River

Address P.O. Box 1509

Phone 772 - 226 - 1343

Street

Vero Beach
City

FL
State

32961
Zip

E-mail CJJordan@IRCTax.com

Speaking: For Against Information

Representing Indian River Tax Collector's office

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic Email Exemption : Fraud Protection

Bill Number SB 538
(if applicable)

Name Larry Hart

Amendment Barcode _____
(if applicable)

Job Title Tax Collector - Lee County

Address 2480 Thompson St.

Phone 239-533-6060

Street

FT. Myers

33901

City

State

Zip

E-mail LHart@LeeTC.com

Speaking: For Against Information

Representing Lee County Tax Collector

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic Taxpayer protection from fraud

Bill Number SB 538
(if applicable)

Name Tim Qualls

Amendment Barcode _____
(if applicable)

Job Title Executive Director

Address 215 S. Monroe St, Ste 802

Phone 850-222-7206

Street

Tallahassee, FL

State

32302

Zip

E-mail TQualls@YULAW.NET

Speaking: For Against Information

Representing Florida Tax Collectors Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA

20th District

March 20, 2014

The Honorable Senator John Thrasher, Chair
Senate Committee on Rules
402 Senate
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

I respectfully request that my bill SB 538/Public Records Exemption for Taxpayers' Email Addresses be placed on the agenda of the Committee on Rules at the earliest possible time.

This bill will provide a public records exemption for the private email addresses of residents who receive electronic payment and notice documents directly from their tax collector.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

Cc: John Phelps, Staff Director; Tamra Lyon, Administrative Assistant

REPLY TO:

- 28133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.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 Rules

BILL: CS/SB 646

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Montford

SUBJECT: OGSR/Education and Applicant Records/Public Postsecondary Educational Institutions

DATE: March 25, 2014 **REVISED:** _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Letarte</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
2. <u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3. <u>Letarte</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 646 continues the current public records exemption for a student's education records and an applicant's records at a public postsecondary educational institution by removing the repeal date. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.¹

The bill takes effect on October 1, 2014.

II. Present Situation:

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.²

¹ Section 1006.52(3), F.S.

² Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term "public records" as "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical

Under Florida law, “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”³

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.⁴ Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSRA) provides a review process for public records exemptions.⁶ OGSRA requires that a new (or substantially amended) exemption be set to repeal on October 2nd of the fifth year after enactment, unless reenacted by the Legislature.⁷

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is substantially amended but not necessary if the exemption is reenacted without expansion.⁸ A substantial amendment exists “if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”⁹

form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(12), F.S.

³ Section 119.07(1)(a), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ *Id.*

⁶ Section 119.15, F.S. The statute provides specific questions to be considered during the review process. Section 119.15(6)(a), F.S. The 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?

Responses to these questions from the Florida Department of Education and the State University System of Florida Board of Governors are on file with the Senate Committee on Education.

⁷ Section 119.15(3), F.S.

⁸ *See* Section 119.15(4), F.S.

⁹ Section 119.15(4)(b), F.S.

Federal and State Law Regarding Privacy of Education Records

Federal Law: Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) applies to educational agencies or institutions that receive federal funds.¹⁰ FERPA prohibits funding from being provided to an educational agency or institution that does not allow access to a student's education records¹¹ by a student or a parent pursuant to FERPA, or does not appropriately limit the transfer of a student's education records in accordance with FERPA.¹² Compliance with FERPA is a condition for receiving federal funds.¹³

Florida Law: Section 1006.52, F.S., Education Records and Applicant Records

Florida law codifies FERPA into state law to ensure compliance with FERPA and continued receipt of federal funds.¹⁴ Section 1006.52, Florida Statutes, makes education records of students and applicants of a public postsecondary educational institution confidential and exempt from public records requirements.¹⁵ "Education records" are defined as in FERPA and its regulations and include "records, files, documents, and other materials" containing "information directly related to a student" and are "maintained by an educational agency or institution or by a person acting for such agency or institution."¹⁶ "Applicant records" consist of information "[d]irectly related to an applicant for admission to a public postsecondary educational institution who has not been in attendance at the institution" and are "[m]aintained by a public postsecondary educational institution or by a party acting on behalf of the public postsecondary educational institution."¹⁷

¹⁰ 20 U.S.C. §1232g(a). An "educational agency or institution" is defined as "any public or private agency or institution which is the recipient of funds under any applicable program." *Id.* §1232(a)(3).

¹¹ *Infra* note 16 and accompanying text (providing FERPA's definition of "education records").

¹² 20 U.S.C. §1232g(a) and (b). FERPA provides that funding will not be provided to a program, agency, or institution "which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without written consent of their parents . . ." *Id.* §1232g(b)(1).

¹³ 20 U.S.C. §1232g(a)(1) and (2); *see* 34 C.F.R. §99.67(a) (identifying actions that may be taken against an educational agency or institution that does not comply with FERPA, which include withholding further payments, compelling compliance through a cease and desist order, and terminating eligibility to receive funding under any applicable program).

¹⁴ *See* s. 1006.52, F.S.; s. 3, ch. 2009-240, L.O.F. (providing that noncompliance with FERPA could result in the loss of federal funding and that "[t]he Legislature finds that in order to comply with the applicable federal requirements regarding the collection, use, and release of education records, such records must be made confidential and exempt from public disclosure).

¹⁵ *See* ss. 2-3, ch. 2009-240, L.O.F. (providing that education records, as defined by the Family Educational Rights and Privacy Act, are confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I, Florida Constitution).

¹⁶ 20 U.S.C. §1232g(a)(4)(A); s. 1006.52, F.S.; *see also* Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records* (Jan. 13, 2014) (on file with Senate Committee on Education).

¹⁷ Section 1006.52(1), F.S. Applicant records were made confidential and exempt because the Legislature found that records of an applicant who is not admitted or does not enroll at an institution contain private information identical to that of an enrolled student and should be protected in the same manner. Section 3, ch. 2009-240, L.O.F.

Current law prohibits a public postsecondary educational institution from releasing a student's education records and personally identifiable information contained therein¹⁸ without a student's written consent except in accordance with the FERPA.¹⁹ Additionally, Florida law requires that education records released to the Auditor General and the Office of Program Policy Analysis and Government Accountability for official business be used and maintained in accordance with FERPA.²⁰

The exemption in s. 1006.52, Florida Statutes, which makes a student's education records and an applicant's records at a public postsecondary educational institution confidential and exempt from public records disclosure requirements, is set to repeal on October 2, 2014 unless reviewed and saved through reenactment by the Legislature.²¹

III. Effect of Proposed Changes:

CS/SB 646 continues the current public records exemption for a student's education records and an applicant's records at a public postsecondary educational institution by removing the repeal date. The bill does not require a public necessity statement or a two-thirds vote for passage because the bill does not create a new exemption or substantially amend an existing exemption.

If the exemption is not reenacted, a conflict would exist between a public postsecondary educational institution's obligations under public records laws and the privacy rights afforded to students under FERPA.²² Noncompliance with FERPA may result in the loss of federal funding to educational agencies and institutions.²³

The bill takes effect on October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

¹⁸ See 20 U.S.C. §1232(g)(b)(1)(providing that funding will not be provided to an educational agency or institution that has a policy or practice of releasing such information without consent).

¹⁹ Section 1006.52(2), F.S.

²⁰ *Id.*

²¹ Section 1006.52(3), F.S.

²² Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records* (Jan. 13, 2014) (on file with Senate Committee on Education); see 20 U.S.C. §1232g; Art. I, s. 24(a), Fla. Const.; s. 119.011(12), F.S.

²³ 20 U.S.C. §1232g(a)-(b); 34 C.F.R. §99.67(a); Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1006.52, F.S. Education Records and Applicant Records* (Jan. 17, 2014) (on file with Senate Committee on Education).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1006.52 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS integrates technical changes.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Montford

585-02889-14

2014646c1

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 1006.52, F.S., relating
4 to an exemption from public records requirements for
5 postsecondary education records and applicant records;
6 saving the exemption from repeal under the Open
7 Government Sunset Review Act; providing an effective
8 date.
9
10 Be It Enacted by the Legislature of the State of Florida:
11
12 Section 1. Section 1006.52, Florida Statutes, is amended to
13 read:
14 1006.52 Education records and applicant records; public
15 records exemption.-
16 (1) Each public postsecondary educational institution may
17 prescribe the content and custody of records that the
18 institution may maintain on its students and applicants for
19 admission. A student's education records, as defined in the
20 Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. s.
21 1232g, and the federal regulations issued pursuant thereto, and
22 applicant records are confidential and exempt from s. 119.07(1)
23 and s. 24(a), Art. I of the State Constitution. For the purpose
24 of this subsection, applicant records are ~~shall be considered to~~
25 ~~be~~ records that are:
26 (a) Directly related to an applicant for admission to a
27 public postsecondary educational institution who has not been in
28 attendance at the institution; and
29 (b) Maintained by a public postsecondary educational

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

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30 institution or by a party acting on behalf of the public
31 postsecondary educational institution.
32 (2) (a) A public postsecondary educational institution may
33 not release a student's education records without the written
34 consent of the student to any individual, agency, or
35 organization, except in accordance with and as permitted by the
36 FERPA.
37 (b) Education records released by public postsecondary
38 educational institutions to the Auditor General or the Office of
39 Program Policy Analysis and Government Accountability, which are
40 necessary for such agencies to perform their official duties and
41 responsibilities, must ~~shall~~ be used and maintained by the
42 Auditor General and the Office of Program Policy Analysis and
43 Government Accountability in accordance with the FERPA.
44 (3) ~~This section is subject to the Open Government Sunset~~
45 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
46 ~~on October 2, 2014, unless reviewed and saved from repeal~~
47 ~~through reenactment by the Legislature.~~
48 Section 2. This act shall take effect October 1, 2014.

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

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 Rules

BILL: CS/SB 648

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Montford

SUBJECT: OGSR/Education Records/Family Educational Rights and Privacy Act

DATE: March 25, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Letarte</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	<u>Letarte</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 648 continues the current public records exemption for education records of K-12 students held by an educational agency or institution by removing the repeal date. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.¹

The bill takes effect on October 1, 2014.

II. Present Situation:

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.²

¹ Section 1002.221(3), F.S.

² Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term “public records” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical

Under Florida law, “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”³

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.⁴ Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSRA) provides a review process for public records exemptions.⁶ OGSRA requires that a new exemption or substantial amendment of an existing exemption be set to repeal on October 2nd of the fifth year after enactment, unless reenacted by the Legislature.⁷

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is substantially amended but not necessary if the exemption is reenacted without expansion.⁸ A substantial amendment exists “if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”⁹

form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(12), F.S.

³ Section 119.07(1)(a), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ *Id.*

⁶ Section 119.15, F.S. The statute provides specific questions to be considered during the review process. Section 119.15(6)(a), F.S. The 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?

Responses to these questions from the Florida Department of Education and the State University System of Florida Board of Governors are on file with the Senate Committee on Education.

⁷ Section 119.15(3), F.S.

⁸ *See* Section 119.15(4), F.S.

⁹ Section 119.15(4)(b), F.S.

Federal and State Law Regarding Privacy of Education Records

Federal Law: Family Educational Rights and Privacy Act

The Family Educational Rights and Privacy Act (FERPA) applies to educational agencies or institutions that receive federal funds.¹⁰ FERPA prohibits funding from being provided to an educational agency or institution that does not allow access to a student's education records¹¹ by a student or a parent pursuant to FERPA, or does not appropriately limit the transfer of a student's education records in accordance with FERPA.¹² Compliance with FERPA is a condition for receiving federal funds.¹³

Florida Law: Section 1002.221, F.S., K-12 Education Records

Florida law codifies FERPA into state law to ensure compliance with FERPA and continued receipt of federal funds.¹⁴ Section 1002.221, Florida Statutes, makes education records of students in kindergarten through grade twelve (K-12) confidential and exempt from public records disclosure requirements.¹⁵ "Education records" are defined as in FERPA and its regulations and include "records, files, documents, and other materials" containing "information directly related to a student" and are "maintained by an educational agency or institution or by a person acting for such agency or institution."¹⁶

¹⁰ 20 U.S.C. §1232g(a). An "educational agency or institution" is defined as "any public or private agency or institution which is the recipient of funds under any applicable program." *Id.* §1232(a)(3).

¹¹ *Infra* note 16 and accompanying text (providing FERPA's definition of "education records").

¹² 20 U.S.C. §1232g(a) and (b). FERPA provides that funding will not be provided to a program, agency, or institution "which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein other than directory information . . .) of students without written consent of their parents . . ." *Id.* §1232g(b)(1).

¹³ 20 U.S.C. §1232g(a)(1) and (2); *see* 34 C.F.R. §99.67(a) (identifying actions that may be taken against an educational agency or institution that does not comply with FERPA, which include withholding further payments, compelling compliance through a cease and desist order, and terminating eligibility to receive funding under any applicable program).

¹⁴ *See* s. 1002.221, F.S.; s. 3, ch. 2009-240, L.O.F. (providing that noncompliance with FERPA could result in the loss of federal funding and that "[t]he Legislature finds that in order to comply with the applicable federal requirements regarding the collection, use, and release of education records, such records must be made confidential and exempt from public disclosure).

¹⁵ Section 1, ch. 2009-240, L.O.F. (stating that education records, as defined by the Family Educational Rights and Privacy Act, are confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I, Florida Constitution).

¹⁶ 20 U.S.C. §1232g(a)(4)(A); *see also* Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 13, 2014) (on file with Senate Committee on Education).

Under current law, agencies¹⁷ and institutions that are part of Florida's education system¹⁸ may not release a student's education records, or personally identifiable information therein,¹⁹ without written consent from the student or student's parent except in accordance with the FERPA.²⁰ Additionally, Florida law requires that education records released to the Auditor General and the Office of Program Policy Analysis and Government Accountability for official business be used and maintained in accordance with FERPA.²¹ In 2010, s. 1002.221, F.S. was amended to allow release of a student's record without consent, in accordance with FERPA, to "parties to an interagency agreement among the Department of Juvenile Justice, the school, law enforcement authorities, and other signatory agencies" for the purpose of reducing juvenile crime and providing appropriate programs and services to a juvenile and a juvenile's family.²²

The exemption in s. 1002.221, Florida Statutes, which removes education records of students in kindergarten through grade twelve from public records requirements, is set to repeal on October 2, 2014 unless reviewed and saved through reenactment by the Legislature.²³

III. Effect of Proposed Changes:

CS/SB 648 continues the current public records exemption for education records of students in kindergarten through grade twelve held by an educational agency or institution.²⁴ The bill does not require a public necessity statement or a two-thirds vote for passage because the bill does not create a new exemption or substantially amend an existing exemption.

If the exemption is not continued, a conflict will exist between a public educational agency or institution's obligations under Florida's public records requirements and the privacy rights afforded to students and parents under FERPA.²⁵ Noncompliance with FERPA may result in the loss of federal funding to educational agencies and institutions.²⁶

¹⁷ Section 1002.22(1)(a), F.S. (defining an agency as "any board, agency, or other entity that provides administrative control or direction of or performs services for public elementary or secondary schools, centers, or other institutions as defined in this chapter").

¹⁸ Section 1002.221(2)(a), F.S. (referencing s. 1000.04(1), (3), and (4), F.S., which describe the components for delivery of public education including public K-12 schools, Florida School for the Deaf, and Blind and the Florida Virtual School). Public K-12 schools "include charter schools and consist of kindergarten classes, elementary, middle, and high school grades and special classes; virtual instruction programs; workforce education; career centers; adult, part-time, and evening schools, courses, or classes, as authorized by law to be operated under the control of district school boards; and lab schools operated under the control of state universities." Section 1000.04(1), F.S.

¹⁹ See 20 U.S.C. §1232(g)(b)(1) (providing that funding will not be provided to an educational agency or institution that has a policy or practice of releasing such information without consent).

²⁰ Section 1002.221(2)(a), F.S.

²¹ Section 1002.221(2)(a), F.S.

²² Section 1002.221(2)(b), F.S.; s. 2, ch. 2010-192, L.O.F.

²³ Section 1002.221(3), F.S.

²⁴ See s. 1002.221, F.S.

²⁵ Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 13, 2014) (on file with Senate Committee on Education); see 20 U.S.C. §1232g; Art. I, s. 24(a), Fla. Const.; s. 119.011(12), F.S.

²⁶ 20 U.S.C. §1232g(a)-(b); 34 C.F.R. §99.67(a); Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1002.221, F.S. K-12 Records* (Jan. 17, 2014) (on file with Senate Committee on Education).

The bill also repeals a statement in current law that provided the purpose of an interagency agreement to allow release of certain records to DJJ, the school, law enforcement authorities, and other signatory agencies.

The bill takes effect on October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1002.221 of the Florida Statutes.

IX. Additional Information:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS integrates several technical changes and repeals a statement in current law that provided the purpose of an interagency agreement to allow release of certain records to DJJ, the school, law enforcement authorities, and other signatory agencies.

- 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 Governmental Oversight and Accountability;
and Senator Montford

585-02890-14

2014648c1

A bill to be entitled

An act relating to a review under the Open Government
Sunset Review Act; amending s. 1002.221, F.S.,
relating to an exemption from public records
requirements for K-12 education records; saving the
exemption from repeal under the Open Government Sunset
Review Act; deleting provisions to conform; providing
an effective date.

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

Section 1. Section 1002.221, Florida Statutes, is amended
to read:

1002.221 K-12 education records; public records exemption.-

(1) Education records, as defined in the Family Educational
Rights and Privacy Act (FERPA), 20 U.S.C. s. 1232g, and the
federal regulations issued pursuant thereto, are confidential
and exempt from s. 119.07(1) and s. 24(a), Art. I of the State
Constitution.

(2) (a) An agency or institution, as defined in s. 1002.22
~~1002.22(1)(a), or a public school, center, institution, or other~~
~~entity that is part of Florida's education system under s.~~
~~1000.04(1), (3), or (4),~~ may not release a student's education
records without the written consent of the student or parent to
any individual, agency, or organization, except in accordance
with and as permitted by the FERPA.

(b) Education records released by an agency or institution,
as defined in s. 1002.22 ~~1002.22(1)(a), or by a public school,~~
~~center, institution, or other entity that is part of Florida's~~

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~~education system under s. 1000.04(1), (3), or (4), to the~~
Auditor General or the Office of Program Policy Analysis and
Government Accountability, which are necessary for such agencies
to perform their official duties and responsibilities, must
~~shall~~ be used and maintained by the Auditor General and the
Office of Program Policy Analysis and Government Accountability
in accordance with the FERPA.

(c) ~~(b)~~ In accordance with FERPA and the federal regulations
issued pursuant to FERPA, an agency or institution, as defined
in s. 1002.22, ~~or a public school, center, institution, or other~~
~~entity that is part of Florida's education system under s.~~
~~1000.04(1), (3), or (4)~~ may release a student's education
records without written consent of the student or parent to
parties to an interagency agreement among the Department of
Juvenile Justice, the school, law enforcement authorities, and
other signatory agencies. ~~The purpose of such an agreement and~~
~~information sharing is to reduce juvenile crime, especially~~
~~motor vehicle theft, by promoting cooperation and collaboration~~
~~and the sharing of appropriate information in a joint effort to~~
~~improve school safety, to reduce truancy and in-school and out-~~
~~of-school suspensions, and to support alternatives to in-school~~
~~and out-of-school suspensions and expulsions, which provide~~
~~structured and well-supervised educational programs supplemented~~
~~by a coordinated overlay of other appropriate services designed~~
~~to correct behaviors that lead to truancy, suspensions, and~~
~~expulsions and that support students in successfully completing~~
~~their education.~~ Information provided in furtherance of an
interagency agreement is intended solely for use in determining
the appropriate programs and services for each juvenile or the

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59 juvenile's family, or for coordinating the delivery of the
60 programs and services, and as such is inadmissible in any court
61 proceeding before a dispositional hearing unless written consent
62 is provided by a parent or other responsible adult on behalf of
63 the juvenile.

64 ~~(3) This section is subject to the Open Government Sunset~~
65 ~~Review Act in accordance with s. 119.15 and shall stand repealed~~
66 ~~on October 2, 2014, unless reviewed and saved from repeal~~
67 ~~through reenactment by the Legislature.~~

68 Section 2. This act shall take effect October 1, 2014.

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 Rules

BILL: CS/CS/SB 654

INTRODUCER: Judiciary Committee; Commerce and Tourism Committee; and Senators Clemens and Richter

SUBJECT: Business Organizations

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Malcolm</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
2.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
3.	<u>Malcolm</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/CS/SB 654 amends the Florida Business Corporation Act to allow for the creation of two new forms of corporate enterprise: the social purpose corporation and the benefit corporation. These new entities will allow businesses to engage in societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization. Key elements of the social purpose corporation and the benefit corporation are:

- A social purpose corporation must pursue one or more narrowly identified public benefits.
- A benefit corporation must pursue a general public benefit, which is a broad purpose intended to encompass a broad range of social and environmental factors that are affected by the corporation.
- The corporation's directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation.
- Like directors and officers of all corporations, the new entities' directors and officers are immune from personal liability for failure to pursue or achieve the corporation's benefit goals, but they are subject to duty of care and fiduciary principles applicable to all corporate directors and officers.
- Benefit enforcement judicial proceedings may be brought by a shareholder or certain individuals for claims that the directors or officers have failed to satisfy their obligations in making corporate decisions. Such proceedings are analogous to a shareholder derivative action and allow shareholders to hold a social purpose corporation or benefit corporation accountable to its required public benefit.

- The corporation must provide an annual benefit report to all its shareholders describing and assessing the corporation's efforts during the year to achieve the corporation's benefit goals.

Additionally, the bill specifies which differences in the name of certain business entities are not considered distinguishable and thus are not sufficiently distinguishable from the names of other business entities. The bill also provides that the business name distinguishability requirement does not require business entity names to be distinguishable from the name of any general partnership registration or limited liability partnership statement filed with the Florida Department of State.

II. Present Situation:

For-profit Corporations

For-profit corporations are established in Florida under ch. 607, F.S., the Florida Business Corporation Act. Generally, a corporation is a complex business structure and is considered a separate legal entity from its owners, who own shares of stock in the company.¹ A corporation may be taxed, sued, and can enter into contractual agreements.² Shareholders are not personally liable for corporate obligations. Similarly, directors are generally not personally liable for damages for their actions regarding corporate management or policy.³

As the name suggests, a for-profit corporation exists to pursue the goal of profit maximization for its shareholders.⁴ In pursuing this goal, a corporation's directors must act in good faith, with the care an ordinarily prudent person in a like position would exercise, and in a manner he or she reasonably believes to be in the best interests of the corporation.⁵ Additionally, Florida law specifically permits a director, in discharging his or her duties, to consider other factors he or she deems relevant, including:

the long-term prospects and interests of the corporation and its shareholders, and the social, economic, legal, or other effects of any action on the employees, suppliers, customers of the corporation or its subsidiaries, the communities and society in which the corporation or its subsidiaries operate, and the economy of the state and the nation.⁶

¹ For basic information regarding corporations, see *Choose Your Business Structure: Corporation*, SBA.Gov, <http://www.sba.gov/content/corporation> (last visited Feb. 10, 2014).

² See s. 607.0302, F.S.

³ Section 607.0831, F.S.

⁴ See, e.g., *Dodge v. Ford*, 170 N.W. 668, 684 (1919) ("A business corporation is organized and carried on primarily for the profit of the stockholders."); Stephen M. Bainbridge, *In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green*, 50 Wash. & Lee L. Rev. 1423 (1993) ("Shareholder wealth maximization long has been the fundamental norm which guides U.S. corporate decisionmakers.").

⁵ Section 607.0830(1), F.S.

⁶ *Id.* at (3).

Social Purpose Corporations and Benefit Corporations

Recent interest among consumers, investors, and entrepreneurs in socially responsible businesses that pursue public benefit goals in addition to, or even as a priority over, the business' profit motive has led to the creation of new forms of corporate entities.⁷

The Business Law Section of The Florida Bar has proposed the creation of two new alternative forms of corporate entity: social purpose corporations and benefit corporations.⁸ As explained by the Business Law Section, these entities “will allow entrepreneurs and investors to cause their corporation to engage in significant societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization.”⁹

The primary difference between a social purpose corporation and a benefit corporation is the public benefit purpose imposed upon each of the corporations. A social purpose corporation must pursue or create one or more public benefits, which may be quite specific. In contrast, a benefit corporation must pursue or create a “general public benefit,” which is a broad purpose intended to encompass many societal and environmental factors that are affected by the business and operations of the corporation.¹⁰ For both types of corporation, the directors and officers are required to consider the effects of any corporate action or inaction upon the benefit goals of the corporation. Standard corporate law does not impose such a mandate.¹¹

The primary purpose of both a social purpose corporation and a benefit corporation is to allow directors and officers of the corporation to pursue the twin goals of public benefit and profit maximization. Because these corporations still retain profit-making goals, they are distinguishable from charities and not-for-profit corporations and could not be formed as such.¹²

Benefit corporation legislation has been adopted in 19 states plus the District of Columbia, and social purpose corporation legislation has been adopted in two states.¹³

Business Entity Name Distinguishability

Chapters 605, 607, 617, and 620, F.S., currently require the name of a limited liability company (LLC), for-profit corporation, nonprofit corporation, and limited partnership to be distinguishable from the names of all other entities or filings on file with the Department of State (DOS), with the exception of fictitious name registrations. However, the term “distinguishable”

⁷ See B Lab, *White Paper; The Need and Rationale for the Benefit Corporation: Why it is the Legal Form that Best Addresses the Needs of Social Entrepreneurs, Investors, and Ultimately the Public*, 2-6 January 18, 2013 available at http://benefitcorp.net/storage/documents/Benefit_Corporation_White_Paper_1_18_2013.pdf (last visited Feb. 11, 2014).

⁸ The Business Law Section of The Florida Bar, *Proposed Legislation to Amend Chapter 607, Florida Statutes, to Provide for the Creation of a Florida Social Purpose Corporation and a Florida Benefit Corporation*, 1 (Jan. 15, 2014) (on file with the Senate Committee on Commerce and Tourism).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 2.

¹² *Id.* at 4.

¹³ *Id.* at 11-12.

is not defined by any of these statutes.¹⁴ According to DOS, some businesses try to adopt names that are similar to existing businesses in an effort to capitalize on the goodwill of existing businesses.¹⁵ Close name similarities can cause confusion in the business environment, and in some instances existing businesses experience hardships when new businesses form and use names similar to that of an established business.¹⁶

III. Effect of Proposed Changes:

Social Purpose Corporations and Benefit Corporations

Restructure of Ch. 607, F.S.

Sections 2, 6, and 20 of the bill breaks ch. 607, F.S., the Florida Business Corporation Act, into 3 parts. Part I is entitled “General Provisions” and comprises ss. 607.0101-607.193, F.S., which are current law regulations for for-profit corporations. Part II is entitled “Social Purpose Corporations” and comprises ss. 607.501- 607.513, F.S., which are created in the bill. Part III is entitled “Benefit Corporations” and comprises ss. 607.601-607.613, F.S., which are created in the bill.

Sections 7 and 21 create ss. 607.501 and 607.601, F.S., respectively, to provide that part II of ch. 607, F.S., applies to a social purpose corporation and that part III of ch. 607, F.S., applies to a benefit corporation. The bill also provides that except for those provisions in ch. 607, F.S., that specifically apply to social purpose or benefit corporations, all otherwise non-conflicting provisions of ch. 607, F.S., apply as well. Additionally, unless authorized in the applicable part, a social purpose or benefit corporation’s articles of incorporation (articles) or bylaws, or a shareholders’ agreement, may not limit, be inconsistent with, or supersede the applicable part.

Sections 8 and 22 create ss. 607.502 and 607.602, F.S., respectively, to provide definitions for terms used in parts II and III of ch. 607, F.S., which are created by the bill.

Sections 9 and 23 create ss. 607.503 and 607.603, F.S., respectively, to require the corporation’s articles to state that it is either a social purpose corporation or a benefit corporation and to require the incorporator to satisfy the requirements of ch. 607, F.S.

Creation of Social Purpose Corporation and Benefit Corporation

Sections 10 and 24 create ss. 607.504 and 607.604, F.S., respectively, to permit an existing corporation to become a social purpose or benefit corporation by amending its articles to include a statement that the corporation is a social purpose corporation or benefit corporation or by a merger, conversion, or share exchange. Such action must be adopted by a minimum status vote. A “minimum status vote” is defined, in the case of a corporation, as a vote in which all shareholders are entitled to vote and the action is approved by a two-thirds vote of each class or series of shares entitled to vote; or, in the case of a domestic entity other than a corporation, as a

¹⁴ Florida Department of State, *Bill Analysis for Senate Bill 654* (Feb. 4, 2014) (on file with the Senate Committee on Commerce and Tourism).

¹⁵ Florida Department of State, *Business Entity Name Distinguishability* (on file with the Senate Committee on Commerce and Tourism).

¹⁶ *Id.*

vote in which the holders of each class or series of equity interest in the entity who are entitled to receive a distribution are entitled to vote on or consent to the action and the action is approved by a two-thirds vote or consent of each class or series of equity interest who are entitled to vote or consent.¹⁷

If an entity elects to become a social purpose or benefit corporation by amendment of its articles or by a merger, conversion, or share exchange, shareholders are entitled to appraisal rights.

Termination of Social Purpose Corporation or Benefit Corporation Status

Sections 11 and 25 create ss. 607.505 and 607.605, F.S., respectively, to permit a social purpose or benefit corporation to terminate its status as such by amending its articles, or by merger, conversion, or share exchange. Termination of its status requires a minimum status vote unless the transaction terminating the status is in the usual and regular course of business, pursuant to a court order, or is a sale in which all or a substantial portion of the net proceeds of the sale will be distributed to the shareholders within 1 year of the sale.

If a corporation's status as a social purpose or benefit corporation is terminated pursuant to an amendment of its articles or by a merger, conversion, or share exchange, shareholders of the corporation are entitled to appraisal rights.

Section 5 amends s. 607.1302, F.S., to provide appraisal rights to shareholders of a domestic corporation that becomes a social purpose or a benefit corporation, or terminates its status as such, by amendment of its articles or by a merger, conversion, or share exchange.

Statutory Public Benefit Purposes

Sections 12 and 26 create ss. 607.506 and 607.606, F.S., respectively to describe the statutory corporate purposes of social purpose corporations and benefit corporations.

A social purpose corporation has the purpose of creating a "public benefit," which is defined as a positive effect, or the minimization of negative effects, on the environment or on *one or more* categories of persons or entities, of an artistic, charitable, economic, educational, cultural, literary, religious, social, ecological, or scientific nature, due to the business and operations of the corporation. The term includes:

- Providing low-income or underserved individuals or communities with beneficial products or services.
- Promoting economic opportunity for individuals or communities beyond the creation of jobs in the normal course of business.
- Protecting or restoring the environment.
- Improving human health.
- Promoting the arts, sciences, or advancement of knowledge.

¹⁷ The definitions of "minimum status vote" are created in ss. 607.502(5) and 607.602(7), F.S., in Sections 8 and 22 of the bill.

- Increasing the flow of capital to entities that provide a benefit to society or the environment.¹⁸

A social purpose corporation's articles may identify one or more additional specific public benefits as its purpose in its articles in addition to its original public benefit purpose and any other lawful purpose it may have. The specific public benefit must be consistent with the corporation's public benefit.¹⁹ It may amend its articles to add, amend, or delete the identification of any additional public benefit; however, the amendment must be adopted by a minimum status vote. In sum, a social purpose corporation must pursue or create one or more narrowly identifiable public benefits.²⁰

A benefit corporation, however, has the purpose of creating a *general* public benefit, which is broadly defined as a material, positive effect on society and the environment, as assessed using a third-party standard, which is attributable to the business and operations of the corporation.²¹ In addition to its general public benefit purpose, a benefit corporation's articles may also identify one or more specific public benefits, which are defined similar to "public benefit" for a social purpose corporation as discussed above. Any specific public benefit adopted by a benefit corporation must be consistent with the general benefit purpose of the corporation.²² It may amend its articles to add, amend, or delete the identification of a specific public benefit; however, the amendment must be adopted by a minimum status vote. Additionally, the adoption of a specific public benefit, does not relieve the benefit corporation of its obligation to create a general public benefit.²³

Unlike a social purpose corporation, which must pursue or create one or more narrowly defined public benefits, a benefit corporation must pursue or create a *general* public benefit, which, as indicated by the Business Law Section, "is a broad purpose intended to encompass many societal and environmental factors that are impacted by the business and operations of the corporation."²⁴ However, both corporations may adopt additional specific public benefits.

The bill also provides that the creation of any specific public benefit by a social purpose corporation or the creation of a general public benefit and specific public benefit by a benefit corporation are in the best interest of the corporation. Additionally, a professional corporation that is a social purpose corporation or a benefit corporation and complies with the applicable statutory purpose does not violate s. 621.08, F.S., which limits a professional service corporation or limited liability company to engage only in providing professional services for which the entity was specifically organized.

¹⁸ The definition of "public benefit" for social purpose corporations is created in Section 8 of the bill, creating s. 607.502(6), F.S.

¹⁹ The definition of "specific public benefit" for social purpose corporations is created in Section 8 of the bill, creating s. 607.502(8), F.S.

²⁰ The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 1.

²¹ The definition of "general public benefit" for benefit corporations is created in Section 22 of the bill, creating s. 607.602(5), F.S.

²² The definition of "specific public benefit" for benefit corporations is created in Section 22 of the bill, creating s. 607.602(8), F.S.

²³ See The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 8.

²⁴ *Id.* at 1.

Standard of Conduct for Directors and Officers

Sections 13, 15, 27, and 29 create ss. 607.507, 607.509, 607.607 and 607.609, F.S., respectively to regulate the standard of conduct for directors and officers of social purpose corporations and benefit corporations.

Directors and officers of social purpose corporations *must* consider the effects of any action by the corporation or any discretionary action by its officers on the corporation's shareholders and on the corporation's ability to accomplish any public benefits identified in its articles. The directors and officers *may* also consider the effect of a corporate action on the corporation's work force, its customers and suppliers, community and societal factors, the environment, the interests of the corporation, and any other pertinent factors or the interests of any group that they deem appropriate. Directors and officers are not required to give priority or equal weight to the interests of a particular person or group unless the corporation states in its articles its intention to give such priority or equal weight.

Directors and officers of benefit corporations *must* consider the effects of any action by the corporation or any discretionary action by its officers on the corporation's shareholders, work force, and customers and suppliers; community and societal factors; the environment; the interests of the corporation; and on the corporation's ability to accomplish its general public benefit purpose and any applicable specific public benefit. The directors and officers *may* consider any other pertinent factors or the interests of any group that they deem appropriate. However, directors and officers are not required to give priority or equal weight to the interests of a particular person or group, unless the corporation states in its articles its intention to give such priority or equal weight.

The bill provides that a director or officer of a social purpose or benefit corporation is not personally liable for monetary damages to the corporation, shareholders, or potential beneficiaries of the corporation's benefit goals for failure to pursue or create a benefit, unless the corporation's articles expressly provide otherwise. Directors are still subject to the traditional duties of good faith and care and to fiduciary principles applicable to all corporate directors under s. 607.0830, F.S.,²⁵ and officers are still subject to any additional duties prescribed under the corporation's bylaws pursuant to s. 607.0841, F.S. However, an officer's consideration of those interests and factors described above is not a violation of any duties prescribed under the corporation's bylaws pursuant to s. 607.0841, F.S.

Benefit Directors

Sections 14 and 28 create ss. 607.508 and 607.608, F.S., respectively, to allow a social purpose corporation and a benefit corporation to include, in its articles, an elected, independent²⁶ benefit director. "Independent" is defined as not having a material relationship with the corporation or a subsidiary. A material relationship is presumed to exist:

- If the individual has been an employee, other than a benefit officer, of the corporation or a subsidiary within the last 3 years;

²⁵ The Business Law Section, *Proposed Legislation to Amend Chapter 607* at 8.

²⁶ Benefit directors of professional service corporations and limited liability companies organized under ch. 621, F.S., are not required to be independent.

- If an immediate family member of the individual has been an executive officer, other than a benefit officer, of the corporation or a subsidiary within the last 3 years;
- If the individual or an entity of which the individual is a director, officer, or manager owns 5 percent or more of the shares of the corporation; or
- If an entity in which the individual owns 5 percent or more of the outstanding equity interests owns 5 percent or more of the shares of the corporation.²⁷

A benefit director has the powers, duties, rights and immunities as other corporate directors, and his or her actions or inactions are inseparable from his or her status as a director.

Unless the corporation's articles or bylaws provide otherwise, the benefit director must prepare a report to be included in the corporation's annual benefit report²⁸ that provides his or her opinion on:

- Whether the corporation acted in accordance with its benefit purpose;
- Whether the corporation's directors and officers complied with the statutory standards of conduct; and
- Whether the corporation or its directors or officers failed, in the case of the corporation, to act in accordance with its statutory purpose, or, in the case of directors and officers, to comply with the requirements to consider the interests and factors provided in ss. 607.507(1) or 607.607(1), F.S., in deciding on a corporate action.

Benefit Officers

Sections 16 and 30 create ss. 607.510 and 607.610, F.S., respectively, to allow a social purpose corporation and a benefit corporation to designate an officer as a benefit officer with powers and duties set forth in the bylaws or determined by the board of directors. Such powers and duties may include preparing the corporation's annual benefit report and any other powers and duties relating to the public benefit, general public benefit, or specific public benefit purpose of the corporation.

Rights of Action and Benefit Enforcement Proceedings

Sections 17 and 31 create ss. 607.511 and 607.611, F.S., respectively, to identify the circumstances under which a person may bring a cause of action against a social purpose corporation or a benefit corporation. Generally, a person may not assert a claim against a social purpose or benefit corporation, or any of its respective directors or officers, for failing to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles. Additionally, a person is generally barred from asserting a claim against a social purpose or a benefit corporation, or any of its respective directors or officers, for violating any obligation, duty, or standard of conduct under ch. 607, F.S.

However, the bill provides that a benefit enforcement proceeding may be brought against the corporation, its directors, and officers directly by the corporation or derivatively by a shareholder, director, person or group that owns 5 percent or more of the outstanding equity

²⁷ The definitions of "independent" are created in ss. 607.502(4) and 607.602(6), F.S., in Sections 8 and 22 of the bill.

²⁸ See "Annual Benefit Report" section below.

interest in an entity of which the corporation is a subsidiary, or any other person specified in the corporation's articles or bylaws. A "benefit enforcement proceeding" is defined as a claim or action for a social purpose or benefit corporation's failure to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles.²⁹ A benefit enforcement proceeding may also be brought for a violation of any obligation, duty, or standard of conduct under the applicable provisions of part II or part III of ch. 607, F.S.

The bill also provides that a social purpose corporation or a benefit corporation is not liable for monetary damages for failure of the corporation to pursue or create a public benefit or general public benefit, as the case may be, or pursue or create a specific public benefit as set forth in the corporation's articles.

Annual Benefit Report

Sections 18 and 32 create ss. 607.512 and 607.612, F.S., to require a social purpose corporation and a benefit corporation to prepare and distribute an annual benefit report to shareholders.

For a benefit corporation, the annual report must be based on a third-party standard that is either applied consistently with previous annual reports or contains an explanation of any changes from prior reports. The bill defines a "third-party standard" as a recognized standard for defining, reporting, and assessing the societal and environmental performance of a business. The third-party standard must be:

- Comprehensive in its assessment of the effect of the business on the interests and factors the corporation and its officers and directors must consider when deciding on a course of action;
- Developed by an entity that is not controlled by the corporation;
- Developed by an entity with the expertise to assess the overall effect of the business and that uses a comprehensive approach to develop the standard, including a period for public comment; and
- Transparent by making information regarding the criteria used under the third-party standard and information regarding any possible conflict of interest between the entity that developed the standard and the corporation publicly available.³⁰

Unlike a benefit corporation, a social purpose corporation's annual benefit report is not required to be based on a third-party standard³¹ unless required by the articles or the board of directors. If a third-party standard is required, it must either be applied consistently with previous annual reports or contain an explanation of any changes from prior reports.

For both a social purpose corporation and a benefit corporation, the annual benefit report must also include a description of:

- The ways in which the corporation pursued a public benefit, or general public benefit, as the case may be, during the year and the extent to which such a benefit was created.
- Any circumstance that has hindered the pursuit or creation of a public benefit or general public benefit, as the case may be, by the corporation.

²⁹ "Benefit enforcement proceeding" is defined in Sections 8 and 22 of the bill, creating ss. 607.502(2) and 607.602(3), F.S.

³⁰ "Third-party standard" is defined in Sections 8 and 22 of the bill, creating ss. 607.502(10) and 607.602(10), F.S.

³¹ *Id.*

- The process and rationale for selecting or changing the third-party standard used to prepare the benefit report.
- The name and addresses of the benefit director and the benefit officer, if those positions exist.
- If the corporation has a benefit director, he or she must include in the benefit report the required opinion statement regarding the corporation's fulfillment of its statutory benefit purpose.³²
- If a third-party standard is used, the report must contain a statement of any connection between the entity that established the standard, its directors, officers, or any person with significant control over the entity, and the corporation, its directors, officers, or any significant shareholder of the corporation, including any information that might affect the credibility of the use of the third-party standard.³³

If a benefit director resigned, refused to stand for reelection, or was removed from his or her position, and furnished written correspondence to the corporation concerning the circumstances surrounding his or her departure, that correspondence must be included in the annual benefit report.

Lastly, the annual benefit report and the third-party standard, if used, are not required to be audited or certified by a third-party standards provider.

Annual Benefit Report Availability

Sections 19 and 33 create ss. 607.513 and 607.613, F.S., to regulate the availability of annual benefit reports created by social purpose corporations and benefit corporations. The bill requires a social purpose corporation and a benefit corporation to send its annual benefit report to each shareholder either within 120 days after the end of the corporation's fiscal year or at the same time that the corporation delivers any other annual report to its shareholders. Additionally, the corporation must post each annual benefit report on the public portion of its website for at least 3 years. If the corporation does not have a website, it must provide a free copy of the most recent annual benefit report to any person who requests a copy.

If a social purpose corporation or benefit corporation does not comply with the benefit report delivery requirements, the circuit court in the county in which the principal office of the corporation is located or, if no office is located in this state, the county in which its registered office is located, may, after a shareholder requests a copy, summarily order the corporation to provide the annual benefit report. If the court orders the annual benefit report to be provided, the court may order the corporation to pay the shareholder's costs, including attorney fees.

Business Entity Name Distinguishability

Sections 1, 4, 34, 35 amend ss. 605.0112, 607.0401, 617.0401, and 620.1108, F.S., to specify which differences in the name of an LLC, for-profit corporation, nonprofit corporation, and limited partnership are not considered distinguishable, and thus do not satisfy the requirement

³² See "*Benefit Directors*" section above.

³³ Because a third-party standard is always required in an annual benefit report for a benefit corporation, this statement must always be included in its annual benefit report.

that the name of such entities be distinguishable from the names of other entities, except fictitious name registrations.

The bill also provides that the name of an LLC, for-profit corporation, nonprofit corporation, and limited partnership does not have to be distinguishable from the name of any general partnership registration or limited liability partnership statement. General partnership registration and limited partnership statements, like fictitious name registrations, are merely registered with DOS for public notice purposes.³⁴

Clarifying the distinguishability of entity names will help businesses and their customers, and it will help DOS in enforcement actions.

Sections 3, 34, 36-74 amend ss. 607.0101, 617.0401, 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09, F.S., to conform to changes made by the act and conform cross-references.

Section 75 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may give businesses and entrepreneurs in Florida that desire to pursue public benefit goals along with traditional profit-making goals additional options for the type of corporate entity they create. It may also attract out-of-state businesses and entrepreneurs who want to form a social purpose corporation or a benefit corporation in Florida.

³⁴ Department of State Bill Analysis at 2.

C. Government Sector Impact:

According to DOS, the bill will have an indeterminate impact on revenue, and any impact the bill has on DOS's information technology system can be covered by the current resources of the department.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 605.0112, 607.0101, 607.0401, 607.1302, 617.0401, 620.1108, 48.091, 215.555, 243.54, 310.171, 310.181, 329.10, 339.412, 420.101, 420.111, 420.161, 440.02, 440.386, 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462, 624.489, 628.041, 631.262, 636.204, 641.2015, 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03, 663.04, 663.301, 663.306, 663.313, 718.111, 719.104, 720.302, 720.306, 766.101, and 865.09.

This bill creates the following sections of the Florida Statutes: 607.501, 607.502, 607.503, 607.504, 607.505, 607.506, 607.507, 607.508, 607.509, 607.510, 607.511, 607.512, 607.513, 607.601, 607.602, 607.603, 607.604, 607.605, 607.606, 607.607, 607.608, 607.609, 607.610, 607.611, 607.612, and 607.613.

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

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

CS/CS by Judiciary Committee on March 18, 2014:

The committee substitute makes technical changes to the bill without changing any substantive provisions. It changes a reference to "CORPORATIONS" to "GENERAL PROVISIONS," and adds a comma.

CS by Commerce and Tourism Committee on February 17, 2014:

The committee substitute clarifies what information must be included in a corporation's annual benefit report and it corrects technical and drafting errors.

B. Amendments:

None.

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

³⁵ *Id.* at 4.

By the Committees on Judiciary; and Commerce and Tourism; and
Senators Clemens and Richter

590-02757-14

2014654c2

1 A bill to be entitled
2 An act relating to business organizations; amending s.
3 605.0112, F.S.; providing additional exceptions
4 regarding the requirement that limited liability
5 company names be distinguishable from the names of
6 other entities or filings; specifying differences in
7 names which are not considered distinguishable;
8 designating part I of ch. 607, F.S., entitled "General
9 Provisions"; amending s. 607.0101, F.S.; revising a
10 provision to conform to changes made by the act;
11 amending s. 607.0401, F.S.; providing additional
12 exceptions regarding the requirement that corporate
13 names be distinguishable; specifying differences in
14 corporate names which are not considered
15 distinguishable; amending s. 607.1302, F.S.; providing
16 that the amendment of articles of incorporation or the
17 merger, conversion, or share exchange of a social
18 purpose or benefit corporation entitles the
19 shareholders to appraisal rights; creating part II of
20 ch. 607, F.S., entitled "Social Purpose Corporations";
21 creating s. 607.501, F.S.; providing application and
22 effect; creating s. 607.502, F.S.; providing
23 definitions; creating s. 607.503, F.S.; establishing
24 requirements for the formation of a social purpose
25 corporation; creating s. 607.504, F.S.; providing
26 procedures for an existing corporation to become a
27 social purpose corporation; creating s. 607.505, F.S.;
28 providing procedures for the termination of a social
29 purpose corporation status; creating s. 607.506, F.S.;

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30 requiring that the corporate purpose must be to create
31 a public benefit; providing criteria; creating s.
32 607.507, F.S.; requiring that the directors of a
33 social purpose corporation meet a standard of conduct;
34 providing criteria for the standards; creating s.
35 607.508, F.S.; authorizing the articles of
36 incorporation of a social purpose corporation to
37 provide for a benefit director; providing powers and
38 duties of a benefit director; creating s. 607.509,
39 F.S.; requiring that the officers of a social purpose
40 corporation meet a standard of conduct; providing
41 criteria for the standards of conduct; creating s.
42 607.510, F.S.; authorizing a social purpose
43 corporation to designate an officer as a benefit
44 officer; providing for the powers and duties of a
45 benefit officer; creating s. 607.511, F.S.;

46 authorizing certain legal actions to be brought
47 against a social purpose corporation, its officers, or
48 its directors; creating s. 607.512, F.S.; requiring
49 the board of directors to prepare an annual benefit
50 report; providing criteria for the preparation of the
51 report; creating s. 607.513, F.S.; establishing
52 requirements for the availability and dissemination of
53 the annual report; authorizing a court to order
54 dissemination of the report; providing criteria;
55 creating part III of ch. 607, F.S., entitled "Benefit
56 Corporations"; creating s. 607.601, F.S.; providing
57 for application and effect; creating s. 607.602, F.S.;

58 providing definitions; creating s. 607.603, F.S.;

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59 establishing requirements for the formation of a
60 benefit corporation; creating s. 607.604, F.S.;
61 providing procedures for an existing corporation to
62 become a benefit corporation; creating s. 607.605,
63 F.S.; providing procedures for the termination of a
64 benefit corporation status; creating s. 607.606, F.S.;
65 requiring that the corporate purpose be to create a
66 public benefit; providing criteria; creating s.
67 607.607, F.S.; requiring the directors of a benefit
68 corporation to meet a standard of conduct; providing
69 criteria for the standards; creating s. 607.608, F.S.;
70 authorizing the articles of incorporation of a benefit
71 corporation to provide for a benefit director;
72 providing powers and duties of the benefit director;
73 creating s. 607.609, F.S.; requiring the officers of a
74 benefit corporation to meet a standard of conduct;
75 providing criteria for the standards of conduct;
76 creating s. 607.610, F.S.; authorizing a benefit
77 corporation to designate an officer as a benefit
78 officer; providing for the powers and duties of the
79 benefit officer; creating s. 607.611, F.S.;
80 authorizing certain legal actions to be brought
81 against a benefit corporation, its officers, or its
82 directors; creating s. 607.612, F.S.; requiring the
83 board of directors to prepare an annual benefit
84 report; providing criteria for the preparation of the
85 report; creating s. 607.613, F.S.; establishing
86 requirements for the availability and dissemination of
87 the annual report; authorizing a court to order

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88 dissemination of the report; amending ss. 617.0401 and
89 620.1108, F.S; providing additional exceptions
90 regarding the requirement that the names of entities
91 be distinguishable; specifying differences in names
92 which are not considered distinguishable; amending ss.
93 48.091, 215.555, 243.54, 310.171, 310.181, 329.10,
94 339.412, 420.101, 420.111, 420.161, 440.02, 440.386,
95 609.08, 617.1908, 618.221, 619.04, 624.430, 624.462,
96 624.489, 628.041, 631.262, 636.204, 641.2015,
97 655.0201, 658.23, 658.2953, 658.30, 658.36, 663.03,
98 663.04, 663.301, 663.306, 663.313, 718.111, 719.104,
99 720.302, 720.306, 766.101, and 865.09, F.S.;
100 conforming cross-references to changes made by the
101 act; providing an effective date.

102
103 Be It Enacted by the Legislature of the State of Florida:

104
105 Section 1. Subsection (1) of section 605.0112, Florida
106 Statutes, is amended to read:

107 605.0112 Name.—

108 (1) The name of a limited liability company:

109 (a) Must contain the words "limited liability company" or
110 the abbreviation "L.L.C." or "LLC,"~~+~~

111 (b) Must be distinguishable in the records of the Division
112 of Corporations of the department from the names of all other
113 entities or filings that are on file with the division, except
114 fictitious name registrations pursuant to s. 865.09, general
115 partnership registrations pursuant to s. 620.8105, and limited
116 liability partnership statements pursuant to s. 620.9001 which

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117 are organized, registered, or reserved under the laws of this
 118 state, ~~which names are on file with the division~~; however, a
 119 limited liability company may register under a name that is not
 120 otherwise distinguishable on the records of the division with
 121 the written consent of the owner entity ~~if, provided~~ the consent
 122 is filed with the division at the time of registration of such
 123 name. A name that is different from the name of another entity
 124 or filing due to any of the following is not considered
 125 distinguishable:

- 126 1. A suffix.
 - 127 2. A definite or indefinite article.
 - 128 3. The word "and" and the symbol "&."
 - 129 4. The singular, plural, or possessive form of a word.
 - 130 5. A recognized abbreviation of a root word.
 - 131 6. A punctuation mark or a symbol.
- 132 (c) May not contain language stating or implying that the
 133 limited liability company is organized for a purpose other than
 134 a purpose authorized in this chapter and its articles of
 135 organization. ~~and~~
- 136 (d) May not contain language stating or implying that the
 137 limited liability company is connected with a state or federal
 138 government agency or a corporation or other entity chartered
 139 under the laws of the United States.

140 Section 2. Sections 607.0101 through 607.193, Florida
 141 Statutes, are designated as part I of chapter 607, Florida
 142 Statutes, and entitled "GENERAL PROVISIONS."

143 Section 3. Section 607.0101, Florida Statutes, is amended
 144 to read:

145 607.0101 Short title.—This chapter act shall be known and

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146 may be cited as the "Florida Business Corporation Act."

147 Section 4. Section 607.0401, Florida Statutes, is amended
 148 to read:

149 607.0401 Corporate name.—A corporate name:

- 150 (1) Must contain the word "corporation," "company," or
 151 "incorporated" or the abbreviation "Corp.," "Inc.," or "Co.," or
 152 the designation "Corp.," "Inc.," or "Co.," as will clearly indicate
 153 that it is a corporation instead of a natural person,
 154 partnership, or other business entity. ~~and~~
- 155 (2) May not contain language stating or implying that the
 156 corporation is organized for a purpose other than that permitted
 157 in this act and its articles of incorporation. ~~and~~

- 158 (3) May not contain language stating or implying that the
 159 corporation is connected with a state or federal government
 160 agency or a corporation chartered under the laws of the United
 161 States. ~~and~~

- 162 (4) Must be distinguishable from the names of all other
 163 entities or filings that are on file with the Division of
 164 Corporations, except fictitious name registrations pursuant to
 165 s. 865.09, general partnership registrations pursuant to s.
 166 620.8105, and limited liability partnership statements pursuant
 167 to s. 620.9001 which are organized, registered, or reserved
 168 under the laws of this state, ~~which names are on file with the~~
 169 ~~Division of Corporations~~. A name that is different from the name
 170 of another entity or filing due to any of the following is not
 171 considered distinguishable:

- 172 (a) A suffix.
- 173 (b) A definite or indefinite article.
- 174 (c) The word "and" and the symbol "&."

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175 (d) The singular, plural, or possessive form of a word.

176 (e) A recognized abbreviation of a root word.

177 (f) A punctuation mark or a symbol.

178 ~~(5) The name of the corporation~~ As filed with the
179 Department of State, ~~is shall be~~ for public notice only and does
180 ~~shall~~ not alone create any presumption of ownership beyond that
181 which is created under the common law.

182 Section 5. Subsection (1) of section 607.1302, Florida
183 Statutes, is amended to read:

184 607.1302 Right of shareholders to appraisal.-

185 (1) A shareholder of a domestic corporation is entitled to
186 appraisal rights, and to obtain payment of the fair value of
187 that shareholder's shares, in the event of any of the following
188 corporate actions:

189 (a) Consummation of a conversion of such corporation
190 pursuant to s. 607.1112 if shareholder approval is required for
191 the conversion and the shareholder is entitled to vote on the
192 conversion under ss. 607.1103 and 607.1112(6), or the
193 consummation of a merger to which such corporation is a party if
194 shareholder approval is required for the merger under s.
195 607.1103 and the shareholder is entitled to vote on the merger
196 or if such corporation is a subsidiary and the merger is
197 governed by s. 607.1104;

198 (b) Consummation of a share exchange to which the
199 corporation is a party as the corporation whose shares will be
200 acquired if the shareholder is entitled to vote on the exchange,
201 except that appraisal rights are shall not ~~be~~ available to any
202 shareholder of the corporation with respect to any class or
203 series of shares of the corporation that is not exchanged;

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204 (c) Consummation of a disposition of assets pursuant to s.
205 607.1202 if the shareholder is entitled to vote on the
206 disposition, including a sale in dissolution but not including a
207 sale pursuant to court order or a sale for cash pursuant to a
208 plan by which all or substantially all of the net proceeds of
209 the sale will be distributed to the shareholders within 1 year
210 after the date of sale;

211 (d) An amendment of the articles of incorporation with
212 respect to the class or series of shares which reduces the
213 number of shares of a class or series owned by the shareholder
214 to a fraction of a share if the corporation has the obligation
215 or right to repurchase the fractional share so created;

216 (e) Any other amendment to the articles of incorporation,
217 merger, share exchange, or disposition of assets to the extent
218 provided by the articles of incorporation, bylaws, or a
219 resolution of the board of directors, except that no bylaw or
220 board resolution providing for appraisal rights may be amended
221 or otherwise altered except by shareholder approval; ~~or~~

222 (f) With regard to a class of shares prescribed in the
223 articles of incorporation prior to October 1, 2003, including
224 any shares within that class subsequently authorized by
225 amendment, any amendment of the articles of incorporation if the
226 shareholder is entitled to vote on the amendment and if such
227 amendment would adversely affect such shareholder by:

228 1. Altering or abolishing any preemptive rights attached to
229 any of his or her shares;

230 2. Altering or abolishing the voting rights pertaining to
231 any of his or her shares, except as such rights may be affected
232 by the voting rights of new shares then being authorized of any

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233 existing or new class or series of shares;

234 3. Effecting an exchange, cancellation, or reclassification

235 of any of his or her shares, when such exchange, cancellation,

236 or reclassification would alter or abolish the shareholder's

237 voting rights or alter his or her percentage of equity in the

238 corporation, or effecting a reduction or cancellation of accrued

239 dividends or other arrearages in respect to such shares;

240 4. Reducing the stated redemption price of any of the

241 shareholder's redeemable shares, altering or abolishing any

242 provision relating to any sinking fund for the redemption or

243 purchase of any of his or her shares, or making any of his or

244 her shares subject to redemption when they are not otherwise

245 redeemable;

246 5. Making noncumulative, in whole or in part, dividends of

247 any of the shareholder's preferred shares which had theretofore

248 been cumulative;

249 6. Reducing the stated dividend preference of any of the

250 shareholder's preferred shares; or

251 7. Reducing any stated preferential amount payable on any

252 of the shareholder's preferred shares upon voluntary or

253 involuntary liquidation;-

254 (g) An amendment of the articles of incorporation of a

255 social purpose corporation to which s. 607.504 or s. 607.505

256 applies;

257 (h) An amendment of the articles of incorporation of a

258 benefit corporation to which s. 607.604 or s. 607.605 applies;

259 (i) A merger, conversion, or share exchange of a social

260 purpose corporation to which s. 607.504 applies; or

261 (j) A merger, conversion, or share exchange of a benefit

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262 corporation to which s. 607.604 applies.

263 Section 6. Sections 607.501 through 607.513, Florida

264 Statutes, are designated as part II of chapter 607, Florida

265 Statutes, and entitled "SOCIAL PURPOSE CORPORATIONS."

266 Section 7. Section 607.501, Florida Statutes, is created to

267 read:

268 607.501 Application and effect of part.-

269 (1) This part applies to a social purpose corporation and

270 does not affect a corporation that is not a social purpose

271 corporation.

272 (2) Except as otherwise provided in this part, this chapter

273 applies generally to all social purpose corporations.

274 (3) A social purpose corporation may be simultaneously

275 subject to this part and to one or more chapters, including

276 chapter 621. In such event, this part takes precedence with

277 respect to a social purpose corporation.

278 (4) Except as authorized by this part, a provision of the

279 articles of incorporation or bylaws of a social purpose

280 corporation, or a shareholders agreement among shareholders of a

281 social purpose corporation, may not limit, be inconsistent with,

282 or supersede a provision of this part.

283 Section 8. Section 607.502, Florida Statutes, is created to

284 read:

285 607.502 Definitions.-As used in this part, unless the

286 context otherwise requires, the term:

287 (1) "Benefit director" means:

288 (a) The director designated as the benefit director of a

289 social purpose corporation under s. 607.508; or

290 (b) A person with one or more of the powers, duties, or

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291 rights of a benefit director to the extent provided in the
 292 articles of incorporation or bylaws under s. 607.508.

293 (2) "Benefit enforcement proceeding" means a claim or
 294 action for:

295 (a) The failure of a social purpose corporation to pursue
 296 or create a public benefit or a specific public benefit
 297 established in its articles of incorporation; or

298 (b) A violation of any obligation, duty, or standard of
 299 conduct under this part.

300 (3) "Benefit officer" means the individual designated as
 301 the benefit officer of a social purpose corporation under s.
 302 607.510.

303 (4) "Independent" means not having a material relationship
 304 with the social purpose corporation or a subsidiary of the
 305 social purpose corporation. A person does not have a material
 306 relationship solely by virtue of serving as the benefit director
 307 or benefit officer of the social purpose corporation or a
 308 subsidiary of the social purpose corporation. In determining
 309 whether a director or officer is independent, a material
 310 relationship between an individual and a social purpose
 311 corporation or any of its subsidiaries will be conclusively
 312 presumed to exist, at the time independence is to be determined,
 313 if any of the following apply:

314 (a) The individual is or was within the prior 3 years an
 315 employee, other than a benefit officer, of the social purpose
 316 corporation or a subsidiary.

317 (b) An immediate family member of the individual is or was
 318 within the prior 3 years an executive officer, other than a
 319 benefit officer, of the social purpose corporation or a

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320 subsidiary.

321 (c) When ownership is calculated as if all outstanding
 322 rights to acquire equity interests in the social purpose
 323 corporation had been exercised, there is beneficial or record
 324 ownership of 5 percent or more of the outstanding shares of the
 325 social purpose corporation by:

326 1. The individual; or

327 2. An entity:

328 a. Of which the individual is a director, an officer, or a
 329 manager; or

330 b. In which, when ownership is calculated as if all
 331 outstanding rights to acquire equity interests in the entity had
 332 been exercised, the individual owns beneficially or of record 5
 333 percent or more of the outstanding equity interests.

334 (5) "Minimum status vote" means:

335 (a) In the case of a corporation that is to become a social
 336 purpose corporation, whether by amendment of the articles of
 337 incorporation or by way of or pursuant to a merger, conversion,
 338 or share exchange; a social purpose corporation whose articles
 339 of incorporation are to be amended pursuant to s. 607.506(2); or
 340 a social purpose corporation that is to cease being a social
 341 purpose corporation, in addition to any other required approval
 342 or vote, the satisfaction of the following conditions:

343 1. The holders of each class or series of shares shall be
 344 entitled to vote as a separate voting group on the corporate
 345 action regardless of any limitation on the voting rights of any
 346 class or series stated in the articles of incorporation or
 347 bylaws.

348 2. The corporate action is approved by vote of each class

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349 or series of shares entitled to vote by at least two-thirds of
 350 the total votes of the class or series.

351 (b) In the case of a domestic entity, other than a
 352 corporation, which is to be simultaneously converted to a social
 353 purpose corporation or merged into a social purpose corporation,
 354 in addition to any other required approval, vote, or consent,
 355 the satisfaction of the following conditions:

356 1. The holders of each class or series of equity interest
 357 in the entity who are entitled to receive a distribution of any
 358 kind are entitled, as a separate voting group, to vote on or
 359 consent to the action regardless of any applicable limitation on
 360 the voting or consent rights of any class or series.

361 2. The action is approved by vote or consent of each class
 362 or series of equity interest described in subparagraph 1. who
 363 are entitled to vote by at least two-thirds of the votes or
 364 consent of the class or series.

365 (6) "Public benefit" means a positive effect, or the
 366 minimization of negative effects, taken as a whole, on the
 367 environment or on one or more categories of persons or entities,
 368 other than shareholders in their capacity as shareholders, of an
 369 artistic, charitable, economic, educational, cultural, literary,
 370 religious, social, ecological, or scientific nature, from the
 371 business and operations of a social purpose corporation. The
 372 term includes, but is not limited to, the following:

373 (a) Providing low-income or underserved individuals or
 374 communities with beneficial products or services.

375 (b) Promoting economic opportunity for individuals or
 376 communities beyond the creation of jobs in the normal course of
 377 business.

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378 (c) Protecting or restoring the environment.

379 (d) Improving human health.

380 (e) Promoting the arts, sciences, or advancement of
 381 knowledge.

382 (f) Increasing the flow of capital to entities that have as
 383 their stated purpose the provision of a benefit to society or
 384 the environment.

385 (7) "Social purpose corporation" means a corporation that
 386 is formed, or has elected to become, subject to this part, the
 387 status of which as a social purpose corporation has not been
 388 terminated.

389 (8) "Specific public benefit" means a benefit identified as
 390 a purpose of the social purpose corporation which is set forth
 391 in the articles of incorporation and is consistent with a public
 392 benefit.

393 (9) "Subsidiary" means, in relation to a person other than
 394 an individual, an entity in which the person owns beneficially
 395 or of record 50 percent or more of the outstanding equity
 396 interests.

397 (10) "Third-party standard" means a recognized standard for
 398 defining, reporting, and assessing the societal and
 399 environmental performance of a business which is:

400 (a) Comprehensive, because it assesses the effect of the
 401 business and its operations upon the interests listed in s.
 402 607.507(1) (a).

403 (b) Developed by an entity that is not controlled by the
 404 social purpose corporation.

405 (c) Credible, because it is developed by an entity that has
 406 access to necessary expertise to assess the overall effect of

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407 the business and uses a balanced, collaborative approach to
 408 develop the standard, including a period for public comment.

409 (d) Transparent, because the following information is
 410 publicly available:

411 1. The criteria considered under the standard when
 412 measuring the overall effect of the business and its operations
 413 upon the interests provided in s. 607.507(1)(a) and the relative
 414 weights, if any, of those criteria; and

415 2. The process used in the development and revision of the
 416 third-party standard regarding the identity of the directors,
 417 officers, material owners, and governing body of the entity that
 418 developed and controls revisions to the standard; the process by
 419 which revisions to the standard and changes to the membership of
 420 the governing body are made; and an accounting of the revenue
 421 and sources of financial support for the entity with sufficient
 422 detail to disclose any relationships that could reasonably be
 423 considered to present a potential conflict of interest.

424 Section 9. Section 607.503, Florida Statutes, is created to
 425 read:

426 607.503 Incorporation.—To incorporate as a social purpose
 427 corporation, an incorporator must satisfy the requirements of
 428 this chapter, and the articles of incorporation must state that
 429 the corporation is a social purpose corporation under this part.

430 Section 10. Section 607.504, Florida Statutes, is created
 431 to read:

432 607.504 Election of social purpose corporation status.—

433 (1) An existing corporation may become a social purpose
 434 corporation under this part by amending its articles of
 435 incorporation to include a statement that the corporation is a

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436 social purpose corporation under this part. The amendment must
 437 be adopted by the minimum status vote.

438 (2) A plan of merger, conversion, or share exchange must be
 439 adopted by the minimum status vote if an entity that is not a
 440 social purpose corporation is a party to the merger or
 441 conversion or if the exchanging entity in a share exchange and
 442 the surviving, new, or resulting entity is, or will be, a social
 443 purpose corporation.

444 (3) If an entity elects to become a social purpose
 445 corporation by amendment of the articles of incorporation or by
 446 a merger, conversion, or share exchange, the shareholders of the
 447 entity are entitled to appraisal rights under and pursuant to
 448 ss. 607.1301-607.1333.

449 Section 11. Section 607.505, Florida Statutes, is created
 450 to read:

451 607.505 Termination of social purpose corporation status.—

452 (1) A social purpose corporation may terminate its status
 453 as such and cease to be subject to this part by amending its
 454 articles of incorporation to delete the provision required under
 455 s. 607.503 or s. 607.504. The amendment must be adopted by the
 456 minimum status vote.

457 (2) A plan of merger, conversion, or share exchange which
 458 has the effect of terminating the status of a corporation as a
 459 social purpose corporation must be adopted by the minimum status
 460 vote. A sale, lease, exchange, or other disposition of all or
 461 substantially all of the assets of a social purpose corporation
 462 is not effective unless the transaction is approved by the
 463 minimum status vote. However, a minimum status vote is not
 464 required if the transaction is in the usual and regular course

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465 of business, is pursuant to court order, or is a sale pursuant
 466 to which all or a substantial portion of the net proceeds of the
 467 sale will be distributed to the shareholders within 1 year after
 468 the date of the sale.

469 (3) If a corporation's status as a social purpose
 470 corporation is terminated pursuant to subsection (1) or
 471 subsection (2), shareholders of the corporation are entitled to
 472 appraisal rights under and pursuant to ss. 607.1301-607.1333.

473 Section 12. Section 607.506, Florida Statutes, is created
 474 to read:

475 607.506 Corporate purpose.-

476 (1) A social purpose corporation has the purpose of
 477 creating a public benefit. This purpose is in addition to its
 478 purpose under s. 607.0301.

479 (2) The articles of incorporation of a social purpose
 480 corporation may identify one or more specific public benefits as
 481 its purpose in addition to its purposes under s. 607.0301 and
 482 subsection (1). A social purpose corporation may amend its
 483 articles of incorporation to add, amend, or delete the
 484 identification of a specific public benefit purpose; however,
 485 the amendment must be adopted by the minimum status vote.

486 (3) The creation of a public benefit and a specific public
 487 benefit under subsections (1) and (2) is deemed to be in the
 488 best interest of the social purpose corporation.

489 (4) A professional corporation that is a social purpose
 490 corporation does not violate s. 621.08 by having as its purpose
 491 the creation of a public benefit or a specific public benefit.

492 Section 13. Section 607.507, Florida Statutes, is created
 493 to read:

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494 607.507 Standard of conduct for directors.-

495 (1) In discharging their duties and in considering the best
 496 interests of the social purpose corporation, the directors:

497 (a) Shall consider the effects of any action or inaction
 498 upon:

499 1. The shareholders of the social purpose corporation; and

500 2. The ability of the social purpose corporation to
 501 accomplish its public benefit or any specific public benefit
 502 purpose.

503 (b) May consider the effects of any action or inaction upon
 504 any of the following:

505 1. The employees and work force of the social purpose
 506 corporation, its subsidiaries, and its suppliers.

507 2. The interests of customers and suppliers as
 508 beneficiaries of the public benefit or specific public benefits
 509 of the social purpose corporation.

510 3. Community and societal factors, including those of each
 511 community in which offices or facilities of the social purpose
 512 corporation, its subsidiaries, or its suppliers are located.

513 4. The local and global environment.

514 5. The short-term and long-term interests of the social
 515 purpose corporation, including benefits that may accrue to the
 516 social purpose corporation from its long-term plans and the
 517 possibility that these interests may be best served by the
 518 continued independence of the social purpose corporation.

519 (c) May consider other pertinent factors or the interests
 520 of any other group that they deem appropriate.

521 (d) Are not required to give priority to the interests of a
 522 particular person or group referred to in paragraph (a),

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523 paragraph (b), or paragraph (c) unless the social purpose
 524 corporation states in its articles of incorporation its
 525 intention to give such priority.

526 (e) Are not required to give equal weight to the interests
 527 of any particular person or group referred to in paragraph (a),
 528 paragraph (b), or paragraph (c) unless the social purpose
 529 corporation has stated in its articles of incorporation its
 530 intention to give such equal weight.

531 (2) Except as provided in the articles of incorporation, a
 532 director is not personally liable for monetary damages to the
 533 corporation, or to any other person, for the failure of the
 534 social purpose corporation to pursue or create a public benefit
 535 or a specific public benefit. A director is subject to the
 536 duties specified in s. 607.0830.

537 (3) Except as provided in the articles of incorporation, a
 538 director does not have a duty to a person who is a beneficiary
 539 of the public benefit purpose or any one or more specific public
 540 benefit purposes of a social purpose corporation.

541 Section 14. Section 607.508, Florida Statutes, is created
 542 to read:

543 607.508 Benefit director.—

544 (1) If the articles of incorporation so provide, the board
 545 of directors of a social purpose corporation may include a
 546 director who is designated as the benefit director and, in
 547 addition to the powers, duties, rights, and immunities of the
 548 other directors of the social purpose corporation, has the
 549 powers, duties, rights, and immunities provided in this part.

550 (2) The benefit director shall be elected, and may be
 551 removed, in the manner provided by this chapter. Except as

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552 provided under subsection (5), the benefit director shall be
 553 independent and may serve as a benefit officer. The articles of
 554 incorporation or bylaws may prescribe additional qualifications
 555 of the benefit director.

556 (3) Unless the articles of incorporation or bylaws provide
 557 otherwise, the benefit director shall prepare, and the social
 558 purpose corporation shall include in the annual benefit report
 559 to shareholders required under s. 607.512, the opinion of the
 560 benefit director on the following:

561 (a) Whether the social purpose corporation in all material
 562 respects acted in accordance with its public benefit purpose and
 563 any specific public benefit purpose during the period covered by
 564 the report.

565 (b) Whether the directors and officers complied with ss.
 566 607.507(1) and 607.509(1).

567 (c) Whether the social purpose corporation or its directors
 568 or officers failed to comply with paragraph (a) or s. 607.507(1)
 569 or s. 607.509(1), including a description of the ways in which
 570 the social purpose corporation or its directors or officers
 571 failed to comply.

572 (4) The action or inaction of an individual in his or her
 573 capacity as a benefit director shall constitute for all purposes
 574 an action or inaction of that individual in his or her capacity
 575 as a director of the social purpose corporation.

576 (5) The benefit director of a corporation formed under
 577 chapter 621 is not required to be independent.

578 Section 15. Section 607.509, Florida Statutes, is created
 579 to read:

580 607.509 Standard of conduct for officers.—

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581 (1) If an officer of a social purpose corporation
 582 reasonably believes that a matter may have a material effect on
 583 the ability of the corporation to create a public benefit or a
 584 specific public benefit identified in the articles of
 585 incorporation and the officer has discretion to act on the
 586 matter, the officer shall consider the interests and factors
 587 provided in s. 607.507(1).

588 (2) The officer's consideration of interests and factors
 589 under subsection (1) does not constitute a violation of s.
 590 607.0841.

591 (3) Except as provided in the articles of incorporation, an
 592 officer is not personally liable for monetary damages to the
 593 corporation or any other person for the failure of the social
 594 purpose corporation to pursue or create a public benefit or a
 595 specific public benefit; however, he or she is subject to s.
 596 607.0841.

597 (4) Except as provided in the articles of incorporation, an
 598 officer does not have any duty to a person who is a beneficiary
 599 of the public benefit purpose or any specific public benefit
 600 purpose of a social purpose corporation arising from the status
 601 of the person as a beneficiary.

602 Section 16. Section 607.510, Florida Statutes, is created
 603 to read:

604 607.510 Benefit officer.-
 605 (1) A social purpose corporation may designate an officer
 606 as the benefit officer.

607 (2) The benefit officer has the powers and duties set forth
 608 in the bylaws or determined by the board of directors, which may
 609 include, but are not limited to:

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610 (a) Powers and duties relating to the public benefit or a
 611 specific public benefit purpose of the corporation; and
 612 (b) The duty to prepare the annual benefit report required
 613 under s. 607.512.

614 Section 17. Section 607.511, Florida Statutes, is created
 615 to read:

616 607.511 Right of action.-
 617 (1)(a) Except in a benefit enforcement proceeding, a person
 618 may not bring an action or assert a claim against a social
 619 purpose corporation or its directors or officers with respect
 620 to:

621 1. A failure to pursue or create a public benefit or a
 622 specific public benefit set forth in its articles of
 623 incorporation; or

624 2. A violation of an obligation, duty, or standard of
 625 conduct under this part.

626 (b) A social purpose corporation is not liable for monetary
 627 damages under this part for the failure of the social purpose
 628 corporation to pursue or create a public benefit or a specific
 629 public benefit.

630 (2) A benefit enforcement proceeding may be commenced or
 631 maintained only:

632 (a) Directly by the social purpose corporation; or
 633 (b) Derivatively by:

634 1. A shareholder of record on the date of the action or
 635 inaction complained of in the benefit enforcement proceeding;
 636 2. A director;
 637 3. A person or group of persons that owns beneficially or
 638 of record 5 percent or more of the outstanding equity interests

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639 in an entity of which the social purpose corporation is a
 640 subsidiary on the date of the action or inaction complained of
 641 in the benefit enforcement proceeding; or

642 4. Any other person who is specified in the articles of
 643 incorporation or bylaws of the social purpose corporation.

644 Section 18. Section 607.512, Florida Statutes, is created
 645 to read:

646 607.512 Preparation of annual benefit report.—

647 (1) Unless it is prepared by a benefit director or benefit
 648 officer, the board of directors shall prepare an annual benefit
 649 report. The annual benefit report must include all of the
 650 following:

651 (a) A narrative description of:

652 1. The ways in which the social purpose corporation pursued
 653 a public benefit during the year and the extent to which a
 654 public benefit was created.

655 2. Any circumstance that has hindered the pursuit or
 656 creation of a public benefit by the social purpose corporation.

657 3. The process and rationale for selecting or changing the
 658 third-party standard used to prepare the benefit report, if the
 659 articles of incorporation of the social purpose corporation
 660 require, or the board of directors determines, that the annual
 661 benefit report must be prepared in accordance with a third-party
 662 standard.

663 (b) If the articles of incorporation of the social purpose
 664 corporation require, or the board of directors determines, that
 665 the annual benefit report must be prepared in accordance with a
 666 third-party standard, the third-party standard must be:

667 1. Applied consistently with any previous application in

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668 prior annual benefit reports; or

669 2. Accompanied by an explanation of the reasons for
 670 inconsistent application or any change in the standard from the
 671 immediate prior report.

672 (c) The name of the benefit director and the benefit
 673 officer, if those positions exist, and the respective addresses
 674 to which correspondence may be directed.

675 (d) If the corporation has a benefit director, his or her
 676 statement as provided in s. 607.508(3).

677 (e) If the articles of incorporation of the social purpose
 678 corporation require, or the board of directors determines, that
 679 the annual benefit report must be prepared in accordance with a
 680 third-party standard, a statement of any connection between the
 681 organization that established the third-party standard, or its
 682 directors, officers, or any holder of 5 percent or more of the
 683 governance interests in the organization, and the social purpose
 684 corporation or its directors, officers, or any holder of 5
 685 percent or more of the outstanding shares of the social purpose
 686 corporation, including any financial or governance relationship
 687 that might materially affect the credibility of the use of the
 688 third-party standard.

689 (2) If, during the year covered by an annual benefit
 690 report, a benefit director resigned from, or refused to stand
 691 for reelection to, his or her position, or was removed from his
 692 or her position, and he or she furnished written correspondence
 693 to the social purpose corporation concerning the circumstances
 694 surrounding his or her departure, that correspondence must be
 695 included as an exhibit in the annual benefit report.

696 (3) The annual benefit report and the assessment of the

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697 performance of the social purpose corporation in the annual
 698 benefit report required under paragraph (1)(b) are not required
 699 to be audited or certified by a third-party standards provider.

700 Section 19. Section 607.513, Florida Statutes, is created
 701 to read:

702 607.513 Availability of annual benefit report.-

703 (1) Each social purpose corporation shall send its annual
 704 benefit report to each shareholder:

705 (a) Within 120 days after the end of the fiscal year of the
 706 social purpose corporation; or

707 (b) At the same time that the social purpose corporation
 708 delivers any other annual report to its shareholders.

709 (2) A social purpose corporation shall post each annual
 710 benefit report on the public portion of its website, if any, and
 711 it shall remain posted for at least 3 years.

712 (3) If a social purpose corporation does not have a
 713 website, the corporation shall provide a copy of its most recent
 714 annual benefit report, without charge, to any person who
 715 requests a copy.

716 (4) If a social purpose corporation does not comply with
 717 the annual benefit report delivery requirement, the circuit
 718 court in the county in which the principal office of the social
 719 purpose corporation is located or, if no office is located in
 720 this state, the county in which its registered office is
 721 located, may, after a shareholder of the social purpose
 722 corporation requests a copy, summarily order the corporation to
 723 furnish the annual benefit report. If the court orders the
 724 annual benefit report to be furnished, the court may also order
 725 the social purpose corporation to pay the shareholder's costs,

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726 including reasonable attorney fees, which were incurred in
 727 obtaining the order and otherwise enforce his or her rights
 728 under this section.

729 Section 20. Sections 607.601 through 607.613, Florida
 730 Statutes, are designated as part III of chapter 607, Florida
 731 Statutes, entitled "BENEFIT CORPORATIONS."

732 Section 21. Section 607.601, Florida Statutes, is created
 733 to read:

734 607.601 Application and effect of part.-

735 (1) This part applies to a benefit corporation and does not
 736 affect a corporation that is not a benefit corporation.

737 (2) Except as provided in this part, this chapter applies
 738 generally to all benefit corporations.

739 (3) A benefit corporation may be simultaneously subject to
 740 this part and to one or more chapters, including chapter 621. In
 741 such event, this part takes precedence with respect to a benefit
 742 corporation.

743 (4) Except as authorized by this part, a provision of the
 744 articles of incorporation or bylaws of a benefit corporation, or
 745 a shareholders agreement among shareholders of a benefit
 746 corporation, may not limit, be inconsistent with, or supersede a
 747 provision of this part.

748 Section 22. Section 607.602, Florida Statutes, is created
 749 to read:

750 607.602 Definitions.-As used in this part, unless the
 751 context otherwise requires, the term:

752 (1) "Benefit corporation" means a corporation that is
 753 formed, or has elected to become, subject to this part, the
 754 status of which as a benefit corporation has not been

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755 terminated.

756 (2) "Benefit director" means:

757 (a) The director designated as the benefit director of a

758 benefit corporation under s. 607.608; or

759 (b) A person with one or more of the powers, duties, or

760 rights of a benefit director to the extent provided in the

761 articles of incorporation or bylaws under s. 607.608.

762 (3) "Benefit enforcement proceeding" means any claim or

763 action for:

764 (a) The failure of a benefit corporation to pursue or

765 create general public benefit or a specific public benefit

766 purpose set forth in its articles of incorporation; or

767 (b) A violation of any obligation, duty, or standard of

768 conduct under this part.

769 (4) "Benefit officer" means the individual designated as

770 the benefit officer of a benefit corporation under s. 607.610.

771 (5) "General public benefit" means a material, positive

772 effect on society and the environment, taken as a whole, as

773 assessed using a third-party standard which is attributable to

774 the business and operations of a benefit corporation.

775 (6) "Independent" means not having a material relationship

776 with the benefit corporation or a subsidiary of the benefit

777 corporation. A person does not have a material relationship

778 solely by virtue of serving as the benefit director or benefit

779 officer of the benefit corporation or a subsidiary of the

780 benefit corporation. In determining whether a director or

781 officer is independent, a material relationship between an

782 individual and a benefit corporation or any of its subsidiaries

783 will be conclusively presumed to exist, at the time independence

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784 is to be determined, if any of the following apply:

785 (a) The individual is or has been within the prior 3 years

786 an employee, other than a benefit officer, of the benefit

787 corporation or a subsidiary.

788 (b) An immediate family member of the individual is or has

789 been within the prior 3 years an executive officer, other than a

790 benefit officer, of the benefit corporation or a subsidiary.

791 (c) When ownership is calculated as if all outstanding

792 rights to acquire equity interests in the benefit corporation

793 had been exercised, there is beneficial or record ownership of 5

794 percent or more of the outstanding shares of the benefit

795 corporation by:

796 1. The individual; or

797 2. An entity:

798 a. Of which the individual is a director, an officer, or a

799 manager; or

800 b. In which, when ownership is calculated as if all

801 outstanding rights to acquire equity interests in the entity had

802 been exercised, the individual owns beneficially or of record 5

803 percent or more of the outstanding equity interests.

804 (7) "Minimum status vote" means:

805 (a) In the case of a corporation that is to become a

806 benefit corporation, whether by amendment of the articles of

807 incorporation or by way of or pursuant to a merger, conversion,

808 or share exchange; a benefit corporation whose articles of

809 incorporation are to be amended pursuant to s. 607.606(2); or a

810 benefit corporation that is to cease being a benefit

811 corporation, in addition to any other required approval or vote,

812 the satisfaction of the following conditions:

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813 1. The holders of each class or series of shares shall be
 814 entitled to vote as a separate voting group on the corporate
 815 action regardless of any limitation on the voting rights of any
 816 class or series stated in the articles of incorporation or
 817 bylaws.

818 2. The corporate action is approved by vote of each class
 819 or series of shares entitled to vote by at least two-thirds of
 820 the total votes of the class or series.

821 (b) In the case of a domestic entity, other than a
 822 corporation, which is to be simultaneously converted to a
 823 benefit corporation or merged into a benefit corporation, in
 824 addition to any other required approval, vote, or consent, the
 825 satisfaction of the following conditions:

826 1. The holders of each class or series of equity interest
 827 in the entity who are entitled to receive a distribution of any
 828 kind are entitled, as a separate voting group, to vote on or
 829 consent to the action regardless of any applicable limitation on
 830 the voting or consent rights of any class or series.

831 2. The action is approved by vote or consent of each class
 832 or series of equity interest described in subparagraph 1. who
 833 are entitled to vote by at least two-thirds of the votes or
 834 consent of the class or series.

835 (8) "Specific public benefit" includes, but is not limited
 836 to:

837 (a) Providing low-income or underserved individuals or
 838 communities with beneficial products or services;

839 (b) Promoting economic opportunity for individuals or
 840 communities beyond the creation of jobs in the normal course of
 841 business;

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842 (c) Protecting or restoring the environment;

843 (d) Improving human health;

844 (e) Promoting the arts, sciences, or advancement of
 845 knowledge;

846 (f) Increasing the flow of capital to entities that have as
 847 their stated purpose the provision of a benefit to society or
 848 the environment; and

849 (g) Any other public benefit consistent with the purposes
 850 of the benefit corporation.

851 (9) "Subsidiary" means, in relation to a person other than
 852 an individual, an entity in which a person owns beneficially or
 853 of record 50 percent or more of the outstanding equity
 854 interests.

855 (10) "Third-party standard" means a recognized standard for
 856 defining, reporting, and assessing the societal and
 857 environmental performance of a business which is:

858 (a) Comprehensive, because it assesses the effect of the
 859 business and its operations upon the interests provided in s.
 860 607.607(1)(a)2.-5.

861 (b) Developed by an entity that is not controlled by the
 862 benefit corporation.

863 (c) Credible, because it is developed by an entity that has
 864 access to necessary expertise to assess the overall societal and
 865 environmental performance of a business and uses a balanced,
 866 collaborative approach to develop the standard, including a
 867 period for public comment.

868 (d) Transparent, because the following information is
 869 publicly available:

870 1. The criteria considered under the standard when

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871 measuring the overall societal and environmental performance of
 872 a business and the relative weights, if any, of those criteria.

873 2. The identity of the directors, officers, material
 874 owners, and the governing body of the entity that developed and
 875 controlled revisions; the process by which revisions to the
 876 standard and changes to the membership of the governing body are
 877 made; and an accounting of the revenue and sources of financial
 878 support for the entity, with sufficient detail to disclose any
 879 relationships that could reasonably be considered to present a
 880 potential conflict of interest.

881 Section 23. Section 607.603, Florida Statutes, is created
 882 to read:

883 607.603 Incorporation.—To incorporate as a benefit
 884 corporation, an incorporator must satisfy the requirements of
 885 this chapter, and the articles of incorporation must state that
 886 the corporation is a benefit corporation under this part.

887 Section 24. Section 607.604, Florida Statutes, is created
 888 to read:

889 607.604 Election of benefit corporation status.—

890 (1) An existing corporation may become a benefit
 891 corporation under this part by amending its articles of
 892 incorporation to include a statement that the corporation is a
 893 benefit corporation under this part. The amendment must be
 894 adopted by the minimum status vote.

895 (2) A plan of merger, conversion, or share exchange must be
 896 adopted by the minimum status vote if an entity that is not a
 897 benefit corporation is a party to a merger or conversion or if
 898 the exchanging entity in a share exchange and the surviving,
 899 new, or resulting entity is, or will be, a benefit corporation.

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900 (3) If an entity elects to become a benefit corporation by
 901 amendment of the articles of incorporation or by a merger,
 902 conversion, or share exchange, the shareholders of the entity
 903 are entitled to appraisal rights under and pursuant to ss.
 904 607.1301-607.1333.

905 Section 25. Section 607.605, Florida Statutes, is created
 906 to read:

907 607.605 Termination of benefit corporation status.—

908 (1) A benefit corporation may terminate its status as such
 909 and cease to be subject to this part by amending its articles of
 910 incorporation to delete the provision required under s. 607.603
 911 or s. 607.604. The amendment must be adopted by the minimum
 912 status vote.

913 (2) A plan of merger, conversion, or share exchange which
 914 has the effect of terminating the status of a corporation as a
 915 benefit corporation must be adopted by the minimum status vote.
 916 A sale, lease, exchange, or other disposition of all or
 917 substantially all of the assets of a benefit corporation is not
 918 effective unless the transaction is approved by the minimum
 919 status vote. However, a minimum status vote is not required if
 920 the transaction is in the usual and regular course of business,
 921 is pursuant to court order, or is a sale pursuant to which all
 922 or a substantial portion of the net proceeds of the sale will be
 923 distributed to the shareholders within 1 year after the date of
 924 the sale.

925 (3) If a corporation's status as a benefit corporation is
 926 terminated pursuant to subsection (1) or subsection (2),
 927 shareholders of the corporation are entitled to appraisal rights
 928 under and pursuant to ss. 607.1301-607.1333.

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929 Section 26. Section 607.606, Florida Statutes, is created
930 to read:

931 607.606 Corporate purpose.—

932 (1) A benefit corporation has the purpose of creating
933 general public benefit. This purpose is in addition to its
934 purpose under s. 607.0301.

935 (2) The articles of incorporation of a benefit corporation
936 may identify one or more specific public benefits as its purpose
937 in addition to its purposes under s. 607.0301 and subsection

938 (1). A benefit corporation may amend its articles of
939 incorporation to add, amend, or delete the identification of a
940 specific public benefit purpose; however, the amendment must be
941 adopted by the minimum status vote. The identification of a
942 specific public benefit under this subsection does not limit the
943 obligation of a benefit corporation under subsection (1).

944 (3) The creation of general public benefit and a specific
945 public benefit under subsections (1) and (2) is deemed to be in
946 the best interest of the benefit corporation.

947 (4) A professional corporation that is a benefit
948 corporation does not violate s. 621.08 by having as its purpose
949 the creation of general public benefit or a specific public
950 benefit.

951 Section 27. Section 607.607, Florida Statutes, is created
952 to read:

953 607.607 Standard of conduct for directors.—

954 (1) In discharging their duties and in considering the best
955 interests of the benefit corporation, the directors:

956 (a) Shall consider the effects of any action or inaction
957 upon:

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958 1. The shareholders of the benefit corporation;

959 2. The employees and workforce of the benefit corporation,
960 its subsidiaries, and its suppliers;

961 3. The interests of customers and suppliers as
962 beneficiaries of the general public benefit and any specific
963 public benefit purposes of the benefit corporation;

964 4. Community and societal factors, including those of each
965 community in which offices or facilities of the benefit
966 corporation, its subsidiaries, or its suppliers are located;

967 5. The local and global environment;

968 6. The short-term and long-term interests of the benefit
969 corporation, including benefits that may accrue to the benefit
970 corporation from its long-term plans and the possibility that
971 these interests may be best served by the continued independence
972 of the benefit corporation; and

973 7. The ability of the benefit corporation to accomplish its
974 general public benefit purpose and each of its specific public
975 benefit purposes, if any.

976 (b) May consider other pertinent factors or the interests
977 of any other group that they deem appropriate.

978 (c) Are not required to give priority to the interests of a
979 particular person or group referred to in paragraph (a) or
980 paragraph (b) over the interests of any other person or group,
981 unless the benefit corporation has stated in its articles of
982 incorporation its intention to give priority to certain
983 interests.

984 (d) Are not required to give equal weight to the interests
985 of a particular person or group referred to in paragraph (a) or
986 paragraph (b) unless the benefit corporation has stated in its

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987 articles of incorporation its intention to give such equal
 988 weight.

989 (2) Except as provided in the articles of incorporation, a
 990 director is not personally liable for monetary damages to the
 991 corporation, or to any other person, for the failure of the
 992 benefit corporation to pursue or create general public benefit
 993 or a specific public benefit. A director is subject to the
 994 duties established in s. 607.0830.

995 (3) Except as provided in the articles of incorporation, a
 996 director does not have a duty to a person who is a beneficiary
 997 of the general public benefit purpose or any one or more
 998 specific public benefit purposes of the benefit corporation.

999 Section 28. Section 607.608, Florida Statutes, is created
 1000 to read:

1001 607.608 Benefit director.—

1002 (1) If the articles of incorporation so provide, the board
 1003 of directors of a benefit corporation may include a director who
 1004 is designated as the benefit director and, in addition to the
 1005 powers, duties, rights, and immunities of the other directors of
 1006 the benefit corporation, has the powers, duties, rights, and
 1007 immunities provided in this part.

1008 (2) The benefit director shall be elected, and may be
 1009 removed, in the manner provided by this chapter. Except as
 1010 provided under subsection (5), the benefit director shall be
 1011 independent and may serve as a benefit officer. The articles of
 1012 incorporation or bylaws may prescribe additional qualifications
 1013 of the benefit director.

1014 (3) Unless the articles of incorporation or bylaws provide
 1015 otherwise, the benefit director shall prepare, and the benefit

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1016 corporation shall include in the annual benefit report to
 1017 shareholders required under s. 607.612, the opinion of the
 1018 benefit director on the following:

1019 (a) Whether the benefit corporation in all material
 1020 respects acted in accordance with its general public benefit
 1021 purpose and any specific public benefit purpose during the
 1022 period covered by the report.

1023 (b) Whether the directors and officers complied with ss.
 1024 607.607(1) and 607.609(1).

1025 (c) Whether the benefit corporation or its directors or
 1026 officers failed to comply with paragraph (a) or s. 607.607(1) or
 1027 s. 607.609(1), including a description of the ways in which the
 1028 benefit corporation or its directors or officers failed to
 1029 comply.

1030 (4) The action or inaction of an individual in his or her
 1031 capacity as a benefit director shall constitute for all purposes
 1032 an action or inaction of that individual in his or her capacity
 1033 as a director of the benefit corporation.

1034 (5) The benefit director of a corporation formed under
 1035 chapter 621 is not required to be independent.

1036 Section 29. Section 607.609, Florida Statutes, is created
 1037 to read:

1038 607.609 Standard of conduct for officers.—

1039 (1) If an officer of a benefit corporation reasonably
 1040 believes that a matter may have a material effect on the ability
 1041 of the corporation to create, or the creation by the corporation
 1042 of, general public benefit or a specific public benefit
 1043 identified in the articles of incorporation and the officer has
 1044 discretion to act on the matter, the officer shall consider the

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1045 interests and factors provided in s. 607.607(1).

1046 (2) The officer's consideration of interests and factors
 1047 under subsection (1) does not constitute a violation of s.
 1048 607.0841.

1049 (3) Except as provided in the articles of incorporation, an
 1050 officer is not personally liable for monetary damages to the
 1051 corporation or to any other person for the failure of the
 1052 benefit corporation to pursue or create general public benefit
 1053 or a specific public benefit; however, he or she is subject to
 1054 s. 607.0841.

1055 (4) Except as provided in the articles of incorporation, an
 1056 officer does not have a duty to a person who is a beneficiary of
 1057 the general public benefit purpose or any specific public
 1058 benefit purpose of the benefit corporation arising from the
 1059 status of the person as a beneficiary.

1060 Section 30. Section 607.610, Florida Statutes, is created
 1061 to read:

1062 607.610 Benefit officer.-

1063 (1) A benefit corporation may designate an officer as the
 1064 benefit officer.

1065 (2) The benefit officer has the powers and duties set forth
 1066 in the bylaws or determined by the board of directors, which may
 1067 include, but are not limited to:

1068 (a) Powers and duties relating to the general public
 1069 benefit or a specific public benefit purpose of the corporation;
 1070 and

1071 (b) The duty to prepare the annual benefit report required
 1072 under s. 607.612.

1073 Section 31. Section 607.611, Florida Statutes, is created

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1074 to read:

1075 607.611 Right of action.-

1076 (1) (a) Except in a benefit enforcement proceeding, no
 1077 person may bring an action or assert a claim against a benefit
 1078 corporation or its directors or officers with respect to:

1079 1. A failure to pursue or create a general public benefit
 1080 or a specific public benefit set forth in its articles of
 1081 incorporation; or

1082 2. A violation of an obligation, duty, or standard of
 1083 conduct under this part.

1084 (b) A benefit corporation is not liable for monetary
 1085 damages under this part for the failure of the benefit
 1086 corporation to pursue or create general public benefit or a
 1087 specific public benefit.

1088 (2) A benefit enforcement proceeding may be commenced or
 1089 maintained only:

1090 (a) Directly by the benefit corporation; or

1091 (b) Derivatively by:

1092 1. A shareholder of record on the date of the action or
 1093 inaction complained of in the benefit enforcement proceeding;

1094 2. A director;

1095 3. A person or group of persons that owns beneficially or
 1096 of record 5 percent or more of the outstanding equity interests
 1097 in an entity of which the benefit corporation is a subsidiary on
 1098 the date of the action or inaction complained of in the
 1099 proceeding; or

1100 4. Any other person who is specified in the articles of
 1101 incorporation or bylaws of the benefit corporation.

1102 Section 32. Section 607.612, Florida Statutes, is created

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1103 to read:

1104 607.612 Preparation of annual benefit report.—

1105 (1) Unless it is prepared by a benefit director or a
 1106 benefit officer, the board of directors shall prepare an annual
 1107 benefit report. The annual benefit report must include all of
 1108 the following:

1109 (a) A narrative description of:

1110 1. The ways in which the benefit corporation pursued
 1111 general public benefit during the year and the extent to which
 1112 the general public benefit was created.

1113 2. Any circumstance that has hindered the pursuit or
 1114 creation of general public benefit or a specific public benefit
 1115 by the benefit corporation.

1116 3. The process and rationale for selecting or changing the
 1117 third-party standard used to prepare the benefit report.

1118 (b) The name of the benefit director and the benefit
 1119 officer, if those positions exist, and the respective business
 1120 addresses to which correspondence may be directed.

1121 (c) If the corporation has a benefit director, the
 1122 statement as provided in s. 607.608(3).

1123 (d) A statement of any connection between the organization
 1124 that established the third-party standard, or its directors,
 1125 officers, or any holder of 5 percent or more of the governance
 1126 interests in the organization, and the benefit corporation or
 1127 its directors, officers, or any holder of 5 percent or more of
 1128 the outstanding shares of the benefit corporation, including any
 1129 financial or governance relationship that might materially
 1130 affect the credibility of the use of the third-party standard.

1131 (2) The annual benefit report must be prepared in

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1132 accordance with a third-party standard that is:

1133 (a) Applied consistently with any previous application in
 1134 prior annual benefit reports; or

1135 (b) Accompanied by an explanation of the reasons for any
 1136 inconsistent application or any change in the standard from the
 1137 immediate prior report.

1138 (3) If, during the year covered by an annual benefit
 1139 report, a benefit director resigned from, or refused to stand
 1140 for reelection to, his or her position, or was removed from his
 1141 or her position, and he or she furnished written correspondence
 1142 to the benefit corporation concerning the circumstances
 1143 surrounding his or her departure, that correspondence must be
 1144 included as an exhibit in the annual benefit report.

1145 (4) The annual benefit report and the assessment of the
 1146 performance of the benefit corporation in the annual benefit
 1147 report required under subsection (2) are not required to be
 1148 audited or certified by a third-party standards provider.

1149 Section 33. Section 607.613, Florida Statutes, is created
 1150 to read:

1151 607.613 Availability of annual benefit report.—

1152 (1) Each benefit corporation shall send its annual benefit
 1153 report to each shareholder:

1154 (a) Within 120 days after the end of the fiscal year of the
 1155 benefit corporation; or

1156 (b) At the same time that the benefit corporation delivers
 1157 any other annual report to its shareholders.

1158 (2) A benefit corporation shall post each annual benefit
 1159 report on the public portion of its website, if any, and it
 1160 shall remain posted for at least 3 years.

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1161 (3) If a benefit corporation does not have a website, the
 1162 benefit corporation shall provide a copy of its most recent
 1163 annual benefit report, without charge, to any person who
 1164 requests a copy.

1165 (4) If a benefit corporation does not comply with the
 1166 annual benefit report delivery requirement, the circuit court in
 1167 the county in which the principal office of the benefit
 1168 corporation is located or, if no office is located in this
 1169 state, the county in which its registered office is located,
 1170 may, after a shareholder of the benefit corporation requests a
 1171 copy, summarily order the corporation to furnish the report. If
 1172 the court orders the report to be furnished, the court may also
 1173 order the benefit corporation to pay the shareholder's costs,
 1174 including reasonable attorney fees, which were incurred in
 1175 obtaining the order and otherwise enforce his or her rights
 1176 under this section.

1177 Section 34. Subsection (1) of section 617.0401, Florida
 1178 Statutes, is amended to read:

1179 617.0401 Corporate name.—

1180 (1) A corporate name:

1181 (a) Must contain the word "corporation" or "incorporated"
 1182 or the abbreviation "Corp." ~~"corp."~~ or "Inc." ~~"inc."~~ or words or
 1183 abbreviations of like import in language, as will clearly
 1184 indicate that it is a corporation instead of a natural person,
 1185 unincorporated association, or partnership. The name of the
 1186 corporation may not contain the word "company" or its
 1187 abbreviation "Co." ~~"co."~~

1188 (b) May contain the word "cooperative" or "co-op" only if
 1189 the resulting name is distinguishable from the name of any

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1190 corporation, agricultural cooperative marketing association, or
 1191 nonprofit cooperative association existing or doing business in
 1192 this state under part I of chapter 607, chapter 618, or chapter
 1193 619.~~†~~

1194 (c) May not contain language stating or implying that the
 1195 corporation is organized for a purpose other than that permitted
 1196 in this act and its articles of incorporation.~~†~~

1197 (d) May not contain language stating or implying that the
 1198 corporation is connected with a state or federal government
 1199 agency or a corporation chartered under the laws of the United
 1200 States.~~†~~ ~~and~~

1201 (e) Must be distinguishable from the names of all other
 1202 entities or filings that are on file with the Division of
 1203 Corporations, except fictitious name registrations pursuant to
 1204 s. 865.09, general partnership registrations pursuant to s.
 1205 620.8105, and limited liability partnership statements pursuant
 1206 to s. 620.9001 which are organized, registered, or reserved
 1207 under the laws of this state, ~~that are on file with the Division~~
 1208 ~~of Corporations. A name that is different from a name of another~~
 1209 ~~entity or filing due to any of the following is not considered~~
 1210 distinguishable:

1211 1. A suffix.

1212 2. A definite or indefinite article.

1213 3. The word "and" and the symbol "&."

1214 4. The singular, plural, or possessive form of a word.

1215 5. A recognized abbreviation of a root word.

1216 6. A punctuation mark or a symbol.

1217 Section 35. Subsection (4) of section 620.1108, Florida
 1218 Statutes, is amended to read:

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1219 620.1108 Name.—

1220 (4) The name of a limited partnership must be

1221 distinguishable in the records of the Department of State from

1222 the names of all other entities or filings that are on file with

1223 the Department of State, except fictitious name registrations

1224 pursuant to s. 865.09, general partnership registrations

1225 pursuant to s. 620.8105, and limited liability partnership

1226 statements pursuant to s. 620.9001 which are organized,

1227 registered, or reserved under the laws of this state, ~~the names~~

1228 ~~of which are on file with the Department of State. A name that~~

1229 ~~is different from the name of another entity or filing due to~~

1230 ~~any of the following is not considered distinguishable:~~

1231 (a) A suffix.

1232 (b) A definite or indefinite article.

1233 (c) The word "and" and the symbol "&."

1234 (d) The singular, plural, or possessive form of a word.

1235 (e) A recognized abbreviation of a root word.

1236 (f) A punctuation mark or a symbol.

1237 Section 36. Subsection (1) of section 48.091, Florida

1238 Statutes, is amended to read:

1239 48.091 Corporations; designation of registered agent and

1240 registered office.—

1241 (1) Every Florida corporation and every foreign corporation

1242 now qualified or hereafter qualifying to transact business in

1243 this state shall designate a registered agent and registered

1244 office in accordance with part I of chapter 607.

1245 Section 37. Paragraph (d) of subsection (6) of section

1246 215.555, Florida Statutes, is amended to read:

1247 215.555 Florida Hurricane Catastrophe Fund.—

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1248 (6) REVENUE BONDS.—

1249 (d) *State Board of Administration Finance Corporation.*—

1250 1. In addition to the findings and declarations in

1251 subsection (1), the Legislature also finds and declares that:

1252 a. The public benefits corporation created under this

1253 paragraph will provide a mechanism necessary for the cost-

1254 effective and efficient issuance of bonds. This mechanism will

1255 eliminate unnecessary costs in the bond issuance process,

1256 thereby increasing the amounts available to pay reimbursement

1257 for losses to property sustained as a result of hurricane

1258 damage.

1259 b. The purpose of such bonds is to fund reimbursements

1260 through the Florida Hurricane Catastrophe Fund to pay for the

1261 costs of construction, reconstruction, repair, restoration, and

1262 other costs associated with damage to properties of

1263 policyholders of covered policies due to the occurrence of a

1264 hurricane.

1265 c. The efficacy of the financing mechanism will be enhanced

1266 by the corporation's ownership of the assessments, by the

1267 insulation of the assessments from possible bankruptcy

1268 proceedings, and by covenants of the state with the

1269 corporation's bondholders.

1270 2.a. There is created a public benefits corporation, which

1271 is an instrumentality of the state, to be known as the State

1272 Board of Administration Finance Corporation.

1273 b. The corporation shall operate under a five-member board

1274 of directors consisting of the Governor or a designee, the Chief

1275 Financial Officer or a designee, the Attorney General or a

1276 designee, the director of the Division of Bond Finance of the

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1277 State Board of Administration, and the Chief Operating Officer
1278 of the Florida Hurricane Catastrophe Fund.

1279 c. The corporation has all of the powers of corporations
1280 under part I of chapter 607 and under chapter 617, subject only
1281 to ~~the provisions of~~ this subsection.

1282 d. The corporation may issue bonds and engage in such other
1283 financial transactions as are necessary to provide sufficient
1284 funds to achieve the purposes of this section.

1285 e. The corporation may invest in any of the investments
1286 authorized under s. 215.47.

1287 f. There shall be no liability on the part of, and no cause
1288 of action shall arise against, any board members or employees of
1289 the corporation for any actions taken by them in the performance
1290 of their duties under this paragraph.

1291 3.a. In actions under chapter 75 to validate any bonds
1292 issued by the corporation, the notice required under ~~by~~ s. 75.06
1293 shall be published in two newspapers of general circulation in
1294 the state, and the complaint and order of the court shall be
1295 served only on the State Attorney of the Second Judicial
1296 Circuit.

1297 b. The state hereby covenants with holders of bonds of the
1298 corporation that the state will not repeal or abrogate the power
1299 of the board to direct the Office of Insurance Regulation to
1300 levy the assessments and to collect the proceeds of the revenues
1301 pledged to the payment of such bonds as long as any such bonds
1302 remain outstanding unless adequate provision has been made for
1303 the payment of such bonds pursuant to the documents authorizing
1304 the issuance of such bonds.

1305 4. The bonds of the corporation are not a debt of the state

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1306 or of any political subdivision, and neither the state nor any
1307 political subdivision is liable on such bonds. The corporation
1308 does not have the power to pledge the credit, the revenues, or
1309 the taxing power of the state or of any political subdivision.
1310 The credit, revenues, or taxing power of the state or of any
1311 political subdivision shall not be deemed to be pledged to the
1312 payment of any bonds of the corporation.

1313 5.a. The property, revenues, and other assets of the
1314 corporation; the transactions and operations of the corporation
1315 and the income from such transactions and operations; and all
1316 bonds issued under this paragraph and interest on such bonds are
1317 exempt from taxation by the state and any political subdivision,
1318 including the intangibles tax under chapter 199 and the income
1319 tax under chapter 220. This exemption does not apply to any tax
1320 imposed by chapter 220 on interest, income, or profits on debt
1321 obligations owned by corporations other than the State Board of
1322 Administration Finance Corporation.

1323 b. All bonds of the corporation shall be and constitute
1324 legal investments without limitation for all public bodies of
1325 this state; for all banks, trust companies, savings banks,
1326 savings associations, savings and loan associations, and
1327 investment companies; for all administrators, executors,
1328 trustees, and other fiduciaries; for all insurance companies and
1329 associations and other persons carrying on an insurance
1330 business; and for all other persons who are now or may hereafter
1331 be authorized to invest in bonds or other obligations of the
1332 state and shall be and constitute eligible securities to be
1333 deposited as collateral for the security of any state, county,
1334 municipal, or other public funds. This sub-subparagraph is ~~shall~~

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1335 ~~be considered as~~ additional and supplemental authority and may
 1336 ~~shall~~ not be limited without specific reference to this sub-
 1337 subparagraph.

1338 6. The corporation and its corporate existence continues
 1339 ~~shall continue~~ until terminated by law; however, ~~no~~ such law may
 1340 not shall take effect as long as the corporation has bonds
 1341 outstanding unless adequate provision has been made for the
 1342 payment of such bonds pursuant to the documents authorizing the
 1343 issuance of such bonds. Upon termination of the existence of the
 1344 corporation, all of its rights and properties in excess of its
 1345 obligations shall pass to and be vested in the state.

1346 7. The State Board of Administration Finance Corporation is
 1347 for all purposes the successor to the Florida Hurricane
 1348 Catastrophe Fund Finance Corporation.

1349 Section 38. Subsection (1) of section 243.54, Florida
 1350 Statutes, is amended to read:

1351 243.54 Powers of the authority.—The purpose of the
 1352 authority is to assist institutions of higher education in
 1353 constructing, financing, and refinancing projects throughout the
 1354 state and, for this purpose, the authority may:

1355 (1) Exercise all powers granted to corporations under part
 1356 I of the Florida Business Corporation Act, chapter 607.

1357 Section 39. Section 310.171, Florida Statutes, is amended
 1358 to read:

1359 310.171 Pilots may incorporate themselves.—Any one or more
 1360 licensed state pilots may incorporate in the manner provided
 1361 under part I of chapter 607 or chapter 621.

1362 Section 40. Section 310.181, Florida Statutes, is amended
 1363 to read:

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1364 310.181 Corporate powers.—All the rights, powers, and
 1365 liabilities conferred or imposed by the laws of Florida relating
 1366 to corporations for profit organized under part I of chapter 607
 1367 or under chapter 608 before January 1, 1976, or to corporations
 1368 organized under chapter 621 ~~shall~~ apply to corporations
 1369 organized pursuant to s. 310.171.

1370 Section 41. Paragraph (c) of subsection (4) of section
 1371 329.10, Florida Statutes, is amended to read:

1372 329.10 Aircraft registration.—

1373 (4) It is a violation of this section for any person or
 1374 corporate entity to knowingly supply false information to any
 1375 governmental entity in regard to ownership by it or another
 1376 firm, business, or corporation of an aircraft in or operated in
 1377 this state if it is determined that such corporate entity or
 1378 other firm, business, or corporation:

1379 (c) Has lapsed into a state of no longer being a legal
 1380 entity in this state as defined in part I of chapter 607 or s.
 1381 865.09, and no documented attempt has been made to correct such
 1382 information with the governmental entity for a period of 90 days
 1383 after the date on which such lapse took effect with the
 1384 Secretary of State.

1385 Section 42. Subsection (1) of section 339.412, Florida
 1386 Statutes, is amended to read:

1387 339.412 Powers of corporation.—As to designated projects
 1388 and in addition to other powers prescribed by law, a corporation
 1389 may exercise the following powers with respect to the promotion
 1390 and development of transportation facilities, pursuant to a
 1391 written contract for the same, together with all powers
 1392 incidental thereto or necessary for the performance of those

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1393 hereinafter stated:

1394 (1) The corporation may exercise all the powers as granted
1395 by the department to work directly with landowners, local and
1396 state governmental agencies, elected officials, and any other
1397 person to support those activities required to promote and
1398 develop the projects. These activities shall include:

1399 (a) Acquiring, holding, investing, and administering
1400 property and transferring title of such property to the
1401 department for development of projects on behalf of the
1402 department;

1403 (b) Performing preliminary and final alignment studies in a
1404 manner consistent with state and federal laws;

1405 (c) Receiving contributions of land for rights-of-way and
1406 cash donations to be applied to the purchase of rights-of-way
1407 not donated or to be applied to the design or construction of
1408 the projects;

1409 (d) Reviewing candidates for advisory directorships and
1410 adding or removing such advisory directors as may be
1411 appropriate;

1412 (e) Retaining such administrative staff and legal, public
1413 relations, and engineering services as may be required for the
1414 development of the projects and paying such employees and
1415 consultants from funds donated for this purpose;

1416 (f) Preparing such exhibits, right-of-way documents,
1417 environmental reports, schematics, and preliminary and final
1418 engineering plans as are necessary for the development of the
1419 projects;

1420 (g) Borrowing money to meet any expenses or needs
1421 associated with the regular operations of the corporation or a

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1422 particular project; provided, however, that no corporation shall
1423 have the power to issue bonds, the provisions of part I of
1424 ~~chapter chapters~~ 607 and chapter 617 notwithstanding;

1425 (h) Making official presentations to the state and other
1426 affected agencies or groups concerning the development of the
1427 projects;

1428 (i) Issuing press releases and other material to promote
1429 the activities of the projects; and

1430 (j) Performing any other functions requested by the
1431 department in order to promote and develop the projects.

1432

1433 Nothing in this act empowers the corporation to enter into any
1434 contracts for construction or to undertake any construction, on
1435 behalf of the department.

1436 Section 43. Subsection (4) of section 420.101, Florida
1437 Statutes, is amended to read:

1438 420.101 Housing Development Corporation of Florida;
1439 creation, membership, and purposes.—

1440 (4) Whenever the articles of incorporation have been filed
1441 in the Department of State and approved by it and all filing
1442 fees and taxes prescribed by part I of chapter 607 have been
1443 paid, the subscribers and their successors and assigns shall
1444 constitute a corporation, and the corporation shall then be
1445 authorized to commence business, and stock thereof to the extent
1446 herein or hereafter duly authorized may from time to time be
1447 issued.

1448 Section 44. Section 420.111, Florida Statutes, is amended
1449 to read:

1450 420.111 Housing Development Corporation of Florida;

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1451 additional powers.—In furtherance of its purposes and in
 1452 addition to the powers now or hereafter conferred on business
 1453 corporations by part I of chapter 607, the corporation shall,
 1454 subject to the restrictions and limitations ~~herein~~ contained in
 1455 this section, have the following powers:

1456 (1) To elect, appoint, and employ officers, agents and
 1457 employees and to make contracts and incur liabilities for any of
 1458 the purposes of the corporation, except that the corporation may
 1459 ~~shall~~ not incur any secondary liability by way of guaranty or
 1460 endorsement of the obligations of any person, firm, corporation,
 1461 joint-stock company, association, or trust, or in any other
 1462 manner.

1463 (2) To borrow money from its stockholders, other financial
 1464 institutions, and state and federal agencies for any of the
 1465 purposes of the corporation; to issue therefor its bonds,
 1466 debentures, notes, or other evidences of indebtedness, whether
 1467 secured or unsecured, and to secure the same by mortgage,
 1468 pledge, deed of trust, or other lien on its property,
 1469 franchises, rights, and privileges of every kind and nature, or
 1470 any part thereof or interest therein, without securing
 1471 stockholder approval.

1472 (3) To make loans to any person, firm, corporation, joint-
 1473 stock company, association, or trust and to regulate the terms
 1474 and conditions with respect to any such loans and the charges
 1475 for interest and service connected therewith, provided subsidies
 1476 may be in the form of below market interest rates or such other
 1477 assistance as determined by the board with the concurrence of
 1478 the applicable regulatory agencies governing the several
 1479 stockholder industries.

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1480 (4) To purchase, receive, hold, lease, or otherwise
 1481 acquire, and to sell, convey, transfer, lease, or otherwise
 1482 dispose of, real and personal property, together with such
 1483 rights and privileges as may be incidental and appurtenant
 1484 thereto and the use thereof, including, but not restricted to,
 1485 any real or personal property acquired by the corporation from
 1486 time to time in the satisfaction of debts or enforcement of
 1487 obligations.

1488 (5) For the purposes of foreclosure, to acquire the good
 1489 will, business, rights, real and personal property, and other
 1490 assets, or any part thereof, or interest therein, of any
 1491 persons, firms, corporations, joint-stock companies,
 1492 associations or trusts, and to assume, undertake, or pay the
 1493 obligations, debts and liabilities of any such person, firm,
 1494 corporation, joint-stock company, association or trust; to
 1495 acquire improved or unimproved real estate for the purpose of
 1496 constructing new housing or rehabilitation thereof; for the
 1497 purposes of disposing of such real estate to others for the
 1498 construction of housing or rehabilitation thereof; and to
 1499 acquire, construct or reconstruct, alter, repair, maintain,
 1500 operate, sell, convey, transfer, lease, or otherwise dispose of
 1501 such housing, provided, however that nothing herein contained
 1502 shall authorize the acquisition, construction, reconstruction,
 1503 or operation of any public lodging establishment as defined in
 1504 chapter 509.

1505 (6) To acquire, subscribe for, own, hold, sell, assign,
 1506 transfer, mortgage, pledge, or otherwise dispose of the stock,
 1507 shares, bonds, debentures, notes, or other securities and
 1508 evidences of interest in, or indebtedness of, any person, firm,

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1509 corporation, joint-stock company, association, or trust, and,
 1510 while the owner or holder thereof, to exercise all the rights,
 1511 powers, and privileges of ownership, including the right to vote
 1512 thereon.

1513 (7) To mortgage, pledge, or otherwise encumber any
 1514 property, right, or thing of value, acquired pursuant to the
 1515 powers contained in subsection (4), subsection (5), or
 1516 subsection (6), as security for the payment of any part of the
 1517 purchase price thereof.

1518 (8) To cooperate with, and avail itself of the facilities
 1519 of, the United States Department of Housing and Urban
 1520 Development, the Department of Economic Opportunity, and any
 1521 other similar local, state, or Federal Government agency; and to
 1522 cooperate with and assist, and otherwise encourage,
 1523 organizations in the various communities of the state on the
 1524 promotion, assistance, and development of the housing and
 1525 economic welfare of such communities or of this state or any
 1526 part thereof.

1527 (9) To do all acts and things necessary or convenient to
 1528 carry out the powers expressly granted in this part.

1529 Section 45. Subsection (2) of section 420.161, Florida
 1530 Statutes, is amended to read:

1531 420.161 Housing Development Corporation of Florida; period
 1532 of existence; method of dissolution.—

1533 (2) The corporation may, upon the affirmative vote of two-
 1534 thirds of the votes to which the stockholders are shall be
 1535 entitled, dissolve the said corporation as provided under part I
 1536 of by chapter 607, as long as that part does insofar as chapter
 1537 607 is not in conflict with the provisions of this act. Upon any

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1538 dissolution of the corporation, ~~none of~~ the corporation's assets
 1539 may not shall be distributed to the stockholders until all sums
 1540 due the members of the corporation as creditors thereof have
 1541 been paid in full.

1542 Section 46. Subsection (9) of section 440.02, Florida
 1543 Statutes, is amended to read:

1544 440.02 Definitions.—When used in this chapter, unless the
 1545 context clearly requires otherwise, the following terms shall
 1546 have the following meanings:

1547 (9) "Corporate officer" or "officer of a corporation" means
 1548 any person who fills an office provided for in the corporate
 1549 charter or articles of incorporation filed with the Division of
 1550 Corporations of the Department of State or as authorized
 1551 ~~permitted~~ or required under part I of by chapter 607. The term
 1552 "officer of a corporation" includes a member owning at least 10
 1553 percent of a limited liability company created and approved
 1554 under chapter 608.

1555 Section 47. Paragraph (d) of subsection (10) of section
 1556 440.386, Florida Statutes, is amended to read:

1557 440.386 Individual self-insurers' insolvency; conservation;
 1558 liquidation.—

1559 (10) TRANSFERS PRIOR TO PETITION.—

1560 (d) The personal liability of the officers or directors of
 1561 an insolvent individual self-insurer is shall be subject to part
 1562 I of the provisions of chapter 607 and the penalties provided
 1563 therein.

1564 Section 48. Subsection (3) of section 609.08, Florida
 1565 Statutes, is amended to read:

1566 609.08 Merger of association into wholly owned subsidiary

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1567 corporation; dissenters' rights of appraisal.-

1568 (3) If the surviving corporation is to be governed by the
1569 laws of any jurisdiction other than this state, it shall comply
1570 with part I of the provisions of chapter 607 with respect to
1571 foreign corporations if it is to transact business in this
1572 state, and in every case it shall file with the Department of
1573 State of this state:

1574 (a) An agreement that it may be served with process in this
1575 state in any proceeding for the enforcement of any obligation of
1576 the association and in any proceeding for the enforcement of any
1577 rights under the declaration of trust of the association of a
1578 dissenting shareholder of the association against the surviving
1579 corporation.

1580 (b) An irrevocable appointment of the Secretary of State as
1581 its agent to accept service of process in any such proceeding.

1582 (c) An agreement that it will promptly pay to the
1583 dissenting shareholders of the association the amount, if any,
1584 to which they are ~~shall be~~ entitled under ~~the provisions of~~ its
1585 declaration of trust with respect to the rights of dissenting
1586 shareholders.

1587 Section 49. Section 617.1908, Florida Statutes, is amended
1588 to read:

1589 617.1908 Applicability of Florida Business Corporation
1590 Act.—Except as ~~otherwise~~ made applicable by specific reference
1591 in any other section of this chapter, part I ~~the provisions of~~
1592 chapter 607, the Florida Business Corporation Act, does shall
1593 not apply to any corporations not for profit.

1594 Section 50. Section 618.221, Florida Statutes, is amended
1595 to read:

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1596 618.221 Conversion into a corporation for profit.—Any
1597 association incorporated under or that has adopted the
1598 provisions of this chapter, may, by a majority vote of its
1599 stockholders or members be brought under part I of the
1600 ~~provisions of~~ chapter 607, as a corporation for profit by
1601 surrendering all right to carry on its business under this
1602 chapter, and the privileges and immunities incident thereto. It
1603 shall make out in duplicate a statement signed and sworn to by
1604 its directors to the effect that the association has, by a
1605 majority vote of its stockholders or members, decided to
1606 surrender all rights, powers, and privileges as a nonprofit
1607 cooperative marketing association under this chapter and to do
1608 business under and be bound by part I of the provisions of said
1609 chapter 607, as a corporation for profit and has authorized all
1610 changes accordingly. Articles of incorporation shall be
1611 delivered to the Department of State for filing as required
1612 under part I of chapter 607 ~~in and by s. 607.164~~, except that
1613 they shall be signed by the members of the then board of
1614 directors. The filing fees and taxes shall be as provided under
1615 part I of ~~in~~ chapter 607. Such articles of incorporation shall
1616 adequately protect and preserve the relative rights of the
1617 stockholders or members of the association so converting into a
1618 corporation for profit; provided that no rights or obligations
1619 due any stockholder or member of such association or any other
1620 person, firm, or corporation which has not been waived or
1621 satisfied shall be impaired by such conversion into a
1622 corporation for profit as herein authorized.

1623 Section 51. Section 619.04, Florida Statutes, is amended to
1624 read:

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1625 619.04 Articles of incorporation.—Each association formed
 1626 under this chapter must prepare and file articles of
 1627 incorporation in the same manner and under the same regulations
 1628 as required under part I of chapter 607, and therein shall set
 1629 forth:

1630 (1) The name of the association.
 1631 (2) The purpose for which it is formed.
 1632 (3) The place where its principal business will be
 1633 transacted.
 1634 (4) The term for which it is to exist, not exceeding 50
 1635 years.
 1636 (5) The number of directors thereof, which must not be less
 1637 than three and which may be any number in excess thereof, and
 1638 the names and residences of those selected for the first year
 1639 and until their successors shall have been elected and shall
 1640 have accepted office.
 1641 (6) Whether the voting power and the property rights and
 1642 interest of each member shall be equal, or unequal, and if
 1643 unequal these articles shall set forth a general rule applicable
 1644 to all members by which the voting power and the property rights
 1645 and interests, respectively, of each member may and shall be
 1646 determined and fixed, but the association shall have power to
 1647 admit new members, who shall be entitled to vote and to share in
 1648 the property of the association with the old members, in
 1649 accordance with such general rule. This provision of the
 1650 articles of incorporation may shall not be altered, amended, or
 1651 repealed except by the unanimous written consent or the vote of
 1652 all the members.
 1653 (7) Said articles must be subscribed by the original

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1654 members and acknowledged by one of them before an officer
 1655 authorized by the law of this state to take and certify
 1656 acknowledgments of deeds of conveyance, and shall be filed in
 1657 accordance with the provisions of law, and when so filed the
 1658 said articles of incorporation or certified copies thereof shall
 1659 be received in all the courts of this state and other places as
 1660 prima facie evidence of the facts contained therein.

1661 Section 52. Subsection (3) of section 624.430, Florida
 1662 Statutes, is amended to read:
 1663 624.430 Withdrawal of insurer or discontinuance of writing
 1664 certain kinds or lines of insurance.—
 1665 (3) Upon office approval of the surrender of the
 1666 certificate of authority of a domestic property and casualty
 1667 insurer that is a corporation, the insurer may initiate the
 1668 dissolution of the corporation in accordance with the applicable
 1669 provisions of part I of chapter 607.

1670 Section 53. Subsection (1) of section 624.462, Florida
 1671 Statutes, is amended to read:
 1672 624.462 Commercial self-insurance funds.—
 1673 (1) Any group of persons may form a commercial self-
 1674 insurance fund for the purpose of pooling and spreading
 1675 liabilities of its group members in any commercial property or
 1676 casualty risk or surety insurance. Any fund established pursuant
 1677 to subparagraph (2)(a)1. may be organized as a corporation under
 1678 part I of chapter 607.

1679 Section 54. Subsection (3) of section 624.489, Florida
 1680 Statutes, is amended to read:
 1681 624.489 Liability of trustees of self-insurance trust fund
 1682 and directors of self-insurance funds operating as

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1683 corporations.-

1684 (3) The immunities from liability provided in this section
1685 with respect to trustees also apply to members of the board of
1686 directors of a commercial self-insurance fund organized as a
1687 corporation under part I of chapter 607 if the board of
1688 directors has contracted with an administrator authorized under
1689 s. 626.88 to administer the day-to-day affairs of the fund.

1690 Section 55. Section 628.041, Florida Statutes, is amended
1691 to read:

1692 628.041 Applicability of general corporation statutes.—The
1693 applicable statutes of this state relating to the powers and
1694 procedures of domestic private corporations formed for profit
1695 shall apply to domestic stock insurers and to domestic mutual
1696 insurers, except:

1697 (1) As to any domestic mutual insurers incorporated
1698 pursuant to chapter 617, which chapter shall govern such
1699 insurers when in conflict with part I of chapter 607; and

1700 (2) When in conflict with the express provisions of this
1701 code.

1702 Section 56. Subsection (4) of section 631.262, Florida
1703 Statutes, is amended to read:

1704 631.262 Transfers prior to petition.—

1705 (4) The personal liability of the officers or directors of
1706 an insolvent insurer ~~is shall be~~ subject to part I of the
1707 ~~provisions of~~ chapter 607 and the penalties provided therein.

1708 Section 57. Subsection (1) of section 636.204, Florida
1709 Statutes, is amended to read:

1710 636.204 License required.—

1711 (1) Before doing business in this state as a discount

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1712 medical plan organization, an entity must be a corporation, a
1713 limited liability company, or a limited partnership,
1714 incorporated, organized, formed, or registered under the laws of
1715 this state or authorized to transact business in this state in
1716 accordance with part I of chapter 607, chapter 608, chapter 617,
1717 chapter 620, or chapter 865, and must be licensed by the office
1718 as a discount medical plan organization or be licensed by the
1719 office pursuant to chapter 624, part I of this chapter, or
1720 chapter 641.

1721 Section 58. Section 641.2015, Florida Statutes, is amended
1722 to read:

1723 641.2015 Incorporation required.—On or after October 1,
1724 1985, any entity that has not yet obtained a certificate of
1725 authority to operate a health maintenance organization in this
1726 state shall be incorporated or shall be a division of a
1727 corporation formed under the provisions of either part I of
1728 chapter 607 or chapter 617 or shall be a public entity that is
1729 organized as a political subdivision. In the case of a division
1730 of a corporation, the financial requirements of this part shall
1731 apply to the entire corporation. Incorporation shall not be
1732 required of any entity which has already been issued an initial
1733 certificate of authority prior to this date and which is not a
1734 corporation on October 1, 1985, or which is incorporated in any
1735 other state on October 1, 1985; nor shall incorporation be
1736 required on renewal of any certificate of authority by such an
1737 organization or be required of a public entity that is organized
1738 as a political subdivision.

1739 Section 59. Subsection (1) of section 655.0201, Florida
1740 Statutes, is amended to read:

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1741 655.0201 Service of process, notice, or demand on financial
1742 institutions.-

1743 (1) Process against any financial institution authorized by
1744 federal or state law to transact business in this state may be
1745 served in accordance with chapter 48, chapter 49, part I of
1746 chapter 607, or chapter 608, as appropriate.

1747 Section 60. Subsection (2) of section 658.23, Florida
1748 Statutes, is amended to read:

1749 658.23 Submission of articles of incorporation; contents;
1750 form; approval; filing; commencement of corporate existence;
1751 bylaws.-

1752 (2) The articles of incorporation shall contain:

1753 (a) The name of the proposed bank or trust company.

1754 (b) The general nature of the business to be transacted or
1755 a statement that the corporation may engage in any activity or
1756 business permitted by law. Such statement shall authorize all
1757 such activities and business by the corporation.

1758 (c) The amount of capital stock authorized, showing the
1759 maximum number of shares of par value common stock and of
1760 preferred stock, and of every kind, class, or series of each,
1761 together with the distinguishing characteristics and the par
1762 value of all shares.

1763 (d) The amount of capital with which the corporation will
1764 begin business, which ~~may shall~~ not be less than the amount
1765 required by the office pursuant to s. 658.21.

1766 (e) A provision that the corporation is to have perpetual
1767 existence unless existence is terminated pursuant to the
1768 financial institutions codes.

1769 (f) The initial street address of the main office of the

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1770 corporation, which shall be in this state.

1771 (g) The number of directors, which shall be five or more,
1772 and the names and street addresses of the members of the initial
1773 board of directors.

1774 (h) A provision for preemptive rights, if applicable.

1775 (i) A provision authorizing the board of directors to
1776 appoint additional directors, pursuant to s. 658.33, if
1777 applicable.

1778
1779 The office shall provide to the proposed directors form articles
1780 of incorporation which must ~~shall~~ include only those provisions
1781 required under ~~by~~ this section or under part I of ~~by~~ chapter
1782 607. The form articles shall be acknowledged by the proposed
1783 directors and returned to the office for filing with the
1784 Department of State.

1785 Section 61. Paragraph (c) of subsection (11) of section
1786 658.2953, Florida Statutes, is amended to read:

1787 658.2953 Interstate branching.-

1788 (11) DE NOVO INTERSTATE BRANCHING BY STATE BANKS.-

1789 (c) An out-of-state bank may establish and maintain a de
1790 novo branch or acquire a branch in this state upon compliance
1791 with part I of chapter 607 or chapter 608 relating to doing
1792 business in this state as a foreign business entity, including
1793 maintaining a registered agent for service of process and other
1794 legal notice pursuant to s. 655.0201.

1795 Section 62. Section 658.30, Florida Statutes, is amended to
1796 read:

1797 658.30 Application of the Florida Business Corporation
1798 Act.-

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1799 (1) When not in direct conflict with or superseded by
 1800 specific provisions of the financial institutions codes, the
 1801 provisions of the Florida Business Corporation Act, part I of
 1802 chapter 607, ~~shall~~ extend to state banks and trust companies
 1803 formed under the financial institutions codes. This section
 1804 shall be liberally construed to accomplish the purposes stated
 1805 herein.

1806 (2) Without limiting the generality of subsection (1),
 1807 stockholders, directors, and committees of state banks and trust
 1808 companies may hold meetings in any manner authorized ~~permitted~~
 1809 by part I of chapter 607, and any action by stockholders,
 1810 directors, or committees required or authorized ~~permitted~~ to be
 1811 taken at a meeting may be taken without a meeting in any manner
 1812 authorized ~~provided or permitted~~ by part I of chapter 607.

1813 Section 63. Subsection (3) of section 658.36, Florida
 1814 Statutes, is amended to read:

1815 658.36 Changes in capital.—

1816 (3) If a bank or trust company's capital accounts have been
 1817 diminished by losses to less than the minimum required pursuant
 1818 to the financial institutions codes, the market value of its
 1819 shares of capital stock is less than the present par value, and
 1820 the bank or trust company cannot reasonably issue and sell new
 1821 shares of stock to restore its capital accounts at a share price
 1822 of par value or greater of the previously issued capital stock,
 1823 the office, notwithstanding any other provisions of part I of
 1824 chapter 607 or the financial institutions codes, may approve
 1825 special stock offering plans.

1826 (a) Such plans may include, but are not limited to,
 1827 mechanisms for stock splits including reverse splits;

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1828 revaluations of par value of outstanding stock; changes in
 1829 voting rights, dividends, or other preferences; and creation of
 1830 new classes of stock.

1831 (b) The plan must be approved by majority vote of the bank
 1832 or trust company's entire board of directors and by holders of
 1833 two-thirds of the outstanding shares of stock.

1834 (c) The office shall disapprove a plan that provides unfair
 1835 or disproportionate benefits to existing shareholders,
 1836 directors, executive officers, or their related interests. The
 1837 office shall also disapprove any plan that is not likely to
 1838 restore the capital accounts to sufficient levels to achieve a
 1839 sustainable, safe, and sound financial institution.

1840 (d) For any bank or trust company that the office
 1841 determines to be a failing financial institution pursuant to s.
 1842 655.4185, the office may approve special stock offering plans
 1843 without a vote of the shareholders.

1844 Section 64. Section 663.03, Florida Statutes, is amended to
 1845 read:

1846 663.03 Applicability of the Florida Business Corporation
 1847 Act chapter 607.—Notwithstanding s. 607.01401(12) ~~the definition~~
 1848 ~~of the term "foreign corporation" appearing in s. 607.01401, all~~
 1849 ~~of~~ the provisions of part I of chapter 607 not in conflict with
 1850 the financial institutions codes which relate to foreign
 1851 corporations ~~shall~~ apply to all international banking
 1852 corporations and their offices doing business in this state.

1853 Section 65. Subsection (3) of section 663.04, Florida
 1854 Statutes, is amended to read:

1855 663.04 Requirements for carrying on financial institution
 1856 business.—An international banking corporation or trust company,

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1857 or any affiliate, subsidiary, or other person or business entity
 1858 acting as an agent for, on behalf of, or for the benefit of such
 1859 international banking corporation or trust company who engages
 1860 in such activities from an office located in this state, may not
 1861 transact a banking or trust business, or maintain in this state
 1862 any office for carrying on such business, or any part thereof,
 1863 unless such corporation, trust company, affiliate, subsidiary,
 1864 person, or business entity:

1865 (3) Has filed with the office a certified copy of that
 1866 information required to be supplied to the Department of State
 1867 by those provisions of part I of chapter 607 which are
 1868 applicable to foreign corporations.

1869 Section 66. Paragraph (a) of subsection (1) of section
 1870 663.301, Florida Statutes, is amended to read:

1871 663.301 Definitions.—

1872 (1) As used in this part:

1873 (a) "International development bank" means a corporation
 1874 established for the purpose of promoting development in foreign
 1875 countries by directly or indirectly making funding available to
 1876 foreign business enterprises or foreign governments or by
 1877 providing financing in connection with import-export
 1878 transactions. Subject to the limitations contained in s.
 1879 663.313, an international development bank may be organized
 1880 ~~either~~ under chapter 617 as a corporation not for profit or
 1881 under part I of chapter 607 as a corporation for profit.

1882 Section 67. Subsection (2) of section 663.306, Florida
 1883 Statutes, is amended to read:

1884 663.306 Decision by office.—The office may, in its
 1885 discretion, approve or disapprove the application, but it shall

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1886 not approve the application unless it finds that:

1887 (2) The proposed capital structure is adequate, but in no
 1888 case may the paid-in capital stock be:

1889 (a) Less than \$400,000 in the case of an international
 1890 development bank organized under chapter 617 as a corporation
 1891 not for profit; or

1892 (b) The amount required for a state bank in the case of an
 1893 international development bank organized under part I of chapter
 1894 607 as a corporation for profit.

1895
 1896 The office may disallow any illegally obtained currency,
 1897 monetary instruments, funds, or other financial resources from
 1898 the capitalization requirements of this section.

1899 Section 68. Subsection (4) of section 663.313, Florida
 1900 Statutes, is amended to read:

1901 663.313 Ownership of stock.—

1902 (4) All of the shares of voting stock of an international
 1903 development bank organized under part I of chapter 607 as a
 1904 corporation for profit shall be owned by a regional development
 1905 bank or by one or more wholly owned subsidiaries of a regional
 1906 development bank.

1907 Section 69. Subsection (2) of section 718.111, Florida
 1908 Statutes, is amended to read:

1909 718.111 The association.—

1910 (2) POWERS AND DUTIES.—The powers and duties of the
 1911 association include those set forth in this section and, except
 1912 as expressly limited or restricted in this chapter, those set
 1913 forth in the declaration and bylaws and part I of chapter
 1914 ~~chapters~~ 607 and chapter 617, as applicable.

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1915 Section 70. Subsection (10) of section 719.104, Florida
1916 Statutes, is amended to read:

1917 719.104 Cooperatives; access to units; records; financial
1918 reports; assessments; purchase of leases.—

1919 (10) POWERS AND DUTIES.—The powers and duties of the
1920 association include those set forth in this section and, except
1921 as expressly limited or restricted in this chapter, those set
1922 forth in the articles of incorporation and bylaws and part I of
1923 chapter chapters 607 and chapter 617, as applicable.

1924 Section 71. Subsection (5) of section 720.302, Florida
1925 Statutes, is amended to read:

1926 720.302 Purposes, scope, and application.—

1927 (5) Unless expressly stated to the contrary, corporations
1928 that operate residential homeowners' associations in this state
1929 shall be governed by and subject to part I of chapter 607, if
1930 the association was incorporated under that part chapter, or to
1931 chapter 617, if the association was incorporated under that
1932 chapter, and this chapter. This subsection is intended to
1933 clarify existing law.

1934 Section 72. Paragraph (c) of subsection (1) of section
1935 720.306, Florida Statutes, is amended to read:

1936 720.306 Meetings of members; voting and election
1937 procedures; amendments.—

1938 (1) QUORUM; AMENDMENTS.—

1939 (c) Unless otherwise provided in the governing documents as
1940 originally recorded or permitted by this chapter or chapter 617,
1941 an amendment may not materially and adversely alter the
1942 proportionate voting interest appurtenant to a parcel or
1943 increase the proportion or percentage by which a parcel shares

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1944 in the common expenses of the association unless the record
1945 parcel owner and all record owners of liens on the parcels join
1946 in the execution of the amendment. For purposes of this section,
1947 a change in quorum requirements is not an alteration of voting
1948 interests. The merger or consolidation of one or more
1949 associations under a plan of merger or consolidation under part
1950 I of chapter 607 or chapter 617 is ~~shall not be considered~~ a
1951 material or adverse alteration of the proportionate voting
1952 interest appurtenant to a parcel.

1953 Section 73. Paragraph (a) of subsection (1) of section
1954 766.101, Florida Statutes, is amended to read:

1955 766.101 Medical review committee, immunity from liability.—

1956 (1) As used in this section:

1957 (a) The term "medical review committee" or "committee"
1958 means:

1959 1.a. A committee of a hospital or ambulatory surgical
1960 center licensed under chapter 395 or a health maintenance
1961 organization certificated under part I of chapter 641;7

1962 b. A committee of a physician-hospital organization, a
1963 provider-sponsored organization, or an integrated delivery
1964 system;7

1965 c. A committee of a state or local professional society of
1966 health care providers;7

1967 d. A committee of a medical staff of a licensed hospital or
1968 nursing home, provided the medical staff operates pursuant to
1969 written bylaws that have been approved by the governing board of
1970 the hospital or nursing home;7

1971 e. A committee of the Department of Corrections or the
1972 Correctional Medical Authority as created under s. 945.602, or

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1973 employees, agents, or consultants of either the department or
 1974 the authority or both;~~7~~

1975 f. A committee of a professional service corporation formed
 1976 under chapter 621 or a corporation organized under part I of
 1977 chapter 607 or chapter 617, which is formed and operated for the
 1978 practice of medicine as defined in s. 458.305(3), and which has
 1979 at least 25 health care providers who routinely provide health
 1980 care services directly to patients;~~7~~

1981 g. A committee of the Department of Children and Families
 1982 ~~Family Services~~ which includes employees, agents, or consultants
 1983 to the department as deemed necessary to provide peer review,
 1984 utilization review, and mortality review of treatment services
 1985 provided pursuant to chapters 394, 397, and 916;~~7~~

1986 h. A committee of a mental health treatment facility
 1987 licensed under chapter 394 or a community mental health center
 1988 as defined in s. 394.907, provided the quality assurance program
 1989 operates pursuant to the guidelines that ~~which~~ have been
 1990 approved by the governing board of the agency;~~7~~

1991 i. A committee of a substance abuse treatment and education
 1992 prevention program licensed under chapter 397 provided the
 1993 quality assurance program operates pursuant to the guidelines
 1994 that ~~which~~ have been approved by the governing board of the
 1995 agency;~~7~~

1996 j. A peer review or utilization review committee organized
 1997 under chapter 440;~~7~~

1998 k. A committee of the Department of Health, a county health
 1999 department, healthy start coalition, or certified rural health
 2000 network, when reviewing quality of care, or employees of these
 2001 entities when reviewing mortality records;~~7~~ or

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2002 1. A continuous quality improvement committee of a pharmacy
 2003 licensed pursuant to chapter 465,
 2004
 2005 which committee is formed to evaluate and improve the quality of
 2006 health care rendered by providers of health service, to
 2007 determine that health services rendered were professionally
 2008 indicated or were performed in compliance with the applicable
 2009 standard of care, or that the cost of health care rendered was
 2010 considered reasonable by the providers of professional health
 2011 services in the area; or

2012 2. A committee of an insurer, self-insurer, or joint
 2013 underwriting association of medical malpractice insurance, or
 2014 other persons conducting review under s. 766.106.

2015 Section 74. Subsection (14) of section 865.09, Florida
 2016 Statutes, is amended to read:
 2017 865.09 Fictitious name registration.—
 2018 (14) PROHIBITION.—A fictitious name registered as provided
 2019 in this section may not contain the words "Corporation" or
 2020 "Incorporated," or the abbreviations "Corp." or "Inc.," unless
 2021 the person or business for which the name is registered is
 2022 incorporated or has obtained a certificate of authority to
 2023 transact business in this state pursuant to part I of chapter
 2024 607 or chapter 617.
 2025 Section 75. This act shall take effect July 1, 2014.

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This is the guy Oscar asked to speak for 2 mins. ✓

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/27/14

Meeting Date

Topic B-Corp

SB
Bill Number ~~HB~~ 654
(if applicable)

Name SHAWN SEIPLER

Amendment Barcode _____
(if applicable)

Job Title CEO, Clean the World

Address 400 A Pittman St

Phone _____

Street

Orlando, FL 32801

E-mail Sseipler@cleantheworld.org

City

State

Zip

Speaking: For Against Information

Representing Clean the World

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic Benefit Corporations

Bill Number 654
(if applicable)

Name Greg Black

Amendment Barcode _____
(if applicable)

Job Title _____

Address 215 S. Monroe St., Suite 505

Phone 205-9050

Street

Tallahassee

FL

32301

City

State

Zip

E-mail _____

Speaking: For Against Information

Representing Business Law Section of the Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14
Meeting Date

Topic Business Organizations

Bill Number SB 654
(if applicable)

Name Christie Burrus

Amendment Barcode _____
(if applicable)

Job Title Legislative Affairs Director

Address 500 S. Bronough St.
Street

Phone 245-6512

Tallahassee FL 32399
City State Zip

E-mail Christie.burrus@dos,
myflorida.com

Speaking: For Against Information

Representing Florida Department of State

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 12 2014

Meeting Date

Topic _____

Bill Number 654
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Banking and Insurance, *Vice Chair*
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Finance and Tax
Children, Families, and Elder Affairs
Ethics and Elections
Gaming
Transportation

SENATOR JEFF CLEMENS

27th District

March 18, 2014

Senator John Thrasher, Chair
Committee on Rules
402 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Thrasher:

I respectfully request that SB 654 – Business Organizations be added to the agenda for the next Committee on Rules meeting.

Senate Bill 654 will create two new forms of corporate enterprise: Social Purpose Corporations and Benefit Corporations. Each of these enterprises will allow entrepreneurs and investors, through their corporations, to engage in significant societal benefit programs that may not involve or satisfy the traditional corporate norm of profit maximization.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
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 Rules

BILL: CS/SB 656

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Montford

SUBJECT: OGSR/Active Investigations of Allegations/Testing Impropriety

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Letarte</u>	<u>Klebacha</u>	<u>ED</u>	Favorable
2.	<u>McVaney</u>	<u>McVaney</u>	<u>GO</u>	Fav/CS
3.	<u>Letarte</u>	<u>Phelps</u>	<u>RC</u>	Favorable

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 656 continues the current public records exemption for the identity of a school or postsecondary educational institution, personally identifying information of personnel, and specific allegations of misconduct until an investigation conducted by the Department of Education is concluded or inactive by removing the repeal date. The exemption is scheduled to repeal on October 2, 2014, unless saved from repeal through reenactment by the Legislature.¹

The bill takes effect on October 1, 2014.

II. Present Situation:

Florida Public Records Requirements

The Constitution of the State of Florida provides that:

[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except

¹ Section 1008.52(4)(b), F.S.

with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.²

Under Florida law, “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records.”³

However, the Legislature is authorized to exempt records from such laws that otherwise require accessibility.⁴ Such exemptions must be passed by a two-thirds vote of each house, state with specificity the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose.⁵

Open Government Sunset Review Act

The Open Government Sunset Review Act (OGSRA) provides a review process for public records exemptions.⁶ OGSRA requires that a new exemption or substantial amendment of an existing exemption be set to repeal on October 2nd of the fifth year after enactment, unless reenacted by the Legislature.⁷

When reenacting an exemption that will repeal, a public necessity statement and a two-thirds vote for passage are required if the exemption is substantially amended but not necessary if the exemption is reenacted without expansion.⁸ A substantial amendment exists “if the amendment expands the scope of the exemption to include more records or information or to include meetings as well as records. An exemption is not substantially amended if the amendment narrows the scope of the exemption.”⁹

² Art. I, s. 24(a), Fla. Const. The Florida Statutes define the term “public records” as “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.” Section 119.011(12), F.S.

³ Section 119.07(1)(a), F.S.

⁴ Art. I, s. 24(c), Fla. Const.

⁵ *Id.*

⁶ Section 119.15, F.S. The statute provides specific questions to be considered during the review process. Section 119.15(6)(a), F.S. The 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?

Responses to these questions from the Florida Department of Education and the State University System of Florida Board of Governors are on file with the Senate Committee on Education.

⁷ Section 119.15(3), F.S.

⁸ *See* Section 119.15(4), F.S.

⁹ Section 119.15(4)(b), F.S.

Florida Public Records Exemption for Information in Active Investigations Conducted by the Florida Department of Education: Section 1008.24, F.S., Test Administration and Security

Florida law requires school district and public postsecondary educational administrators to cooperate with the Commissioner of the Florida Department of Education (DOE) during any investigation regarding the administration of tests required by state statute or rule.¹⁰ Certain information is classified as confidential and exempt from public records requirements until an investigation by DOE regarding allegations of testing impropriety is concluded or inactive.¹¹

In 2009, the Legislature made the identity of a school or public postsecondary educational institution, personally identifiable information of personnel, and specific allegations related to alleged testing impropriety confidential and exempt from public records requirements until an investigation was concluded or inactive.¹² The public necessity identified for making such information confidential and exempt was that “[t]he release of information before an investigation is concluded may reveal sensitive or personal information that could cause unwarranted damage to the names or reputations of the individuals involved” in the alleged misconduct.¹³

¹⁰ Section 1008.24(4)(a), F.S.

¹¹ Section 1008.24(4)(b), F.S. An investigation is considered concluded if there is “a finding that no impropriety has occurred, upon the conclusion of any resulting preliminary investigation pursuant to s. 1012.796[F.S.], upon the completion of any resulting investigation by a law enforcement agency, or upon the referral of the matter to an employer who has the authority to take disciplinary action against an individual who is suspected of a testing impropriety.” *Id.* Additionally, an investigation is active “so long as it is ongoing and there is a reasonable, good faith anticipation that an administrative finding will be made in the foreseeable future.” *Id.*

¹² Section 1, ch. 2009-143, L.O.F. Personnel records maintained for the purpose of investigating employee misconduct are exempted from public records requirements in sections 1012.31, 1012.81, and 1012.91, of the Florida Statutes. However, the exemption for personnel records of a public school employee are only protected through the completion of a preliminary investigation as opposed to being exempted until the completion or inactivity of the investigation under section 1008.24, Florida Statutes. Additionally, the exemption under section 1008.24, Florida Statutes, exempts the identity of a school or institution and any specific allegations of misconduct until the completion or inactivity of an investigation while the exemptions for personnel records do not. *See* ss. 1012.31(3)(a)1., 1012.81(1)(b), 1012.91(1)(b), and 1008.24(4)(b), F.S.; Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 13, 2014) (on file with Senate Committee on Education).

¹³ *Id.* s. 2. The release of information prior to the conclusion of an investigation may also compromise the integrity of the investigation. Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 13, 2014) (on file with Senate Committee on Education). To the extent that information obtained or reported in an investigation involves student education records or personally identifiable information, those records would be confidential and exempt pursuant to other statutes. *See* ss. 1002.221, 1006.52, F.S.; Florida Department of Education, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 17, 2014) (on file with Senate Committee on Education); State University System of Florida Board of Governors, *Open Government Sunset Review Questionnaire: Section 1008.24(4)(b), F.S. Test Administration and Security* (Jan. 13, 2014) (on file with Senate Committee on Education) (providing that education records, as defined in the Federal Educational Rights and Privacy Act (FERPA) and its regulations, and personally identifiable information therein, is confidential and exempt from public records requirements).

The exemption in s. 1008.24, F.S., which makes the identity of a school or public postsecondary educational institution, personally identifiable information of personnel, and specific allegations related to alleged testing impropriety from public records requirements until the conclusion or inactivity of an investigation confidential and exempt from public records disclosure requirements, is set to repeal on October 2, 2014 unless reviewed and saved through reenactment by the Legislature.¹⁴

III. Effect of Proposed Changes:

CS/SB 656 continues the current public records exemption for the identity of a school or public postsecondary educational institution, personally identifiable information of personnel, and specific allegations related to alleged testing impropriety from public records requirements until the conclusion or inactivity of an investigation.¹⁵ This bill does not require a public necessity statement or a two-thirds vote for passage because the bill does not create a new exemption or substantially amend an existing exemption.

The bill takes effect on October 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

¹⁴ Section 1008.24(4)(b), F.S.

¹⁵ See s. 1008.24(4), F.S.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 1008.24 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Governmental Oversight and Accountability on March 20, 2014:

The CS integrates technical changes.

B. Amendments:

None.

By the Committee on Governmental Oversight and Accountability;
and Senator Montford

585-02891-14

2014656c1

1 A bill to be entitled
2 An act relating to a review under the Open Government
3 Sunset Review Act; amending s. 1008.24, F.S., relating
4 to an exemption from public records requirements for
5 certain information held by the Department of
6 Education during active investigations of allegations
7 of testing impropriety; saving the exemption from
8 repeal under the Open Government Sunset Review Act;
9 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 (4) of section
14 1008.24, Florida Statutes, is amended to read:
15 1008.24 Test administration and security; public records
16 exemption.-
17 (4)
18 (b) The identity of a school or postsecondary educational
19 institution, personal identifying ~~the personally identifiable~~
20 information of any personnel of any school district or
21 postsecondary educational institution, or any specific
22 allegations of misconduct obtained or reported pursuant to an
23 investigation conducted by the Department of Education of a
24 testing impropriety are confidential and exempt from s.
25 119.07(1) and s. 24(a), Art. I of the State Constitution until
26 the conclusion of the investigation or until such time as the
27 investigation ceases to be active. For the purpose of this
28 paragraph, an investigation ~~is shall be~~ deemed concluded upon a
29 finding that no impropriety has occurred, upon the conclusion of

Page 1 of 2

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

585-02891-14

2014656c1

30 any resulting preliminary investigation pursuant to s. 1012.796,
31 upon the completion of any resulting investigation by a law
32 enforcement agency, or upon the referral of the matter to an
33 employer who has the authority to take disciplinary action
34 against an individual who is suspected of a testing impropriety.
35 For the purpose of this paragraph, an investigation is shall be
36 considered active so long as it is ongoing and there is a
37 reasonable, good faith anticipation that an administrative
38 finding will be made in the foreseeable future. ~~This paragraph~~
39 ~~is subject to the Open Government Sunset Review Act in~~
40 ~~accordance with s. 119.15 and shall stand repealed on October 2,~~
41 ~~2014, unless reviewed and saved from repeal through reenactment~~
42 ~~by the Legislature.~~
43 Section 2. This act shall take effect October 1, 2014.

Page 2 of 2

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

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 Rules

BILL: SB 796

INTRODUCER: Senator Latvala

SUBJECT: Public Accountancy

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	<u>Oxamendi</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 796 increases the number of quarter hours required to sit for the examination for licensure as a certified public accountant from 160 quarter hours to 180 quarter hours, which is equivalent to the alternative 120 semester hours required to sit for the examination.

The bill requires that persons who apply to sit for the license examination must show that he or she has good moral character, and the Board of Accountancy within the Department of Business and Professional Regulation must deny an applicant that fails to show good moral character. Good moral character means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

The bill provides a process for reactivation of CPA licenses that have become inactive due to failure to complete the continuing education requirements. It extends the deadlines in the process for reactivation of licenses that have become inactive due to failure to complete the continuing education requirements. The bill extends, from June 30, 2012 to June 30, 2014, the date by which a person must have been inactive or delinquent for failure to complete the continuing education requirement. The bill extends, from June 30, 2014 to June 30, 2016, the deadline to complete the reactivation of the license. To reactivate the license, the person must complete 120 hours of continuing education.

The bill provides an effective date of July 1, 2014.

II. Present Situation:

The Board of Accountancy (board) within the Department of Business and Professional Regulation (department) is the agency charged with regulating the practice of public accountancy.¹ The Division of Certified Public Accounting performs for the board all services

¹ Section 473.303, F.S.

concerning the enforcement of ch. 473, F.S., including, but not limited to, recordkeeping services, examination services, legal services, and investigative services, and those services in ch. 455, F.S., necessary to perform the board's duties under the chapter. The office of the division is located in Gainesville.²

Section 473.302(4), F.S., defines a "certified public accountant" (CPA) to mean a person who holds a license to practice public accounting in this state under the authority of ch. 473, F.S.

Section 473.302(8), F.S., defines the "practice of," "practicing public accountancy," or "public accounting" to mean:

(a) Offering to perform or performing for the public one or more types of services involving the expression of an opinion on financial statements, the attestation as an expert in accountancy to the reliability or fairness of presentation of financial information, the utilization of any form of opinion or financial statements that provide a level of assurance, the utilization of any form of disclaimer of opinion which conveys an assurance of reliability as to matters not specifically disclaimed, or the expression of an opinion on the reliability of an assertion by one party for the use by a third party;

(b) Offering to perform or performing for the public one or more types of services involving the use of accounting skills, or one or more types of tax, management advisory, or consulting services, by any person who is a certified public accountant who holds an active license, including the performance of such services by a certified public accountant in the employ of a person or firm; or

(c) Offering to perform or performing for the public one or more types of service involving the preparation of financial statements not included within paragraph (a), by a certified public accountant who holds an active license, a firm of certified public accountants, or a firm in which a certified public accountant has an ownership interest, including the performance of such services in the employ of another person. The board shall adopt rules establishing standards of practice for such reports and financial statements; provided, however, that nothing in this paragraph shall be construed to permit the board to adopt rules that have the result of prohibiting licensees employed by unlicensed firms from preparing financial statements as authorized by this paragraph.

However, these terms [of practice] shall not include services provided by the American Institute of Certified Public Accountants or the Florida Institute of Certified Public Accountants, or any full service association of certified public accounting firms whose plans of administration have been approved by the board, to their members or services performed by these entities in reviewing the services provided to the public by members of these entities.

² See s. 20.165(2)(c)2., F.S.

Section 473.302(5), F.S., defines the term “firm” to mean “any entity that is engaged in the practice of public accounting.”

Section 473.3101(1)(a), F.S., requires that firms must hold a license if the firm:

- Uses the title “CPA,” “CPA firm,” or any other title, designation, words, letters, abbreviations, or device tending to indicate that the firm practices public accounting; or
- Does not have an office in this state but performs the services described in s. 473.3141(4), F.S.,³ for a client having its home office in this state, as defined by rule of the board.

License Examination

Section 473.306(2), F.S., requires an applicant to sit for the CPA examination must have completed of 120 semester hours or 160 quarter hours from an accredited college or university with a concentration in accounting and business courses as specified by the board by rule. According to a representative for the Florida Institute of Certified Public Accountants, 160 quarter hours is not equivalent to 120 semester hours. The equivalent number of quarter hours is 180 hours.

Section 473.308(5)(b), F.S., authorizes the board to deny an application for licensure on the basis of lack of good moral character.

Section 473.308(6)(a), F.S., defines the term “good moral character” to means a personal history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation.

However, good moral character is not a basis for the board to deny an application to sit for the license examination.

Continuing Education

Certified public accountants, as part of the license renewal procedure, are required to submit proof satisfactory to the board that, during the two years prior to their application for renewal, they have successfully completed not less than 48 or more than 80 hours of continuing professional education programs in public accounting subjects approved by the board.⁴ The board has the authority to prescribe by rule additional continuing professional education hours, not to exceed 25 percent of the total hours required, for failure to complete the hours required for renewal by the end of the reestablishment period. At least 25 percent of the total hours required by the board must be in accounting-related and auditing-related subjects, as distinguished from federal and local taxation matters and management services.⁵ Five percent of the total hours required by the board must be in ethics applicable to the practice of public accounting.⁶

³ Section 473.3141, F.S., provides the practice requirements for CPA’s from out-of-state.

⁴ Section 473.312(1)(a), F.S.

⁵ Section 473.312(1)(b), F.S.

⁶ Section 473.312(1)(c), F.S.

Inactive Licenses

Section 473.313(1), F.S., permits Florida-licensed CPA's to request that their license be placed on inactive status. Section 473.313(2), F.S., authorizes the board to provide that the minimum requirements for placing a license on inactive status, renewing an inactive license, and reactivating the inactive license.

Section 473.313(2), F.S., provides that a CPA who holds an inactive license due to failure to complete the continuing education requirements in s. 473.312, F.S., may be reactivated under s. 473.311, F.S.,⁷ upon application to the department. The minimum continuing education requirements are those required by board rule, the most recent biennium reporting period, and one-half of the requirements under s. 473.312, F.S.⁸

Section 473.313(3), F.S., permits a license that has become inactive due to failure to meet the continuing education requirements to be renewed upon the licensee applying to the department with payment of a fee as determined by the department.⁹ The applicant must submit proof of satisfactorily completing the continuing education requirement. The applicant must also submit the completed application to the board by March 15 immediately following the inactive period.

Section 473.303(2), F.S., provides the number of hours of continuing education required for applicants to reactivate an inactive license if the license was inactive or delinquent on June 30, 2012. To reactivate, the person must have completed 120 hours of continuing education, including at least 30 hours in accounting-related and auditing-related subjects, not more than 30 hours in behavioral subjects, and a minimum of 8 hours in ethics subjects approved by the board. To reactivate, the CPA must also have notified the board by December 31, 2012, of his or her intention to reactivate such a license and have completed such reactivation by June 30, 2014.

The department noted that the last time amnesty was offered in 2012, the division notified approximately 3,437 inactive licensees of the amnesty provision. Four hundred and twelve licensees submitted letters of intent to reactivate under the amnesty program and only 143 actually completed the reactivation process under that provision.

Rule 61H1-33.006, F.A.C., provides that licenses that have been inactive for no more than two reporting periods may be reactivated upon the completion of the most recent 2-year continuing education requirement plus a minimum of 120 hours of continuing education. The required additional continuing education hours increase to 200 hours if the CPA has been inactive for three or more reporting periods, and 280 hours if the CPA has been inactive for three or more reporting periods.

⁷ Section 473.311, F.S., provides for the renewal of licenses upon the satisfaction of continuing education requirements.

⁸ Section 473.312(1), F.S., requires that at least 48, but not more than 80 hours, of continuing education must be completed within 2 years prior to the application for renewal.

⁹ Section 473.305, F.S., authorizes the board to establish, by rule, a reactivation fee, and a delinquency fee not to exceed \$50 for continuing professional education reporting forms. This section also provides that the board must "establish fees which are adequate to ensure the continued operation of the board and to fund the proportionate expenses incurred by the department which are allocated to the regulation of public accountants." The fees established by the board must be based on department estimates of the revenue required to implement ch. 473, F.S., and the provisions of law with respect to the regulation of certified public accountants.

III. Effect of Proposed Changes:

License Examination

The bill creates s. 473.306(2)(a), F.S., to increase the number of quarter hours required to sit for the CPA license examination from 160 quarter hours to 180 quarter hours, which is equivalent to the alternative 120 semester hours required to sit for the examination.

The bill creates s. 473.306(2)(b), F.S., to require that persons who apply to sit for the CPA license examination show that he or she has good moral character.

The bill defines good moral character as having the same meaning as in s. 473.308(6)(a), F.S.

The bill requires that the board refuse to allow an applicant to take the CPA license examination, if the board finds a reasonable relationship between the applicant's lack of good moral character and the professional responsibilities of a CPA. The board's finding of a lack of good moral character must be supported by competent substantial evidence.¹⁰

If the board finds that the applicant is unqualified to take the license examination because of a lack of good moral character, the board is required to furnish the applicant with a statement containing the findings of the board, a complete record of the evidence upon which the determination was based, and a notice of the rights of the applicant to a hearing and appeal.¹¹

Inactive Licenses

The bill amends s. 473.313(2), F.S., to extend the deadlines in the process for reactivation of licenses that have become inactive due to failure to complete the continuing education requirements. The bill extends, from June 30, 2012 to June 30, 2014, the date by which a person must have been inactive or delinquent for failure to complete the continuing education requirement. The bill extends, from June 30, 2014 to June 30, 2016, the deadline to complete the reactivation of the license.

Reactivation of an inactive or delinquent licenses requires payment of a \$250.00 application fee.¹²

Effective Date

The bill provides an effective date of July 1, 2014.

¹⁰ Agency action must be based on findings of fact that are supported by competent, substantial evidence in the record of a hearing conducted pursuant to ss. 120.569 and 120.57, F.S. See s. 120.68(7)(b), F.S. Competent substantial evidence is evidence as will establish a substantial basis of fact from which the fact at issue can be reasonably inferred. It is relevant evidence as a reasonable mind would accept as adequate to support a conclusion. See *Verizon Florida, Inc., v. Jabor*, 889 So.2d 712, 714 (Fla. 2004), citing *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957).

¹¹ Sections 120.569 and 120.57, F.S., provide the administrative procedures for persons whose substantial interests have been determined by an agency. The administrative rights include a hearing before the agency or before an administrative law judge of the Division of Administrative Hearing. Section 120.60, F.S., provides that a party who is adversely affected by final agency action is entitled to judicial review.

¹² Rule 61H1-31.006, F.A.C.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who apply to reactivate an inactive or delinquent license would be required payment of a \$250.00 application fee.

C. Government Sector Impact:

According to the department, it anticipates revenues from the reactivation of delinquent or inactive license to range from \$60,000 to \$81,000. It also anticipates a corresponding increase in General Revenue of 8% of the additional license and application fees (\$4,800 to \$6,480).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 473.306 and 473.313 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 Latvala

20-01005A-14

2014796__

1 A bill to be entitled
 2 An act relating to public accountancy; amending s.
 3 473.306, F.S.; revising course requirement for
 4 certified public accountant license applicant to take
 5 the licensure examination; requiring an applicant to
 6 be of good moral character in order to take the
 7 licensure examination; requiring the Board of
 8 Accountancy, when refusing to allow an applicant to
 9 take the examination because of a lack of good moral
 10 character, to make certain findings and furnish
 11 certain evidence and notices to the applicant;
 12 amending s. 473.313, F.S.; revising certain deadlines
 13 for license reactivation; providing an effective date.

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

16 Section 1. Subsection (2) of section 473.306, Florida
 17 Statutes, is amended to read:

18 473.306 Examinations.—

19 (2) An applicant is entitled to take the licensure
 20 examination to practice in this state as a certified public
 21 accountant if:

22 (a) The applicant has completed 120 semester hours or 180
 23 160 quarter hours from an accredited college or university with
 24 a concentration in accounting and business courses as specified
 25 by the board by rule; and

26 (b) The applicant shows that she or he has good moral
 27 character. For purposes of this paragraph, the term "good moral
 28 character" has the same meaning as provided in s. 473.308(6)(a).
 29

Page 1 of 3

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

20-01005A-14

2014796__

30 The board may refuse to allow an applicant to take the licensure
 31 examination for failure to satisfy this requirement if:

32 1. The board finds a reasonable relationship between the
 33 lack of good moral character of the applicant and the
 34 professional responsibilities of a certified public accountant;
 35 and

36 2. The finding by the board of lack of good moral character
 37 is supported by competent substantial evidence.
 38

39 If an applicant is found pursuant to this paragraph to be
 40 unqualified to take the licensure examination because of a lack
 41 of good moral character, the board shall furnish to the
 42 applicant a statement containing the findings of the board, a
 43 complete record of the evidence upon which the determination was
 44 based, and a notice of the rights of the applicant to a
 45 rehearing and appeal.

46 Section 2. Subsection (2) of section 473.313, Florida
 47 Statutes, is amended to read:

48 473.313 Inactive status.—

49 (2) A license that has become inactive under subsection (1)
 50 or for failure to complete the requirements in s. 473.312 may be
 51 reactivated under s. 473.311 upon application to the department.
 52 The board may prescribe by rule continuing education
 53 requirements as a condition of reactivating a license. The
 54 minimum continuing education requirements for reactivating a
 55 license ~~are shall be~~ those prescribed by board rule and those of
 56 the most recent biennium plus one-half of the requirements in s.
 57 473.312. Notwithstanding any other provision of this section,
 58 the continuing education requirements are 120 hours, including

Page 2 of 3

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

20-01005A-14

2014796__

59 at least 30 hours in accounting-related and auditing-related
60 subjects, not more than 30 hours in behavioral subjects, and a
61 minimum of 8 hours in ethics subjects approved by the board, for
62 the reactivation of a license that is inactive or delinquent on
63 June 30, ~~2014 2012~~, if the Florida certified public accountant
64 notifies the Board of Accountancy by December 31, ~~2014 2012~~, of
65 an intention to reactivate such a license and completes such
66 reactivation by June 30, 2016 ~~2014~~.

67 Section 3. This act shall take effect July 1, 2014.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/14

Meeting Date

Topic Public Accountancy

Bill Number 796
(if applicable)

Name Justin Thames

Amendment Barcode _____
(if applicable)

Job Title Governmental Affairs Manager

Address 325 W. College Avenue

Phone 850-224-2727

Tallahassee FL 32301
City State Zip

E-mail thamesj@ficpa.org

Speaking: For Against Information

Representing Florida Institute of CPA's

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/26/2014

Meeting Date

Topic _____

Bill Number 796
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

City

State

Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Ethics and Elections, *Chair*
Budget - Subcommittee on General Government
Appropriations
Budget - Subcommittee on Transportation, Tourism,
and Economic Development Appropriations
Community Affairs
Environmental Preservation and Conservation
Rules
Judiciary
Appropriations
Select Committee on Gaming

SENATOR JACK LATVALA

20th District

March 13, 2014

The Honorable John Thrasher, Chairman
Senate Rules Committee
404 S. Monroe St., 402S
Tallahassee, FL 32399-1100

Dear Chairman Thrasher:

I respectfully request that my bill, SB 796/Public Accountancy, be placed on the agenda of the Senate Rules Committee at the earliest possible time. The bill was favorably considered by the Senate Regulated Industry Committee on March 13.

This is a clean-up and clarifying bill which allows exam applicants to fulfill the Board of Accountancy's "Good Moral Character" requirement prior to application for licensure. It also creates a one-time amnesty to reactivate a license by notifying the board of their intention by December 31, 2014 and completing 120 hours of continuing professional education by June 30, 2016.

Please contact me if you have any questions regarding this request. I appreciate your consideration.

Sincerely,

A handwritten signature in black ink that reads "Jack Latvala".

Jack Latvala
State Senator
District 20

JL:tc

CC: John Phelps, Staff Director; Tracy Cantella, Administrative Assistant

REPLY TO:

- 26133 U.S. Highway 19 North, Suite 201 Clearwater, FL 33763 (727) 793-2797
- 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

Senate's Website: www.flsenate.gov

Don Gaetz
President of the Senate

Garrett Richter
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 Rules

BILL: SB 996

INTRODUCER: Commerce and Tourism Committee

SUBJECT: OGSR/Scripps Florida Funding Corporation

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Malcolm</u>	<u>Hrdlicka</u>		CM 7032 as introduced
1.	<u>Kim</u>	<u>McVane</u>	<u>GO</u>	Favorable
2.	<u>Malcolm</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

In 2003, the Legislature appropriated \$310 million for the California-based Scripps Research Institute (SRI) to open a Florida research facility (Scripps Florida),¹ the Legislature also created the Scripps Florida Funding Corporation (the Funding Corporation) to release the funds to Scripps Florida according to a 20-year agreement.² Additionally, the Legislature created public records and public meeting exemptions for certain records and information provided by SRI or Scripps Florida to the Funding Corporation.³ These exemptions are codified in s. 288.9551, F.S., which is set to expire on October 2, 2014.

SB 996 repeals the public records and public meetings exemptions in s. 288.9551, F.S., because the Funding Corporation has indicated that it operates in the sunshine and does not receive such confidential and exempt information.⁴

¹ Chapter 2003-420, s. 5, Laws of Fla.

² *Id.* at s. 1.

³ Chapter 2003-419, s. 1, Laws of Fla. The 2009 reenactment of s. 288.9551, F.S., removed reference to records and meetings held by the former Office of Tourism, Trade, and Economic Development (OTTED). Chapter 2009-236, Laws of Fla.

⁴ The Funding Corporation's response to the joint Senate and House questionnaire regarding the open government sunset review of s. 288.9551, F.S., response completed by Sara Misselhorn, Project Director, received Sept. 10, 2013, questions 13 and 19. SRI, Scripps Florida, and the Department of Economic Opportunity (DEO) have also indicated to committee staff that the exemptions are no longer necessary. Telephone conversation with Tom Northrup, General Counsel for SRI and Scripps Florida (Aug. 28, 2013); E-mail from Karl Blischke, Chief, Bureau of Compliance and Accountability, DEO, (Nov. 1, 2013) (on file with the Committee on Commerce and Tourism).

II. Present Situation:

Public Records in Florida

Florida has a long history of providing public access to government records. In 1992, the State Constitution was amended to provide the public a broad right to access government records.⁵ Article I, s. 24, provides in part:

Every person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution.

In addition to the State Constitution, the Public Records Law,⁶ which pre-dates article I, s. 24, specifies conditions under which an agency must grant public access to government records.⁷ It states,

Every person who has custody of a public record shall permit the record to be inspected and examined by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.⁸

Unless specifically exempt, all agency records are available for public inspection.⁹ The term “public record” is broadly defined to include:

all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.¹⁰

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.¹¹

⁵ FLA. CONST. art. I, s. 24.

⁶ Chapter 119, F.S.

⁷ The word “agency” is defined in s. 119.011(2), F.S., 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 . . . 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.”

⁸ Section 119.07(1)(a), F.S.

⁹ FLA. CONST. art. I, s. 24(a).

¹⁰ Section 119.011(12), F.S.

¹¹ *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc.*, 379 So.2d 633, 640 (Fla. 1980).

Only the Legislature is authorized to create exemptions to open government requirements.¹² Exemptions must be created by general law, must specifically state the public necessity justifying the exemption, and must be no broader than necessary to accomplish the stated purpose of the law.¹³ A bill enacting an exemption¹⁴ may not contain other substantive provisions, but it may contain multiple exemptions that relate to one subject.¹⁵

There is a difference between records that the Legislature has made exempt from public inspection and those that are confidential and exempt. If the Legislature makes a record confidential and exempt, such information may not be released by an agency to anyone other than to the persons or entities designated in the statute.¹⁶ If a record is simply made exempt from disclosure requirements, then an agency is not prohibited from disclosing the record in all circumstances.¹⁷

Open Government Sunset Review Act¹⁸

The Open Government Sunset Review Act (the Sunset Act) provides for the systematic, 5-year review of any exemption from the Public Records Law or the Public Meetings Law.¹⁹

Under the Sunset Act, an exemption may be created, expanded, or maintained only if it serves an identifiable public purpose and is no broader than necessary to meet the public purpose it serves.²⁰ An identifiable public purpose is served if the exemption meets one of three specified criteria and the Legislature finds the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption. An exemption meets the three statutory criteria if it:

- (1) Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- (2) Protects information of a sensitive personal nature concerning individuals, the release of which would be defamatory or cause unwarranted damage to the good name or reputation of such individuals, or would jeopardize their safety; or
- (3) Protects information of a confidential nature concerning entities, including, but not limited to, a formula, pattern, device, combination of devices, or compilation of information that is used to protect or further a business advantage over those who do not know or use it, the disclosure of which would injure the affected entity in the marketplace.²¹

¹² FLA. CONST. art. I, s. 24(c).

¹³ *Id.*

¹⁴ Under s. 119.15(4)(b), F.S., an existing exemption may be considered a new exemption if the exemption is expanded to cover additional records.

¹⁵ FLA. CONST. art. I, s. 24 (c).

¹⁶ See Attorney General Opinion 85-62, WFTV, Inc., v. School Bd. of Seminole, 874, So.2d 48 (2004).

¹⁷ *Williams v. City of Minneola*, 575 So.2d 683, 687 (Fla. 5th DCA), review denied, 589 So.2d 289 (Fla. 1991).

¹⁸ Section 119.15, F.S.

¹⁹ *Id.* at (3).

²⁰ *Id.* at (6)(b).

²¹ *Id.*

The Sunset Act also requires consideration of the following issues:

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?²²

Scripps Florida Funding Corporation

In 2003, the Legislature created the Funding Corporation, a nine-member, not-for-profit entity, to enter into and monitor a 20-year agreement with SRI to establish a biomedical research facility in Florida (Scripps Florida) and to disburse state funds on a schedule that coincides with Scripps Florida meeting job-creation and other contractual targets.²³

The Legislature provided a one-time appropriation of \$310 million for Scripps Florida with the funds to be disbursed over a 7-year period.²⁴ Due to site-selection and permitting delays, the disbursement period was extended to 10 years.²⁵ As of September 2013, the Funding Corporation had disbursed \$349 million (including \$40.3 million in interest earnings) to Scripps Florida.²⁶ The final disbursement occurred in December 2013.²⁷

Because the Funding Corporation is a public body it would be subject to Florida's public records and open meetings laws but for the public records and public meetings exemptions in s. 288.9551, F.S.

Scripps Florida

Scripps Florida is a division of the California-based, non-profit SRI. State funds provided to Scripps Florida are spent only on approved expenditures. Though it receives public funds, SRI (and by extension, Scripps Florida) is a private, not-for-profit research institute, and is not subject to Florida's public records and open meetings laws.²⁸

²² Section 119.15(6)(a), F.S. While the standards in the Sunset Act may appear to limit the Legislature in the exemption review process, those aspects of the act that are only statutory, as opposed to constitutional, do not limit the Legislature because one session of the Legislature cannot bind another. *See Neu v. Miami Herald Pub. Co.*, 462 So.2d 821, 824 (Fla. 1985). Accordingly, the Legislature is only limited in its review process by constitutional requirements. Moreover, s. 119.15(8), F.S., states that the failure of the Legislature to comply strictly with this section does not invalidate an otherwise valid reenactment.

²³ Chapter 2003-420, s. 1, Laws of Fla.

²⁴ Section 288.955(11)(a), F.S.

²⁵ Amendment to Operating and Funding Agreement, Nov. 28, 2006 (on file with the Committee on Commerce and Tourism).

²⁶ Scripps Florida Funding Corporation, *2013 Annual Report*, 36, available at http://www.scripps.edu/florida/about/scientificreports_pdfs/2013SFFCAnnualReport_20140108133315_659841.pdf (last visited Jan. 16, 2014).

²⁷ *Id.* at 43.

²⁸ *See* s. 288.955(1)(c), F.S.

Scripps Florida is a biomedical research facility located on 30 acres adjoining the Florida Atlantic University campus in Jupiter, Florida. There are 528 scientists, technicians, and administrative staff employed in the 345,000 square-foot, biomedical research facility.²⁹ Scripps Florida research targets include neurobiology (Alzheimer's, Parkinson's, autism, schizophrenia, anxiety/depression, and addiction), cancer biology, immune system studies (asthma and rheumatoid arthritis), cardiovascular and metabolic research (heart disease, diabetes, obesity, and metabolic syndrome), and infectious diseases (Creutzfeldt-Jakob disease, malaria, tuberculosis, hepatitis C, and HIV/AIDS).³⁰

Scripps Florida Public Records Exemption

As part of the establishment of the Funding Corporation, s. 288.9551, F.S., was enacted to provide a public records exemption for certain records and meetings of Scripps Florida that are held by the Funding Corporation.³¹ In 2009, the exemption was modified and extended for another five years.³² The following records are confidential and exempt from public disclosure:

- Materials that relate to methods of manufacture or production, potential and actual trade secrets,³³ patentable material, or proprietary information received, generated, ascertained, or discovered by or through Scripps Florida.
- Agreements and proposals to receive funding, including grant applications.³⁴
- Materials relating to the recruitment of scientists and researchers.
- The identity of donors or potential donors who wish to remain anonymous.
- Any information received from a person or another state or nation or the Federal Government, which is otherwise confidential or exempt pursuant to that state's or nation's laws or pursuant to federal law.
- Personal identifying information of individuals who participate in human trials or experiments.
- Any medical or health records relating to participants in clinical trials.³⁵

Additionally, those portions of board meetings by the Funding Corporation's directors during which exempt and confidential information is presented or discussed must be closed to the public, and records of the closed portions of the meetings are exempt and confidential.³⁶

²⁹ Funding Corporation *2013 Annual Report* at 36. Under the terms of its amended agreement, Scripps Florida is required to hire 545 employees by the end of 2014. Amendment to Operating and Funding Agreement, Nov. 28, 2006 (on file with the Committee on Commerce and Tourism).

³⁰ Scripps Florida, *Research Overview – Florida Campus*, <http://www.scripps.edu/florida/research/index.html> (last visited Jan. 21, 2014).

³¹ The 2009 extension of s. 288.9551, F.S., removed reference to records and meetings held by the former OTTED. Ch. 2009-236, s. 2, Laws of Fla.

³² Chapter 2009-236, s. 2, Laws of Fla.

³³ "Trade secret" is defined in s. 688.002, F.S.

³⁴ However, the portions of such agreements and proposals to receive funding, including grant applications, that do not contain information made confidential and exempt by s. 288.9551, F.S., shall not be confidential and exempt upon issuance of the report that is made after the conclusion of the project for which funding was provided. Excluded from this exemption is the agreement between the Funding Corporation and SRI that governs the release of the state funds. Section 288.9551(2)(b), F.S.

³⁵ *Id.* at (2).

³⁶ *Id.* at (3).

Exempt and confidential information must be released to public employees exclusively for the performance of their duties.³⁷ Violating the exemption is a second-degree misdemeanor.³⁸

When originally enacted in 2003, the constitutionally required public necessity statement accompanying the exemptions asserted a number of reasons supporting the confidentiality of certain information that Scripps Florida could provide the Funding Corporation.³⁹ For example:

- The state was making a substantial financial investment in the SRI project.
- Disclosure of certain SRI information and records could create an unfair competitive advantage for persons receiving the information, in turn putting SRI at a competitive disadvantage and negatively impacting anticipated benefits to the state, its economy, and its academic community.
- Specifically, disclosure of grant applications and proposals could put SRI at a competitive disadvantage for receiving research funds; disclosure of materials related to staff recruitment could allow competitors to outbid SRI for scientists and researchers; and, failure to protect the identities of donors and potential donors could reduce private contributions to SRI.

Originally, the exemptions created under s. 288.9551, F.S., were scheduled for repeal on October 2, 2009, unless reenacted after review by the Legislature under the Sunset Act.⁴⁰ In 2009, following review pursuant to the Sunset Act, the Legislature renewed the exemptions for a period of 5 years to October 2, 2014, unless reenacted after legislative review under the Sunset Act.⁴¹

The Funding Corporation recommends repealing the public records and public meeting exemptions because the Funding Corporation does not receive or collect the exempt information listed in the statute and does not hold any exempt meetings.⁴² Scripps Florida, SRI, and the Department of Economic Opportunity are neutral on whether the exemptions are repealed or extended.⁴³

III. Effect of Proposed Changes:

Section 1 of the bill repeals s. 299.9551, F.S., which provides a public record exemption for proprietary business information and certain financial and research information held by the Scripps Florida Funding Corporation and provides a public meetings exemption for meetings where such information is discussed.

Section 2 of the bill provides an effective date of October 1, 2014.

³⁷ *Id.* at (4).

³⁸ *Id.* at (5).

³⁹ Chapter 2003-419, s. 2, Laws of Fla.

⁴⁰ *Id.* at s. 1.

⁴¹ Chapter 2009-236, s. 2, Laws of Fla.

⁴² *Supra* note 4.

⁴³ *Supra* note 4.

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

None.

B. Public Records/Open Meetings Issues:

The bill repeals the public records exemption and the public meeting exemption for the Scripps Florida Funding Corporation. The bill complies with the requirement of article I, s. 24 of the State Constitution that public records exemptions may only be addressed in legislation separate from substantive changes to law.

C. Trust Funds Restrictions:

None.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill repeals section 288.9551 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 Commerce and Tourism

577-01739-14

2014996__

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A bill to be entitled

An act relating to a review under the Open Government
Sunset Review Act; repealing s. 288.9551, F.S., which
provides an exemption from public record and public
meeting requirements for certain records and meetings
of the Scripps Florida Funding Corporation; providing
an effective date.

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

Section 1. Section 288.9551, Florida Statutes, is repealed.
Section 2. This act shall take effect October 1, 2014.



The Florida Senate

Committee Agenda Request

To: Senator John Thrasher, Chair
Committee on Rules

Subject: Committee Agenda Request

Date: March 20, 2014

I respectfully request that **996**, relating to OGSR/Scripps Florida Funding Corporation, be placed on the:

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

A handwritten signature in cursive script, reading "Nancy Detert".

Senator Nancy C. Detert
Florida Senate, District 28

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 Rules

BILL: SB 1664

INTRODUCER: Judiciary Committee

SUBJECT: Arbitration

DATE: March 25, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
	<u>Cibula</u>	<u>Cibula</u>		JU SPB 7078 as Introduced
1.	<u>Cibula</u>	<u>Phelps</u>	<u>RC</u>	Favorable

I. Summary:

SB 1664 corrects a scrivener’s error in the Revised Florida Arbitration Code, which was enacted by the Legislature during the 2013 Legislative Session. The bill clarifies that parties to an arbitration agreement may waive the right to a remedy, not the right to the confirmation of an arbitration award by a court.

II. Present Situation:

Arbitration Generally

Arbitration is an alternative dispute resolution process in which the parties submit a “dispute to one or more impartial persons for a final and binding decision, known as an ‘award.’”¹ Arbitration is intended to be a speedy and economical alternative to court litigation, which is often slow, time-consuming, and expensive.² Parties to arbitration voluntarily give up safeguards that litigants in court proceedings enjoy, such as a jury trial or a right to appeal and rules of evidence.³

Revised Florida Arbitration Code

During the 2013 Legislative Session, the Legislature passed CS/SB 530, codified as ch. 213-232, L.O.F. The bill substantially revised or repealed the then existing arbitration code in ch. 682, F.S., and replaced it with the “Revised Florida Arbitration Code,” based on the 2000 revision of

¹ American Arbitration Association, *Arbitration*, http://www.adr.org/aaa/faces/services/disputeresolutionservices/arbitration;jsessionid=2jX0RZLCyKPV4wMPSrcvCkSmCLsbXCrLZvRsLrhVNnhFChmSSnKj!-1600829671?_afLoop=832669183421451&_afWindowMode=0&_afWindowId=null (last visited March 9, 2014).

² *ManorCare Health Services, Inc. v. Stiehl*, 22 So. 3d 96, 105 (Fla. 2d DCA 2009).

³ *United Ins. Co. of America v. Office of Ins. Regulation*, 985 So. 2d 665, 668 (Fla. 1st DCA 2008); *Murton Roofing Corp. v. FF Fund Corp.*, 930 So. 2d 772, 774 (Fla. 3d DCA 2006).

the Uniform Arbitration Act by the National Conference of Commissioners on Uniform State Laws.

Among the various provisions of the revised code, the code authorizes an arbitrator to award provisional remedies before a final award is made to protect the effectiveness of the arbitration proceeding.⁴ An arbitrator may also award punitive damages or other exemplary relief and other remedies that the arbitrator considers just and appropriate.⁵ A party awarded a provisional remedy or final award may enforce the award by having it confirmed by a court.⁶

The revised arbitration code generally allows parties to an arbitration agreement to waive or vary the effect of the code's requirements. However, the code lists a number of provisions that the parties to an agreement may not waive until a controversy arises and provisions that may not be waived at all.

According to s. 682.014(3), F.S., one of the requirements that may not be waived is "The remedies provided under s. 682.012." In this instance, the requirement, however, is internally inconsistent because the cross-reference of "s. 682.012" relates, not to remedies, but a party's right to enforce the award by having a court enter an order confirming the award. In this case, the cross-reference is correct, but its description is incorrect. Remedies for a breach of contract are often waived or limited by agreement. However, if a party to an arbitration agreement waives the right to enforce an award, there would be little or no reason to arbitrate any disputes.

III. Effect of Proposed Changes:

This bill corrects scrivener's error in the Revised Florida Arbitration Code, which was enacted by the Legislature during the 2013 Legislative Session.

The revised code lists a number of provisions or rights that the parties to an arbitration agreement may not waive. One of these is "The remedies provided under s. 682.12[, F.S]." The description, "remedies," is inconsistent with the cross-reference to s. 682.12, F.S, which relates to the right of a party to have a court enter an order confirming the award. As corrected by the bill, a party to an arbitration agreement may waive a remedy, not the right to the confirmation of the award by a court.

The bill takes effect upon becoming a law and applies retroactively⁷ to July 1, 2013, which was the effective date of the legislation enacting the Revised Florida Arbitration Code.

⁴ See s. 682.031, F.S.

⁵ Section 682.11, F.S.

⁶ Sections 682.081 and 682.11, F.S.

⁷ See *Pembroke Lakes Mall Ltd. v. McGruder*, 2014 WL 714706, *4 (Fla. 4th DCA) (providing that the rule against retroactive application of statutes does not apply to procedural or remedial changes); *Maronda Homes, Inc., of Florida v. Lakeview Reserve Homeowners Ass'n Inc.*, 127 So. 3d 1258, 1273-1274 (Fla. 2013) (stating that a remedial statute does not "create new obligations or duties, but rather provides the remedy of clarification of an existing right").

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By correcting a scrivener's error in the Revised Florida Arbitration Code, litigation relating to the error may be avoided.

C. Government Sector Impact:

By correcting a scrivener's error in the Revised Florida Arbitration Code, litigation relating to the error may be avoided.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following section of the Florida Statutes: 682.014.

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 Judiciary

590-02478-14

20141664__

1 A bill to be entitled
 2 An act relating to arbitration; amending s. 682.014,
 3 F.S.; correcting the description of a cross-reference;
 4 providing for retroactive application; providing an
 5 effective date.
 6
 7 Be It Enacted by the Legislature of the State of Florida:
 8
 9 Section 1. Subsection (3) of section 682.014, Florida
 10 Statutes, is amended to read:
 11 682.014 Effect of agreement to arbitrate; nonwaivable
 12 provisions.—
 13 (3) A party to an agreement to arbitrate or arbitration
 14 proceeding may not waive, or the parties may not vary the effect
 15 of, the requirements in this section or:
 16 (a) The applicability of this chapter, the Revised Florida
 17 Arbitration Code, under s. 682.013(1) or (4);
 18 (b) The availability of proceedings to compel or stay
 19 arbitration under s. 682.03;
 20 (c) The immunity conferred on arbitrators and arbitration
 21 organizations under s. 682.051;
 22 (d) A party's right to seek judicial enforcement of an
 23 arbitration preaward ruling under s. 682.081;
 24 (e) The authority conferred on an arbitrator to change an
 25 award under s. 682.10(4) or (5);
 26 (f) The right to confirmation of an award as remedies
 27 provided under s. 682.12;
 28 (g) The grounds for vacating an arbitration award under s.
 29 682.13;

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

590-02478-14

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30 (h) The grounds for modifying an arbitration award under s.
 31 682.14;
 32 (i) The validity and enforceability of a judgment or decree
 33 based on an award under s. 682.15(1) or (2);
 34 (j) The validity of the Electronic Signatures in Global and
 35 National Commerce Act under s. 682.23; or
 36 (k) The effect of excluding from arbitration under this
 37 chapter disputes involving child custody, visitation, or child
 38 support under s. 682.25.
 39 Section 2. This act shall apply retroactively to July 1,
 40 2013.
 41 Section 3. This act shall take effect upon becoming a law.

Page 2 of 2

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

CourtSmart Tag Report

Room: EL 110
Caption: Senate Rules Committee

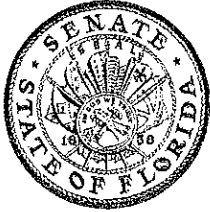
Case:
Judge:

Type:

Started: 3/26/2014 4:04:04 PM
Ends: 3/26/2014 4:44:29 PM Length: 00:40:26

4:04:06 PM Senator Thrasher calls the meeting to order
4:04:13 PM roll call
4:04:19 PM quorum present
4:04:44 PM CS/CS/SB 278 temporarily postponed
4:05:31 PM CS/CS/SB 654 by Senator Clemens
4:05:43 PM Senator Clemens explains the bill
4:06:39 PM Shawn Seipler, CEO, Clean the World speaks
4:07:49 PM Greg Black representing Business Law Section of the Florida Bar waives in support
4:07:56 PM Christie Burrus, Legislative Affairs Director, Florida Department of State waives in support
4:08:04 PM Brian Pitts, Justice-2-Jesus, speaks
4:08:59 PM Senator Clemens closes on the bill
4:09:15 PM roll call
4:09:24 PM CS/CS/SB 654 reported favorably
4:09:48 PM CS/SB 366 by Senator Brandes
4:10:04 PM Senator Brandes explains the bill
4:10:19 PM Brian Pitts speaks
4:11:35 PM Senator Brandes waives close on the bill
4:11:40 PM Roll call
4:11:46 PM CS/SB 366 reported favorably
4:12:12 PM CS/CS/SB 226 by Senator Brandes
4:12:22 PM Senator Brandes explains the bill
4:12:52 PM Senator Brandes waives close on the bill
4:13:01 PM roll call
4:13:07 PM CS/CS/SB 226 reported favorably
4:13:28 PM SB 162 by Senator Stargel
4:13:38 PM Senator Stargel explains the bill
4:13:56 PM Reme Lee speaks
4:17:57 PM Brian Pitts speaks
4:20:35 PM Senator Sobel in debate
4:21:42 PM Senator Stargel closes on the bill
4:22:03 PM roll call
4:22:07 PM SB 162 reported favorably
4:22:41 PM CS/SB 292 by Senator Hays
4:22:56 PM Senator Hays explains the bill
4:23:41 PM Jim Smith, Director, Century Link waives in support
4:23:50 PM Troy McNichols, A T & T External Affairs, waives in support
4:24:04 PM Senator Hays waives close on the bill
4:24:14 PM roll call
4:24:18 PM CS/SB 292 reported favorably
4:24:38 PM CS/SB 390 by Senator Hays
4:24:44 PM Senator Hays explains the bill
4:25:12 PM Paul Rink, Deputy Director of Legislative Planning, Department of Health waives in support
4:25:20 PM Brian Pitts waives in support
4:25:26 PM Sen Hays waives close
4:25:32 PM roll call
4:25:41 PM CS/SB 390 reported favorably
4:26:18 PM SB 996 by Committee on Commerce and Tourism
4:26:25 PM Senator Detert explains the bill
4:27:25 PM Sen Detert waives close
4:27:33 PM roll call
4:27:38 PM SB 996 reported favorably
4:28:00 PM CS/SB 408 by Senator Braynon

4:28:09 PM Senator Braynon explains the bill
4:29:26 PM Stephen Winn, Executive Director of the Florida Osteopathic Medical Association waives in support
4:29:42 PM Jesse Fry, representing Florida HIV/AIDS Advocacy Network waives in support
4:29:53 PM Chanelle Diaz, University of Miami medical student waives in support
4:30:04 PM Michelle Jacquis, Florida Medical Association waives in support
4:30:07 PM Hansel Tookes waives in support
4:30:11 PM Chris Fisher, Florida Advocacy & Policy Coordinator waives in support
4:30:22 PM Martha DeCastro, Vice President for Nursing, Florida Hospital Association waives in support
4:30:23 PM Brian Pitts waives in support
4:30:36 PM Bill Ekwel, Division Chief, Tallahassee Fire Department waives in support
4:30:40 PM Kathryn Gohlke, Lieutenant, Tallahassee Fire Department waives in support
4:30:46 PM Jim Magill, USF Health waives in support
4:30:56 PM Senator Sobel in debate
4:31:14 PM Senator Braynon waives close on the bill
4:31:19 PM roll call
4:31:24 PM CS/SB 408 reported favorably
4:32:00 PM SB 516 by Senator Latvala
4:32:11 PM Senator Latvala explains the bill
4:33:13 PM Chelsea d'Hemecourt, Florida Coalition for the Homeless, waives in support
4:33:22 PM Brian Pitts speaks
4:33:45 PM Senator Latvala waives close
4:34:32 PM roll call
4:34:36 PM SB 516 reported favorably
4:34:58 PM SB 538 by Senator Latvala
4:35:08 PM Senator Latvala explains the bill
4:36:23 PM Carole Jean Jordon, Indian River Tax Collector, waives in support
4:36:32 PM Larry Hart, Lee County Tax Collector, waives in support
4:36:38 PM Tim Qualls, Executive Director Florida Tax Collectors Association, waives in support
4:36:46 PM Senator Latvala waives close
4:36:55 PM roll call
4:36:59 PM SB 538 reported favorably
4:37:26 PM SB 796 by Senator Latvala
4:37:36 PM Senator Latvala explains the bill
4:38:15 PM Justin Thames, Governmental Affairs Manager Florida Institute of CPA's, waives in support
4:38:23 PM Brian Pitts speaks
4:38:46 PM Senator Latvala waives close
4:39:25 PM roll call
4:39:31 PM SB 796 reported favorably
4:40:02 PM CS/SB 646 by Senator Montford
4:40:11 PM Senator Montford explains the bill
4:40:25 PM Senator Montford waives close on the bill
4:40:39 PM roll call
4:40:43 PM CS/SB 646 reported favorably
4:41:06 PM CS/SB 648 by Senator Montford
4:41:14 PM Senator Montford explains the bill
4:41:27 PM Senator Montford waives close on the bill
4:41:35 PM roll call
4:41:38 PM CS/SB 648 reported favorably
4:42:02 PM SB 1664 by Committee on Judiciary
4:42:11 PM SB 1664 explained by Judiciary Staff Director Tom Cibula
4:42:41 PM Brian Pitts waives in support
4:42:53 PM Staff Director Cibula waives close
4:42:56 PM roll call
4:43:02 PM SB 1664 reported favorably
4:43:23 PM CS/SB 656 by Senator Montford
4:43:32 PM Senator Montford explains the bill
4:43:42 PM Senator Montford waives close on the bill
4:43:46 PM roll call
4:43:51 PM CS/SB 656 reported favorably
4:44:19 PM Senator Richter moves we rise



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR JOE NEGRON

32nd District

COMMITTEES:
Appropriations, *Chair*
Banking and Insurance
Rules

SELECT COMMITTEE:
Select Committee on Indian River Lagoon
and Lake Okeechobee Basin, *Chair*
Select Committee on Patient Protection
and Affordable Care Act, *Chair*

JOINT COMMITTEE:
Joint Legislative Budget Commission,
Alternating Chair

March 26, 2014

Chairman John Thrasher
Senate Rules Committee
404 Senate Office Building
Tallahassee, FL 32399

HAND DELIVERED

Re: Excused Absence Request

Dear Chairman Thrasher:

This letter shall serve as my formal request for an excused absence to leave early from the Senate Rules Committee Meeting on Wednesday, March 26, 2014. This absence is necessary to attend to duties regarding the General Appropriations Act being heard on Thursday, March 27, 2014.

Thank you for your consideration of this request.

Sincerely Yours,

A handwritten signature in black ink, appearing to read "Joe Negron", with a horizontal line underneath.

Joe Negron
State Senator
District 32

JN/hd

c: John B. Phelps, Staff Director

REPLY TO:

3500 SW Corporate Parkway, Suite 204, Palm City, Florida 34990 (772) 219-1665 FAX: (772) 219-1666
 412 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5032

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Criminal Justice, *Vice Chair*
Rules, *Vice Chair*
Appropriations
Appropriations Subcommittee on Criminal and
Civil Justice
Appropriations Subcommittee on Health
and Human Services
Communications, Energy, and Public Utilities
Community Affairs
Governmental Oversight and Accountability

SELECT COMMITTEE:

Select Committee on Patient Protection
and Affordable Care Act

JOINT COMMITTEE:

Joint Legislative Budget Commission

SENATOR CHRISTOPHER L. SMITH

Democratic Leader
31st District

March 25, 2014

The Honorable John Thrasher, Chair
Senate Committee on Rules
402 Senate office Building
Tallahassee, Florida 32399-1100

Dear Senator Thrasher:

I respectfully request permission to be excused from Senate Committee on Rules that will be held on Wednesday March 26, 2014 from 4:00 PM until 6:00 PM. I have a very important commitment that i was unable to reschedule.

Thank you in advance for your consideration.

Sincerely,

Senator Christopher L. Smith
Democratic Leader
District 31

REPLY TO:

- 2151 NW 6th Street, Fort Lauderdale, Florida 33311 (954) 321-2705 FAX: (954) 321-2707
- 200 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5031

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

SENATOR ANDY GARDINER

13th District

COMMITTEES:
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Chair*
Appropriations
Appropriations Subcommittee on Finance and Tax
Environmental Preservation and Conservation
Ethics and Elections
Gaming
Judiciary
Military and Veterans Affairs, Space, and
Domestic Security
Rules

JOINT COMMITTEE:
Joint Legislative Budget Commission

March 26, 2014

The Honorable John Thrasher, Chair
Committee on Rules
402 Senate Office Building
404 South Monroe Street
Tallahassee, FL 32399

A handwritten signature in black ink, appearing to be "AG" followed by a flourish.

Dear Chair Thrasher,

I am writing to respectfully request that I be excused from the Committee on Rules meeting scheduled for Wednesday, March 26. I had an immediate issue arise which needed my immediate attention.

If you have any questions regarding this request, please do not hesitate to call my office. Thank you for your time and consideration of this matter.

Sincerely,

A handwritten signature in black ink, appearing to be "Andy Gardiner" with a large flourish.

Senator Andy Gardiner

AG:gh

Cc: John Phelps, Staff Director
Tamara Lyon, Administrative Assistant

REPLY TO:

- 1013 East Michigan Street, Orlando, Florida 32806 (407) 428-5800
- 420 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5013

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Judiciary, *Chair*
Appropriations Subcommittee on Health
and Human Services
Appropriations Subcommittee on Transportation,
Tourism, and Economic Development
Banking and Insurance
Ethics and Elections
Gaming
Rules
Transportation

SENATOR TOM LEE

Deputy Majority Leader
24th District

March 26, 2014

Chairman John Thrasher
Senate Committee on Rules
402 The Capitol
404 South Monroe St.
Tallahassee, FL 32399

Dear Chairman Gardiner,

I respectfully request to be excused from the Senate Committee on Rules on March 26, 2014 due to a prior commitment.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Tom Lee".

Tom Lee
Senator, District 24

Cc: John Phelps, Staff Director

REPLY TO:

- 915 Oakfield Drive, Suite D, Brandon, Florida 33511 (813) 653-7061
- 418 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5024

Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore